

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

<p>In re</p> <p>CD LIQUIDATION CO., LLC, et al.,</p> <p style="text-align:center">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 09-13038 (KG)</p> <p>Substantively Consolidated</p> <p><b>Hearing Date:</b> April 24, 2012 at 11:00 a.m. <b>Objection Deadline:</b> April 10, 2012 at 4:00 p.m.</p>
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**MOTION OF THE LIQUIDATING TRUSTEE FOR AN ORDER APPROVING AND  
AUTHORIZING COMPROMISE OF CONTROVERSIES BY AND AMONG THE  
LIQUIDATING TRUSTEE, XL SPECIALTY INSURANCE COMPANY AND  
MARCELO PALADINI**

Charles M. Moore, as Liquidating Trustee for CD Liquidation Co., LLC (the “**Liquidating Trustee**”), by and through his undersigned counsel, move (the “**Motion**”) this Court on an emergency basis<sup>1</sup> for entry of an order pursuant to section 105(a) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) approving and authorizing the settlement agreement attached as Exhibit A (the “**Settlement**”).<sup>2</sup> In support of this Motion, the Liquidating Trustee respectfully represent as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this District and before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

<sup>1</sup> The Liquidating Trustee does not believe that Court approval is necessary pursuant to the terms of the Plan. However, in an abundance of caution, the Liquidating Trustee, at the request of all parties involved, moves on an emergency basis for approval of the Settlement and payment of the XL Defense Payment (as those terms are defined in this Motion).

<sup>2</sup> Unless otherwise defined in this Motion, all capitalized terms shall have the meanings ascribed to them in the Settlement.



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2. The statutory and legal predicates for the relief requested are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a).

### **Background**

3. On September 1, 2009 (the “**Petition Date**”), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

4. On December 21, 2010, this Court confirmed the Joint Plan of Liquidation of CD Liquidation Co., LLC, CD Liquidation Co. Plus, LLC and Cynergy Data Holdings, Inc. (the “**Plan**”).

5. Prior to the Petition Date, XL Specialty Insurance Company (“**XL**”) issued Private Company Insurance Policy No. ELU 110860-09 to Cynergy Data, LLC f/k/a CPS Group, Inc. d/b/a Cynergy Data (“**Cynergy**”) for the original Policy Period from April 23, 2009 to June 1, 2010, which was extended to June 1, 2011 (the “**Policy**”). The Policy contains a \$5 million aggregate limit of liability for all Claims under the Management Liability and Company Reimbursement (“**Management Liability**”) Coverage Part, subject to a \$5,000 retention for each Insured Person under Insuring Agreement I(A), a \$15,000 retention for each Claim under Insuring Agreement I(B) of the Management Liability Coverage Part, and a co-insurance liability for each Insured Person who is a Cynergy officer or director in the amount of 0.5% of Loss in excess of the applicable Retention for the first \$1 million of coverage.

6. On or about September 15, 2009, Dymas Funding Company, LLC, and others, filed a lawsuit against Marcelo Paladini (“**Paladini**”), John Martillo (“**Martillo**”) and Gustavo Ceballos (“**Ceballos**”) (collectively the “**Insureds**”) in the Supreme Court for New York County, New York, styled *Dymas Funding Company, LLC, et al. v. Marcelo Paladini, et al.*, Index No.: 602852/2009 (the “**Dymas Lawsuit**”);

7. By letter dated September 25, 2009, the Debtors, provided notice to XL of circumstances that might give rise to a claim under the Policy, or any other applicable policies, namely, the Debtors filing voluntary petitions under Chapter 11 of the Bankruptcy Code. Additionally, the Debtors provided notice to XL of the Dymas Lawsuit and requested that XL provide coverage under the Policy for it.

8. On August 4, 2010, XL agreed to provide the Insureds with a defense to the Dymas Lawsuit subject to a full reservation of rights under the Policy and applicable law.

9. On or about October 8, 2010, the Official Committee of Unsecured Creditors filed a lawsuit against Paladini in the United States Bankruptcy Court for the District of Delaware, styled *CD Liquidation Co., LLC, et al., by and through the Official Committee of Unsecured Creditors v. Marcelo Paladini*, Case No. 10-ap-53190 (the “**Adversary Proceeding**”).

10. On January 14, 2011, counsel for Paladini provided notice to XL of the Adversary Proceeding and requested that XL provide coverage under the Policy for it.

11. On April 14, 2011, XL agreed to provide Paladini with a defense to the Adversary Proceeding subject to a full reservation of rights under the Policy and applicable law.

12. Subsequently, on May 10, 2011, XL denied coverage for, and withdrew its defense of, the Dymas Lawsuit and the Adversary Proceeding based, in part, on its determination that coverage for these actions was barred by the Prior Knowledge Exclusion in the Application for the Policy (the “**Disclaimer of Coverage**”).

13. Paladini disputed the Disclaimer of Coverage on the grounds that it was untimely and improper. Paladini also submitted a request for payment in the amount of \$465,066.99 for attorneys’ fees and costs incurred by Foley & Lardner LLP and Fox Rothschild LLP (together “**Defense Counsel**”) on Paladini’s behalf (the “**Requested Amount**”).

14. In response, XL objected certain portions of the Requested Amount on the grounds that the hourly rates were unreasonable and that certain fees and costs were not Defense Expenses as defined under the Policy (the “**Fee Dispute**”). Paladini disagreed and disputed XL’s objections to the Requested Amount.

15. Subsequently, XL and Paladini, through counsel, engaged in arms-length negotiations in order to resolve the Fee Dispute. As a result, XL, the Liquidating Trustee and Paladini (together with the Liquidating Trustee, the “**Cynergy Parties**”, and together with XL, the “**Parties**”) have agreed enter into the Settlement, through which XL has agreed to pay Paladini \$268,650.00 in full and final satisfaction of any and all of XL’s defense obligations under the Policy or otherwise through May 10, 2011 (“**the XL Defense Payment**”). Additionally, the Liquidating Trustee has given its written consent to payment of the XL Defense Payment to Paladini.

16. The Settlement, which is being submitted to this Court for approval on an emergency basis, seeks to avoid the expense, inconvenience and uncertainty of litigation and, in so doing, resolve and settle all outstanding issues and claims among the Parties. This Motion seeks approval of the Settlement, which is summarized as follows:<sup>3</sup>

**Settlement Summary:**

- a. Within fifteen (15) business days after the later of (1) XL’s receipt of this Agreement executed by or on behalf of the Cynergy Parties, or (2) XL’s receipt of an order entered by this Court authorizing and/or approving payment of the XL Defense Payment, XL will deliver to Foley & Lardner LLP in the amount of \$268,250.00, which funds will be disbursed to or as directed by Paladini.
- b. Paladini has assigned the XL Defense Payment to the Liquidating Trustee.

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<sup>3</sup> This summary is qualified in its entirety by the Settlement itself. If there are any inconsistencies between this summary and the Settlement, the Settlement controls.

- c. The Cynergy Parties acknowledge and agree that the XL Defense Payment fully and finally satisfies any and all of XL's defense obligations to Paladini and Defense Counsel under the Policy or otherwise through May 10, 2011 and that the XL Defense Payment will be credited against the Policy's \$5 million aggregate limit of liability and will count toward exhaustion of such limit of liability.
- e. The Settlement also contains mutual releases by and among the Parties.

### **Relief Requested**

17. By this Motion, and in accordance with section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, the Liquidating Trustee respectfully request this Court to enter an Order, (i) approving the Settlement, (ii) approving payment of the XL Defense Payment and (iii) authorizing the Liquidating Trustee to take any and all actions necessary to effectuate the Settlement.

### **Basis for Relief**

18. Section 105 of the Bankruptcy Code authorizes this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a) (2012). Bankruptcy Rule 9019(a) provides that "on motion by the trustee and after a hearing, the court may approve a compromise or settlement." FED. R. BANKR. P. 9019(a) (2012).

19. Bankruptcy courts encourage the fair and equitable settlement of time-consuming and burdensome litigation. See In re Protective Comm. For Indep. Stockholders of TMT Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) ("[I]n administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims . . .").

20. In considering the propriety of a settlement, courts have enumerated four factors in determining whether a settlement should be approved. The four factors are: (i) the probability

of success on the merits of underlying litigation, (ii) the potential difficulty in collection of a judgment, (iii) the complexity and expense of litigation, and (iv) the interest of creditors, with deference to their reasonable views. See Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co), 213 B.R. 1020, 1022 (10th Cir. BAP 1997).

21. The Liquidating Trustee has weighed the costs and risks associated with a continuation of the Fee Dispute and possible litigation, including its respective rights, liabilities, obligations and duties, against the compromises contained within the Settlement and has concluded that it is in its respective best interests to compromise and settle the matter pursuant to the terms of the Settlement without further delay.

22. In particular, the Liquidating Trustee is in the process of concluding disputes between the Trust and various former executives of the Debtors and other third parties. Continuation of the Fee Dispute between the Liquidating Trustee, Paladini and XL would delay conclusion of these bankruptcy proceedings and distract the Liquidating Trustee from more pressing issues. Such litigation would be time consuming, speculative in nature and expensive to the Debtors' estates. Indeed, the cost of continuing the Fee Dispute would only further diminish the Trust's remaining assets, which ultimately will be distributed to general unsecured creditors.

23. The Liquidating Trustee believes the Settlement is fair, equitable, and in the best interest of the debtors' creditors and estates, represents an exercise of the Liquidating Trustee's sound business judgment, and should be approved pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

#### Notice

24. Notice of this Motion has been provided to (i) the United States Trustee and (ii) all parties requesting notice pursuant to Bankruptcy Rule 2002.

**No Prior Request**

25. No previous request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Liquidating Trustee respectfully request that the Court: (i) enter an order, in substantially the same form as that attached as Exhibit B, approving the Settlement, payment of the XL Defense Payment and the relief requested in this Motion; and (ii) provide such other relief as the Court deems appropriate and just.

Dated: March 26, 2012

Respectfully Submitted,

/s/ Christopher A. Ward

Christopher A. Ward (Del. Bar No. 3877)

Jarrett Vine (Del. Bar No. 5400)

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-and-

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Attorneys for the Liquidating Trustee

**Exhibit A**  
**(Settlement)**



## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into by and between XL Specialty Insurance Company ("XL"), on the one hand, and Charles M. Moore, as Liquidating Trustee for CD Liquidation Co., LLC, f/k/a Cynergy Data, LLC, Cynergy Data Holdings, Inc., and CD Liquidation Co. Plus, LLC, f/k/a Cynergy Prosperity Plus, LLC (the "Liquidating Trustee"), CD Liquidation Trust ("CD Trust"), Comerica Bank, as Agent ("Comerica") and Marcelo Paladini ("Paladini" and collectively with the Liquidating Trustee, CD Trust and Comerica, the "Cynergy Parties") on the other hand. XL and the Cynergy Parties together are referred to as the "Parties," and each, individually, is referred to as a "Party." This Agreement will become effective on the date it is executed by all Parties.

WHEREAS, XL issued Private Company Insurance Policy No. ELU 110860-09 to Cynergy Data, LLC f/k/a CPS Group, Inc. d/b/a Cynergy Data ("Cynergy") for the original Policy Period from April 23, 2009 to June 1, 2010, which subsequently was extended by Run-Off Endorsement, subject to certain conditions, to June 1, 2011 (the "Policy");

WHEREAS, in addition to other provisions, the Policy contains a \$5 million aggregate limit of liability for all Claims under the Management Liability and Company Reimbursement ("Management Liability") Coverage Part, subject to a \$5,000 retention for each Insured Person under Insuring Agreement I(A), a \$15,000 retention for each Claim under Insuring Agreement I(B) of the Management Liability Coverage Part, and a co-insurance liability for each Insured Person who is a Cynergy officer or director in the

amount of 0.5% of Loss in excess of the applicable Retention for the first \$1 million of coverage;

**WHEREAS**, on or about September 15, 2009, Dymas Funding Company, LLC, and others, filed a lawsuit against Paladini, John Martillo ("Martillo") and Gustavo Ceballos ("Ceballos") (collectively the "Insureds") in the Supreme Court for New York County, New York, styled *Dymas Funding Company, LLC, et al. v. Marcelo Paladini, et al.*, Index No.: 602852/2009 (the "*Dymas Lawsuit*");

**WHEREAS**, by letter dated September 25, 2009, Frank Crystal & Company ("Crystal"), on behalf of Cynergy, purported to provide notice to XL of circumstances that might give rise to a claim under the Policy, or any other applicable policies, namely, Cynergy's filing a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware styled *In re CD Liquidation Co., LLC, f/k/a Cynergy Data, LLC, et. al.*, Case No. 09-13038 (KG) (the "Cynergy Bankruptcy");

**WHEREAS**, by letter dated October 1, 2009, Crystal, on behalf of Cynergy, provided notice to XL of the *Dymas Lawsuit* and requested that XL provide coverage under the Policy for it;

**WHEREAS**, Crystal, in its September 25 and October 1, 2009 letters requested that all correspondence relating to the Cynergy Bankruptcy and the *Dymas Lawsuit* be sent to Crystal;

**WHEREAS**, Gustavo Ceballos has not been served with the summons and complaint in the *Dymas Lawsuit*;

**WHEREAS**, on December 7, 2009, the Court in the *Dymas* Lawsuit entered a Stipulation and Discontinuance of that lawsuit as to John Martillo;

**WHEREAS**, by letter dated August 4, 2010, addressed to Crystal, XL agreed to provide the Insureds with a defense to the *Dymas* Lawsuit subject to a full reservation of rights under the Policy and applicable law and requested information concerning the proposed defense arrangements for the *Dymas* Lawsuit including, but not limited to, the names and hourly rates of all attorneys and other timekeepers proposed to work on the *Dymas* Lawsuit;

**WHEREAS**, on or about October 8, 2010, the Official Committee of Unsecured Creditors filed a lawsuit against Paladini in the United States Bankruptcy Court for the District of Delaware, styled *CD Liquidation Co., LLC, et al., by and through the Official Committee of Unsecured Creditors v. Marcelo Paladini*, Case No. 10-ap-53190 (the "Adversary Proceeding");

**WHEREAS**, by letter dated January 14, 2011, counsel for Paladini, Stephen A. Aschettino of Aschettino Law, P.C. ("Aschettino"), on behalf of Paladini, provided notice to XL of the Adversary Proceeding and requested that XL provide coverage under the Policy for it;

**WHEREAS**, by letter dated April 14, 2011, to Aschettino, XL agreed to provide Paladini with a defense to the Adversary Proceeding subject to a full reservation of rights under the Policy and applicable law and requested information concerning the proposed defense arrangements for the Adversary Proceeding including, but not limited to, the names and hourly rates of all attorneys and other timekeepers proposed to work on the Adversary Proceeding;

**WHEREAS**, by letter dated May 10, 2011, to Aschettino, XL denied coverage for, and withdrew its defense of, the *Dymas* Lawsuit and the Adversary Proceeding based, in part, on its determination that coverage for these actions was barred by the Prior Knowledge Exclusion in the Application for the Policy (the "Disclaimer of Coverage");

**WHEREAS**, Paladini has disputed the Disclaimer of Coverage on the grounds that it was untimely and improper and has reserved all of his rights with respect to same;

**WHEREAS**, Paladini has submitted a request for payment in the amount of \$465,066.99 for attorneys' fees and costs incurred by Foley & Lardner LLP and Fox Rothschild LLP (together "Defense Counsel") on Paladini's behalf (the "Requested Amount");

**WHEREAS**, XL has disputed certain portions of the Requested Amount on the grounds that the hourly rates were unreasonable and that certain fees and costs were not Defense Expenses as defined under the Policy (the "Fee Dispute");

**WHEREAS**, Paladini has disputed XL's position with regard to the Fee Dispute on the grounds that the Requested Amount was reasonable and proper;

**WHEREAS**, XL and Paladini, through counsel, have engaged in arms-length negotiations in order to resolve the Fee Dispute;

**WHEREAS**, as a result of these negotiations, XL has agreed to pay, and Paladini has agreed to accept, \$268,650.00 as full and final satisfaction of any and all of XL's defense obligations under the Policy or otherwise through May 10, 2011 ("the XL Defense Payment");

**WHEREAS**, on February 16, 2012, Paladini, CD Trust and Comerica entered into an Assignment of Claims, pursuant to which Paladini agreed to assign to CD Trust

and Comerica all of his rights, interest or claims arising from the Disclaimer of Coverage, including reimbursement of Defense Expenses;

**WHEREAS**, Paladini has provided XL, with the Liquidating Trustee's, CD Trust's and Comerica's written consent to payment of the XL Defense Payment to Paladini;

**WHEREAS**, the Parties desire to resolve any and all claims and disputes between and among them with respect to the Requested Amount, the Fee Dispute and the XL Defense Payment;

**NOW, THEREFORE**, for full and valuable consideration and on the terms, conditions and covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the foregoing recitals, which form a part of the Agreement, the Parties agree as follows

1. **Payment**

Within fifteen (15) business days after the later of (1) XL's receipt of this Agreement executed by or on behalf of the Cynergy Parties, or (2) XL's receipt of an order entered in the Cynergy Bankruptcy by the Bankruptcy Court for the District of Delaware authorizing and/or approving payment of the XL Defense Payment, XL will deliver to Foley & Lardner LLP, attention Douglas E. Spelfogel, a check made payable to the Foley & Lardner LLP Client Trust Account as Attorney for Marcelo Paladini in the amount of \$268,250.00, which funds will be disbursed to or as directed by Paladini.

2. **XL's Defense Obligation**

The Cynergy Parties acknowledge and agree that the XL Defense Payment fully and finally satisfies any and all of XL's defense obligations to Paladini and Defense

Counsel under the Policy or otherwise through May 10, 2011 and that the XL Defense Payment will be credited against the Policy's \$5 million aggregate limit of liability and will count toward exhaustion of such limit of liability.

3. **Mutual Releases**

a. The Cynergy Parties, on behalf of themselves and their members, officers, directors, partners, principals, managers, management entities, employees, agents, predecessors and successors in interest, affiliates, subsidiaries, parents, divisions, past, present and future associates, representatives, owners, heirs, assigns, insurers (other than XL or affiliates of XL), reinsurers, shareholders, attorneys, and persons acting by, through, under or in concert with any of the foregoing (the "Cynergy Parties Related Persons and Entities"), hereby release, remise, acquit and forever discharge XL and its members, officers, directors, partners, principals, managers, management entities, employees, agents, predecessors and successors in interest, affiliates, subsidiaries, parents, divisions, past, present and future associates, representatives, owners, heirs, assigns, insurers, reinsurers, shareholders, attorneys, and persons acting by, through, under or in concert with any of the foregoing (the "XL Related Persons and Entities"), separately and jointly, of and from any and all claims (including without limitation any claims for contract or tort damages, punitive damages, fraud, misrepresentation, violation of statute, breach of duty of good faith and fair dealing, extra-contractual damages, and any other damages or loss or other form of relief), duties, debts, liens, contracts, agreements, promises, demands, payments, rights, obligations, losses, judgments, awards, attorneys' fees, costs, expenses, interests, damages, liabilities, benefits and causes of action, at law or in equity, of whatever kind or character, known or unknown, suspected,

fixed, or contingent, that they or any one of them now have, ever have had, or may have in the future against XL and/or the XL Related Persons and Entities based solely on, arising out of or related to (1) the Requested Amount; (2) the Fee Dispute; (3) the XL Defense Payment; and/or (4) any defense fees or costs incurred on behalf of Paladini through May 10, 2011. Notwithstanding anything contained in this Paragraph, the foregoing release shall not release any claim for breach of this Agreement.

b. XL, on behalf of itself and the XL Related Persons and Entities, hereby releases, remises, acquits and forever discharges the Cynergy Parties and their Related Persons and Entities, separately and jointly, of and from any and all claims (including without limitation any claims for contract or tort damages, punitive damages, fraud, misrepresentation, violation of statute, breach of duty of good faith and fair dealing, extra-contractual damages, and any other damages or loss or other form of relief), duties, debts, liens, contracts, agreements, promises, demands, payments, rights, obligations, losses, judgments, awards, attorneys' fees, costs, expenses, interests, damages, liabilities, benefits and causes of action, at law or in equity, of whatever kind or character, known or unknown, suspected, fixed, or contingent, that they or any one of them now have, ever have had, or may have in the future against the Cynergy Parties and/or their Related Persons or Entities based solely on, arising out of or related to (1) the Requested Amount; (2) the Fee Dispute; (3) the XL Defense Payment; and/or (4) any defense fees or costs incurred on behalf of Paladini through May 10, 2011.

Notwithstanding anything contained in this Paragraph, the foregoing release shall not release any claim for breach of this Agreement.

4. **Unknown Claims**

Notwithstanding any state, federal or foreign statute or principle of common law which provides that a general release does not extend to claims which a releasor does not know or suspect to exist at the time of executing the release, the releases provided for in Paragraph 3 of this Agreement shall be deemed to constitute full releases in accordance with their terms. Although the Parties do not contemplate that California law governs this Agreement, the Parties acknowledge that they have been informed of and are familiar with California Civil Code Section 1542 ("Section 1542"), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Parties knowingly, voluntarily and expressly waive, to the fullest extent permitted by law, any and all rights they may have under any state, federal or foreign statute or any principle of common law, including Section 1542, that would limit the effect of the releases provided for in Paragraph 3 of this Agreement. The Parties understand the provisions of this Paragraph 4 and knowingly and voluntarily enter into this waiver with the intention in executing this Agreement to discharge each other and their respective Related Persons and Entities from any and all present and future, foreseen and unforeseen, known and unknown claims and causes of action as provided for in Paragraph 3 of this Agreement. The Parties acknowledge and agree that this waiver is an essential and material term of this Agreement, and that, without such waiver, they would not have entered into this Agreement.



5. **Bankruptcy Court Approval**

The Cynergy Parties agree to submit a motion to the Bankruptcy Court for the District of Delaware requesting authorization and/or approval of XL's payment of the XL Defense Payment. The Parties agree that if such approval is not obtained, then this Agreement will be null and void *ab initio*.

6. **No Admission of Liability**

The Parties acknowledge and agree that this Agreement is entered into for the sole purpose of resolving all matters relating to the Requested Amount, the Fee Dispute and the XL Defense Payment. The Parties further acknowledge and agree that neither the execution nor the performance of any of the terms of this Agreement will constitute or be construed as an admission by any of the Parties of any liability, or of the validity or enforceability of any matters that are released pursuant to this Agreement, or of any coverage under the Policy. The Parties also acknowledge and agree that this Agreement will not be offered or used, nor will this Agreement be admissible in evidence, in any action, cause of action or proceeding, except in an action to enforce the terms of this Agreement. Nothing in this Agreement shall be deemed to alter, modify, or delete any of the terms or conditions of the Policy.

7. **No Assignment**

Except for Paladini's agreement to transfer the XL Defense Payment to the Liquidating Trustee, the Parties represent and warrant that they have not sold, assigned or otherwise transferred any interest in the claims, demands, rights, actions, causes of action or liabilities that are the subject of the releases provided for in Paragraph 3 of this Agreement.

8. **Authority**

The individuals executing this Agreement on behalf of an entity or entities represent and warrant that they are authorized to enter into and execute this Agreement on behalf of the entity or entities on whose behalf they purport to execute the Agreement, that the appropriate corporate resolutions or other consents have been passed and/or obtained, and that this Agreement will be binding upon the entity or those entities.

9. **Construction of Agreement and Binding Effect**

This Agreement will not be construed against any of the Parties for any reason, including against XL because it is an insurance company. The Parties agree that this Agreement will be binding upon and inure to the benefit of the Parties, their respective Related Persons and Entities, and any corporation, partnership or other entity into which any corporate Party may merge, consolidate or reorganize.

10. **Entire Agreement**

This Agreement constitutes the entire agreement among the Parties with respect to the matters addressed herein and supersedes all prior oral or written agreements with respect to the matters released, except for the Policy. This Agreement will not be amended, altered or modified, except by an instrument in writing signed by all Parties.

11. **Advice of Counsel**

This Agreement is made and executed by each of the Parties with the advice of counsel, and none of the Parties has been coerced or induced to enter into this Agreement by any improper action of any other Party or its or his counsel.

12. Headings and Captions

The headings and captions used in this Agreement are for convenience only, are not a part of this Agreement, and will not alter or determine any rights or obligations under this Agreement or otherwise.

13. Execution in Counterparts

This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which, together, will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the undersigned Parties has executed this Agreement or caused it to be executed on his or its behalf.

Dated: 3 26 12

XL Specialty Insurance Company

By: 

Title: SR. CATHS COUNSEL

Dated: \_\_\_\_\_

CD Liquidation Co., LLC f/k/a Cynergy Data, LLC

By: \_\_\_\_\_

Title: Liquidating Trustee

Dated: \_\_\_\_\_

Cynergy Data Holdings, Inc.

By: \_\_\_\_\_

Title: Liquidating Trustee

12. **Headings and Captions**

The headings and captions used in this Agreement are for convenience only, are not a part of this Agreement, and will not alter or determine any rights or obligations under this Agreement or otherwise.

13. **Execution in Counterparts**

This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which, together, will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the undersigned Parties has executed this Agreement or caused it to be executed on his or its behalf.

Dated: 3-23-2012

XL Specialty Insurance Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: 3-23-2012

CD Liquidation Co., LLC f/k/a Cynergy  
Data, LLC

By: Chuck M. Moore

Title: Liquidating Trustee

Dated: 3-23-2012

Cynergy Data Holdings, Inc.

By: Chuck M. Moore

Title: Liquidating Trustee

Dated: 3-23-2012

CD Liquidation Co. Plus, LLC f/k/a  
Cynergy Prosperity Plus, LLC

By: Chad M. Moore

Title: Liquidating Trustee

Dated: 3-23-2012

CD Liquidation Trust

By: Chad M. Moore

Title: Liquidating Trustee

Dated: 3-23-12

Comerica Bank, as Agent

By: Elaine J. Szydrych

Title: VICE PRESIDENT

Dated: \_\_\_\_\_

\_\_\_\_\_  
Marcelo Paladini

Dated: \_\_\_\_\_

CD Liquidation Co. Plus, LLC f/k/a  
Cynergy Prosperity Plus, LLC

By: \_\_\_\_\_

Title: Liquidating Trustee

Dated: \_\_\_\_\_

CD Liquidation Trust

By: \_\_\_\_\_

Title: Liquidating Trustee

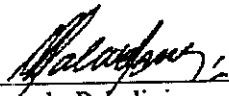
Dated: \_\_\_\_\_

Comerica Bank, as Agent

By: \_\_\_\_\_

Title:

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Marcelo Pafadini

**Exhibit B**  
**(Proposed Order)**

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

In re  CD LIQUIDATION CO., LLC, et al.,  Debtors.	Chapter 11  Case No. 09-13038 (KG)  Substantively Consolidated  Re: Docket No. ____
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**ORDER GRANTING THE MOTION OF THE LIQUIDATING TRUSTEE FOR AN  
ORDER APPROVING AND AUTHORIZING COMPROMISE OF CONTROVERSIES  
BY AND AMONG THE LIQUIDATING TRUSTEE, XL SPECIALITY INSURANCE  
COMPANY AND MARCELO PALADINI**

Upon consideration of the Motion of the Liquidating Trustee for an Order Approving and Authorizing Compromise of Controversies by and among the Liquidating Trustee, XL Specialty Insurance Company and Marcelo Paladini (the “**Motion**”); and the Court having reviewed the settlement agreement attached to the Motion as Exhibits A (the “**Settlement**”); and the Court having found that jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and the Liquidating Trustee having provided appropriate notice under the circumstances of the Motion and the opportunity for a hearing on the Motion, and that no other or further notice is required; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted in this Order; and after due deliberation and sufficient cause appearing therefore, it is ORDERED THAT:

1. The Motion is GRANTED.



2. The Liquidating Trustee's entry into the Settlement is authorized and the terms of the Settlement and payment of the XL Defense Payment are approved.

3. The Liquidating Trustee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

4. The Court retains jurisdiction over any and all matters arising from or related to the Settlement and the implementation or interpretation of this Order.

Dated: April \_\_\_\_, 2012

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The Honorable Kevin Gross  
United States Bankruptcy Judge