

April 3, 2009

Federal Election Commission  
Office of the General Counsel  
999 E Street, NW  
Washington, DC 20463

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AOR 2009-12

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Re: Request for Advisory Opinion

Dear Commissioners:

On behalf of Senator Norm Coleman and his principal campaign committee, Coleman for Senate ("Committee"), we respectfully request an advisory opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971 ("FECA"), as amended.

Consistent with previous Commission guidance, we seek confirmation that the Committee may pay the legal fees and expenses described below.

### FACTUAL BACKGROUND

#### **A. Matters Generating Legal Fees**

Over the last several months, Senator Coleman's campaign and legal counsel<sup>1</sup> have been forced to (1) respond to allegations arising from baseless complaints filed by Senator Coleman's political opponents; (2) monitor ongoing litigation related to these topics, prepare for possible involvement in such litigation, and preserve documents that may prove relevant to the litigation; and (3) provide responses and information to the media on these topics. We describe these matters in detail below.

#### **1. Texas & Delaware State Court Complaints**

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<sup>1</sup> Representing Senator Coleman in these matters is Douglas A. Kelley of Kelley & Wolter, a Minneapolis law firm. Fees from Kelley & Wolter's services have not been paid by either Senator Coleman or his campaign as of the date of this request.

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On October 27, 2008, the former CEO of Deep Marine Technology (“DMT”) filed a lawsuit in a state court in Houston alleging misconduct by DMT investor Nassar Kazeminy. On November 3, 2008, several minority shareholders of DMT filed a nearly identical lawsuit in Delaware state court. *See Exhibits I & J.*

Neither Senator Coleman nor his wife Laurie Coleman is named as a defendant in the lawsuits. However, both complaints allege that Kazeminy coerced DMT to make improper payments of \$75,000 to Laurie Coleman through her employer, for the ultimate benefit of her husband. The Texas complaint alleges that Kazeminy told the CFO of DMT that “U.S. Senators don’t make [expletive deleted] and that he was going to find a way to get money to United States Senator Norm Coleman of Minnesota and wanted to utilize DMT in the process.”

The Delaware complaint alleges that “[n]ews articles have reported that Defendant Kazeminy is a large donor to Senator Coleman’s campaign,” and that the two men have vacationed together at Kazeminy’s expense using Kazeminy’s private plane in 2004 and 2005. According to the complaint, “[n]ews articles have reported that Kazeminy may have paid large bills for clothing purchases at Neiman Marcus in Minneapolis by Senator Coleman and his wife.” *Id.*

In addition to monitoring these suits, counsel has been preparing for the potential involvement of Senator Coleman as a witness in the matters, and pursuant to law, preserving documents that may prove relevant. Counsel has also helped provide responses to media inquiries.

## **2. “Alliance for a Better Minnesota” and CREW Ethics Complaints and Letter to the FBI**

A self-described “progressive” organization that actively campaigned against Senator Coleman, Alliance for a Better Minnesota (“ABM”), has devoted considerable time and resources to filing frivolous complaints and letters against Senator Coleman:

- On November 12, 2008, the group filed a complaint with the Senate Select Committee on Ethics, which accused Senator Coleman of violating Senate Rule 35 by accepting the alleged gifts described in the state court complaints detailed above.
- Also on November 12, the group wrote to the Minneapolis Field Office of the Federal Bureau of Investigation to request that the FBI “investigate allegations of fraud alleged under oath in a lawsuit.” Specifically, ABM recounted the allegations that Kazeminy had intended to make an improper gift to Senator Coleman, and that Senator Coleman had accepted undisclosed gifts.

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- On December 12, 2008, ABM filed another complaint with the Senate Select Committee on Ethics, this time to imply that Senator Coleman's personal home renovations coincided suspiciously with the alleged "improper payments" from Kazeminy.

Citizens for Responsibility and Ethics in Washington ("CREW") has also devoted considerable time and resources to filing complaints against Senator Coleman. On July 1, 2008, CREW filed a complaint with the Senate Select Committee on Ethics, asking for an investigation into allegations concerning whether Senator Coleman violated the Senate gifts rule by accepting underpriced lodging from a consultant and friend.

These pending matters and the accusations within them have generated considerable media interest. *See, e.g.*, Exhibits E-H. In addition, the existence of these complaints has forced counsel to devote considerable *additional* time to monitoring the Delaware and Texas proceedings, despite the fact that Senator Coleman is not named as a defendant in either matter.

#### **B. Legal Fees**

Legal fees have been generated as a result of the aforementioned matters, and such fees break down into the following percentages of the total outstanding amount:

**Chart 1 – Legal Fees/Expenses Breakdown**

1. Monitoring Texas and Delaware Lawsuits	3.36%
2. Preparing for Possible Involvement in Texas and Delaware Lawsuits	63.44%
3. Document Preservation Related to Texas and Delaware Lawsuit Issues	16.82%
4. Media Inquiries Related to Texas and Delaware Lawsuits	2.77%
5. Review of Senate Ethics Complaints / Letter to FBI	4.67%
6. Media Inquiries Related to Ethics Complaints / Letter to FBI	8.67%
7. Costs (Copying, Phone Calls, Etc.)	.27%

#### **QUESTION PRESENTED**

May the Committee pay for the above-described legal fees and expenses as shown more specifically in Chart 1, as well as any additional fees and expenses in the future for cases and controversies arising from the same set of facts?

### LEGAL ANALYSIS

As the Commission is aware, federal law permits use of campaign funds by federal officeholders in connection with their campaigns for federal office, their duties as officeholders, *or for any other lawful purpose*, provided that the funds are not expended for personal use. *See* 2 U.S.C. § 439a(a). “Personal use” exists where funds are used “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.” *Id.* at (b)(2).

Because the question of whether legal expenses may be paid with campaign funds does not lend itself to bright-line rules, the questions are reviewed on a “case by case” basis. *See* 60 Fed. Reg. 7862, 7867-68 (“Consequently, the Commission has decided that issues raised by the use of campaign funds for a candidate’s or committee’s legal expenses will have to be addressed on a case by case basis.”).

With respect to legal fees in particular, the Explanation & Justification is careful to note what is *not* permissible, explaining that “legal expenses will not be treated as though they are campaign or officeholder related merely because the underlying legal proceedings have some impact on the campaign or the officeholder’s status. Thus, legal expenses associated with a divorce or charges of driving under the influence of alcohol will be treated as personal, rather than campaign or officeholder related.” 60 Fed. Reg. 7862, 7868.

In applying these rules, the Commission has concluded that legal expenses incurred as a result of an investigation by a congressional ethics committee may clearly be paid with campaign funds, because congressional committee action is always *per se* related to an officeholder’s official duties. *See, e.g.*, AO 2008-07 (Vitter); 2006-35 (Kolbe); AO 1998-1 (Hilliard). Such expenses are “ordinary and necessary expenses incurred in connection with the duties of a Federal officeholder.” AO 2008-07 at 4.

Similarly, the Commission has concluded that “a candidate’s authorized committee may use campaign funds to pay certain legal fees and expenses incurred in responding to press inquiries and news stories regarding allegations both related and unrelated to campaign activities and duties as an officeholder.” AO 2008-07 at 5 (citing AO-2006-35 (Kolbe); 2005-11 (Cunningham); 1998-1 (Hilliard); 1997-12 (Costello); and 1996-24 (Cooley)).

#### **A. Legal Expenses Incurred as a Result of the Delaware and Texas Complaints May Be Paid with Campaign Funds (Categories 1-4).**

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Expenses arising from monitoring, preparing for involvement in, and engaging in document preservation for, the Delaware and Texas lawsuits may be paid by the Committee, because such expenses were incurred as a direct result of Senator Coleman's status as a federal officeholder and candidate.

This matter differs significantly from the facts at issue in 2008-07. There, Senator Vitter's involvement in the Palfrey matter, and the fact that he was targeted as a witness in the Palfrey investigation, had little to do with his status as a federal officeholder. In contrast, Senator Coleman was targeted in the two lawsuits just before the 2008 election *because of his position as a Senator and candidate*, and for no other reason whatsoever.

Indeed, the state complaints themselves allege that the *very reason* for the purported improper payment was *because* of Senator Coleman's status as a federal officeholder and a candidate. The Delaware complaint specifically alleges that Kazeminy told a "confidential source" that "[w]e have to get some money to Senator Coleman' because the Senator 'needs the money.'" The Texas complaint similarly alleges that Kazeminy told the CFO of DMT that "U.S. Senators don't make [expletive deleted]' and that he was going to find a way to get money to United States Senator Norm Coleman of Minnesota and wanted to utilize DMT in the process." As such, the suits did not arise "irrespective" of Senator Coleman's election campaign or duties as a holder of Federal office. For this reason, this matter is quite different than the circumstances described in AO 2008-7, and circumstances dictate that Senator Coleman's expenses arising from these allegations may be paid for with campaign funds.

This matter also sharply contrasts with AO 1998-1, in which the Commission limited to 50% the payment of certain legal expenses because they did not "directly relate" to allegations arising from campaign or officeholder activity. There, the legal fees in question were incurred in connection with investigations by government authorities into misconduct by business and charities associated with Congressman Hilliard. His continuing involvement in the investigations was not dependent on his status as a federal officeholder or candidate. Here, however, the state court complaints *themselves* make clear that alleged payments were "made" *because of* Senator Coleman's status.

In addition, Senator Coleman must devote time and resources to these lawsuits in part *because of* the Ethics Complaints filed by CREW and ABM, and the need to keep informed of facts and circumstances relevant to the overlapping facts of the two sets of matters. Because fees generated by the Ethics Complaints are *per se* payable by the Committee, the fees generated by the two state court lawsuits should also be payable by the Committee.

Finally, fees generated in responding to press inquiries regarding the state court complaints are *per se* payable by the Committee.

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**B. Legal Expenses Incurred as a Result of ABM and CREW Complaints and Letter to FBI May Be Paid with Campaign Funds (Categories 5-6).**

Legal fees attributable to Ethics Complaints fall squarely within the permissible payments set forth in previous Advisory Opinions. In addition, fees generated in responding to media inquiries regarding these complaints may also be paid with campaign funds under the Commission's previous rulings.

Finally, reviewing the November 12 letter to the FBI relates entirely to the alleged violation of gift rules – rules that would not be applicable to Senator Coleman were he not a Senator. Furthermore, much of Senator Coleman's attention to the FBI letter stems from the letter's interrelationship with the Ethics Complaints. As such, costs attributable to reviewing the letter are payable by the Committee.

**C. Related Costs Incurred May Be Paid with Campaign Funds (Category 7).**

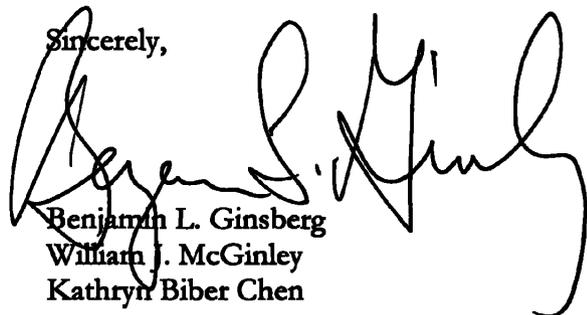
To the extent the legal fees listed in Categories 1-6 may be paid with campaign funds, the minimal costs for copying, telephone calls, and similar expenses should also be payable with campaign funds.

**CONCLUSION**

Given precedent set forth in previous AO's, we seek confirmation from the Commission that the Committee may pay for all legal fees and expenses listed in Chart 1, as well as any additional fees and expenses in the future for cases and controversies arising from the same set of facts.

Please do not hesitate to contact us with any questions.

Sincerely,



Benjamin L. Ginsberg  
William J. McGinley  
Kathryn Biber Chen



Sen. Norm Coleman (R-MN) with wife Laurie (gov)

## Taking Stock Of The Coleman-Kazeminy Charges

By Zachary Roth - November 13, 2008, 1:46PM

As Norm Coleman gets set for a recount in his bid to hold onto his Minnesota Senate seat, it's worth considering where things stand on the allegations that surfaced in the waning days of the campaign about Coleman's relationship with his friend and longtime associate, the businessman Nasser Kazeminy.

Here's what we know:

Late last month, in a suit filed in Texas, Paul McKim, the former CEO of Deep Marine Technologies (DMT), alleged in a sworn statement that Kazeminy -- who owns DMT -- directed him to make payments totaling \$75,000 to the Hays Companies, a Minnesota insurance brokerage that employs Coleman's wife Laurie Coleman. The payments, claimed McKim in the suit, were not for legitimate work performed by Hays for DMT, but rather were a way for Kazeminy to funnel money to Coleman.

Soon afterwards, a group of DMT investors filed a separate suit naming both Kazeminy and McKim as defendants, and making similar allegations.

Since news of the suits surfaced in late October, none of the principals has offered responses that have put the matter to rest.

Coleman has vehemently denied the charges, and even cut a last-minute TV ad suggesting, with little evidence, that the campaign of his opponent, Democrat Al Franken, was behind them. And yesterday, when a progressive Minnesota watchdog group that ran ads attacking Coleman during the campaign held a press conference at which it called for investigations by the FBI and the Senate Ethics Committee into the matter, Coleman quickly said in a statement that he would welcome such probes, and that he wanted them to start "immediately." (Coleman's Senate office did not immediately respond to a detailed message from TPMuckraker asking whether he has already been contacted by investigators.)

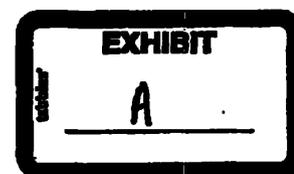
But neither Norm Coleman nor Laurie Coleman have offered details on the nature of her work for Hays.

Neither has Hays. Soon after news of the allegations broke, the company put out a statement calling the charges "libelous and defamatory." It said that Laurie Coleman "has been an Independent Contractor for Hays Companies since 2006." but offered no further detail on what she does for the company, beyond saying that she "receives no compensation related to the services we provide for our client Deep Marine Technology."

What are those services? Again, the statement was vague, saying only: "In the first half of 2007, we were retained to provide our risk management consulting services, and that work continues at this time."

As for Kazeminy, after initially remaining silent, he eventually hired a top Minneapolis-based crisis management expert, who late last week issued a tautological denial on his behalf: "Mr. Kazeminy vehemently denies the false and baseless claims made against him in recent weeks."

It's also worth noting that Norm Coleman and the Hays Companies may not have been on the same page about the arrangement between the firm and Laurie Coleman - a former model and actress who, according to state



records examined by TPMuckraker, only received her insurance license in October 2006. As we reported earlier this week, Norm Coleman wrote on his Senate disclosure forms for 2006 and 2007 that Laurie Coleman receives a salary from Hays - which would appear to contradict Hays' assertion that she's an independent contractor.

And according to FEC records examined by TPMuckraker, Hays has been a frequent financial contributor to Coleman's Senate campaigns.

We may have to wait for possible law-enforcement or congressional investigations to get to the truth about Coleman's role in the alleged scheme. But it's certain that, barring any compelling explanations from any of the principals said to be involved, questions about the affair won't be going away any time soon.

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## **Money and past bond Coleman, Kazeminy**

**By TONY KENNEDY and PAUL McENROE, Star Tribune staff writers**  
November 10, 2008

It was unlikely that Nasser Kazeminy had ever laced up hockey skates when then-St. Paul Mayor Norm Coleman turned to the Iranian-born businessman in 1996 while trying to bring NHL hockey back to Minnesota.

Kazeminy was obscure but rich — a visionary entrepreneur in technology and finance. He was already acquainted with Coleman, an ambitious mayor eager to stamp his political signature across the state as someone who got things done.

Kazeminy listened to Coleman's pitch that day, but declined to invest in hockey. Still, their friendship flourished. That same year, Coleman switched from the DFL to the Republican Party. Soon, Kazeminy was investing in Coleman's political aspirations.

To Coleman, their bond became as true as family. Here was a man, Coleman recalls, at his side through joys and sorrows, Thanksgivings and Christmases, campaign defeats and victories.

Coleman became a U.S. senator. Kazeminy became a major GOP campaign donor.

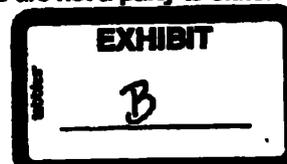
Now their friendship is attracting public scrutiny neither man welcomes.

Twelve years after the two talked hockey, Coleman awaits word of whether he has won a second term in the Senate after a cliffhanger election between him and DFL challenger Al Franken that's still so close it has triggered a statewide recount.

Coleman, 59, spent the waning days of the campaign defending himself against allegations in two lawsuits that his longtime friend used Houston-based Deep Marine Technology to steer \$75,000 last year to the Minneapolis-based Hays insurance company, where the senator's wife, Laurie Coleman, is an independent contractor.

The suit alleges that Kazeminy wanted the money funneled to the Colemans. In a statement issued Saturday, a Kazeminy spokeswoman vehemently denied the allegations. Coleman also says no such payment was ever made. And Jim Hays has said in a statement that the allegations about his company are "libelous and defamatory."

Kazeminy, 66, has remained out of sight since the allegations emerged in lawsuits filed in Texas and Delaware over corporate practices at the deep-sea diving company, where Kazeminy holds a controlling financial interest. The Colemans are not a party to either lawsuit, but are mentioned in both.



Amy Rotenberg, a spokesperson for Kazeminy, said Saturday that he is "deeply offended" by the lawsuits.

"Mr. Kazeminy vehemently denies the false and baseless claims made against him in recent weeks," Rotenberg said in a statement. "He declined to comment publicly on these attacks and lawsuits prior to Tuesday's election out of profound respect for the election process."

Rotenberg said that independent counsel has been retained by the independent directors of Deep Marine Technologies to investigate the claims, but that effort is being hampered by the refusal of some minority shareholders to cooperate with the investigation.

The Delaware suit was filed by a group of minority shareholders at Deep Marine. The Texas suit was brought by Deep Marine founder Paul McKim, a self-described die-hard Republican, who said in an interview that he has no animosity toward Coleman.

McKim said Kazeminy ordered him to make three \$25,000 payments to the Hays companies. In a sworn statement on which the suit is based, McKim said he grew angry with the arrangement and blocked a fourth, final payment because Deep Marine was getting nothing in return from the Hays. McKim said in an interview that he left the company over the summer in his dispute with Kazeminy. He said he doesn't know what the Hays companies did with the alleged money.

#### Powerful friends

Coleman hasn't discussed the details of his relationship with Kazeminy since the suits were filed, but in an April interview, the senator described his 14-year friendship with Kazeminy as rare and "very dear."

When Jesse Ventura stunned Coleman by besting him for the governorship in 1998, Kazeminy was in the room to help ease his friend's pain. He was at Coleman's side as he fought his way to the U.S. Senate in 2002. From 1998 to 2008, Kazeminy gave \$88,200 to Coleman's political committees, making him a top contributor. In the same period, Kazeminy gave \$642,000 to Republican Party committees in Minnesota and Washington, campaign finance records show.

Ron Eibensteiner, the Minnesota Republican Party chairman from 1999 through 2005, said he remembered Kazeminy during those years as a donor who gave money without meddling in party politics. "The only thing he did as far as I can remember is write out checks," Eibensteiner said. "He never once called me about what the party should do or what any individual should do."

Coleman describes his friendship with Kazeminy as devoid of any quid pro quos.

"In my business that's a pretty nice thing when you have a relationship with someone when you're not talking business," Coleman said in April. "I've never had a conversation

with Nasser Kazeminy where he has asked something for a business. It's just kind of the nature of our friendship."

Coleman's connection with Kazeminy had drawn little attention in the past, but the two did create headlines in 2006 when the senator was criticized for taking trips hosted by special interests. The trips included family excursions on private jets to Paris, the Bahamas and Florida, paid for by Kazeminy. At the time, Coleman said of Kazeminy: "It's a friend with a plane."

Kazeminy has many friends, some in high places. His connections have included the former shah of Iran's family, Minnesota Twins owner Carl Pohlad and top officials at the White House and the Central Intelligence Agency. He has done business deals with former Chrysler Corp. Chairman Lee Iacocca, and he posed for pictures in 2005 at a party in Southampton, N.Y., honoring then-Attorney General Elliot Spitzer. In 2006, Kazeminy awarded the Ellis Island Medal of Honor to Minnesota Gov. Tim Pawlenty.

That same year, Kazeminy received the New York Albert Schweitzer Leadership Award from the Hugh O'Brian Youth Leadership organization. The citation said he supports more than 100 charities worldwide.

Eibensteiner, the former state GOP chairman, said that while Kazeminy clearly gave more to Republican causes, he also gave to Democrats such as U.S. Rep. Charles Rangel of New York. Records show he has also given to other Democrats, including Gov. Bill Richardson of New Mexico and former U.S. Sen. Bill Bradley of New Jersey. In 2000, Kazeminy contributed to Ralph Nader, then running for the Green Party.

Minneapolis financier Irwin Jacobs, a close family friend and business partner of Kazeminy, said Saturday that Kazeminy is "off the charts unusual" in his financial integrity and personal generosity.

"He's the best partner I've ever had," said Jacobs, whose current deals with Kazeminy include an investment in the Broadway musical "Jersey Boys."

Kazeminy's loyalty to friends is legendary -- including making regular weekend flights from Palm Beach to the Twin Cities to play gin rummy with Carl Pohlad, Jacobs said.

He said it's ludicrous to think Kazeminy would ever misappropriate company funds. Instead, Jacobs said, Kazeminy is the rare investor who has been known to write a personal check to cover someone else's losses when a deal goes sour.

In a visit last week to Kazeminy's Florida home, Jacobs said, Kazeminy teared up when describing his anguish over the Deep Marine lawsuits, their impact on the Senate race and possible damage to his reputation.

Coming to Minnesota

Schooled in England, Kazeminy began his business career as a computer specialist for Honeywell in London. He made a name for himself playing a major role in designing a worldwide logistics system. In 1969, he was recruited by another Minnesota company, Control Data Corp., to work in the United States.

In his 2007 book, "The Eye for Innovation," former Control Data CEO Robert Price said Kazeminy arrived as a computer programmer and left the company several years later as an enlightened entrepreneur. With Control Data's blessing, Price wrote, Kazeminy formed a computer peripherals company that successfully offered low-cost, tax-leveraged equipment leases to Control Data's customers.

From there, Kazeminy branched off into computer businesses related to court litigation, banking and educational testing. One of his companies merged with Sylvan Learning Systems and later sold for more than \$775 million.

Another, Digital Insight, developed an Internet-based home banking platform for mid-sized banks that is used by more than five million people a day. In February 2007, Digital Insight was sold to Intuit for \$1.35 billion.

"Over the course of 14 years," Price wrote, "over 48 multimillionaires were created by Nasser's companies."

Kazeminy's addresses have ranged from a walk-up flat in London to his current mansion in Palm Beach. He also owns a residence in Edina, just doors down from Pohlard, and a luxury apartment along the Seine River in Paris.

Kazeminy's umbrella company is based in Bloomington, and bears his initials -- NJK Holding Corp. The private investment firm's brick headquarters is in a no-frills office park on a frontage road along Interstate 494.

Kazeminy added Deep Marine to his stable of companies after McKim founded it in 2001 as an underwater services provider to the offshore oil and gas industry. A sea diver himself, McKim had raised \$5 million in start-up money and was looking for more cash when he was introduced to Kazeminy.

By 2004, Kazeminy controlled a majority of Deep Marine's stock. Four years later, that investment had spawned lawsuits and political headlines.

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## **Texas filing seeks to put off suit tied to Coleman**

**By BRIAN BAKST**, Associated Press

January 9, 2009

**ST. PAUL, Minn.** - A new court filing in Texas seeks to suspend a lawsuit alleging that a friend and donor of Republican Norm Coleman tried to improperly steer money to the then-U.S. senator.

The filing this week by attorneys representing Deep Marine Technology Inc. said the lawsuit by the company's former chief executive officer should be put on hold for at least two months. The court document said that would afford time for a special investigation commissioned by the company's board. The plaintiff's lawyer said he will oppose the request.

Among other things, former company executive Paul McKim alleges that a Coleman benefactor sought to funnel \$75,000 to the Minnesota Republican through a Minneapolis-based insurance company where Coleman's wife works. The donor, Minnesota businessman Nasser Kazeminy, is a shareholder in the Texas company.

Kazeminy has denied the allegations. Coleman has insisted that he knew nothing of any financial arrangement nor did he benefit from one. He is not a party to the case.

Coleman argues the late-October lawsuit was politically timed. It rocked his race with Democratic challenger Al Franken on the final weekend.

Coleman is engaged more directly on a legal front related to the Minnesota Senate seat. He is contesting his recent 225-vote recount loss to Franken, arguing that the count was flawed because some ballots were wrongly excluded and others improperly included. The election court case could drag on for months.

In the new Texas filing, attorneys representing Deep Marine's interests also said that McKim didn't follow the proper steps for bringing his case nor has he been accessible since lodging the charges.

"Paul McKim figures prominently in the investigation, and has to date refused to cooperate in giving a deposition," the filing said.

McKim's attorney, Casey Wallace, disputed that claim. He said McKim will submit to a sworn deposition in the normal course of the court case.

Wallace said he will object to an attempt to slow the case.



**"Their investigatory time has surely passed. This is not a complicated case and we don't think that anything needs to be stayed so an investigation can be conducted," Wallace said. "The investigation should have already been wrapped up."**

**The original lawsuit — and a second one filed by company shareholders in Delaware — accused Kazeminy of pressuring company officials to make multiple \$25,000 payments to Hays Companies, a Minneapolis insurance firm that employed Laurie Coleman.**

**Hays officials have said the company provided risk management consulting services to Deep Marine Technology and that Laurie Coleman received no money related to those services.**

**The earliest the motion to put off the lawsuit will be considered is Jan. 19.**

**If granted, the lawyers hired to look into activities at Deep Marine would have to keep the court apprised of the progress of the probe.**

**But it might be up to the company's board to determine whether any findings or evidence in the internal investigation are made public.**

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## Texas lawsuit naming Coleman should proceed quickly, lawyer says

By Paul Demko 1/14/09 6:00 AM





**A lawsuit alleging that Norm Coleman's longtime associate Nasser Kazeminy attempted to funnel \$75,000 to the senator should proceed without delay, says attorney Casey Wallace.**

**Last week, lawyers representing Deep Marine Holdings, a Houston-based company of which Kazeminy is a primary stockholder, sought a stay that would delay proceedings in the case for at least two months. They argued that an internal investigation set up by the company should be completed before any more court proceedings are held.**

**But Wallace, the attorney representing plaintiff Paul McKim, the founder and chief executive officer of Deep Marine Holdings, insists there's no need for a delay.**

**"These are simple allegations," he said on the phone from Houston. "This is not an Enron-ish type case. They've had plenty of time to do their investigation."**

**A pair of lawsuits making nearly identical allegations about Kazeminy's efforts to funnel money to Coleman were filed in Texas and Delaware courts just prior to the November election. The accusation is just one detail in a messy corporate dispute involving Deep Marine Holdings that has McKim at loggerheads with his former business partners.**

The Federal Bureau of Investigation has subsequently launched a probe into Coleman's ties to Kazeminy.

Coleman has denied the allegations made in the suits, dismissing them as a last-second political smear. But as the U.S. Senate contest continues to drag on more than two months after election day, the cases have begun moving, albeit slowly, through the courts.

While McKim's attorney believes the case should proceed without delay, he doesn't see any political calculations behind the effort to postpone the lawsuit.

"Absolutely not," Wallace said. "If there were I'd be happy to tell you yes. I absolutely do not believe that to be the case."

A decision on whether to postpone the Texas lawsuit could come as soon as Monday, when a hearing is scheduled on the matter.

The case in Delaware, meanwhile, is also creeping forward. Arguments on a motion to dismiss the case are due by the end of next month.

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## **Group wants probe of lawsuits that mention Coleman**

By **DAVID SHAFFER** and **TONY KENNEDY**, Star Tribune staff writers

November 13, 2008

A liberal political group Wednesday called on the Senate Ethics Committee and the FBI to investigate allegations raised in two lawsuits that a friend and supporter of U.S. Sen. Norm Coleman sought to channel \$75,000 to him through an insurance agency that employs the senator's wife, Laurie.

In a statement, Coleman said, "I not only welcome such an investigation, but I am eager to have it move forward immediately."

The labor-supported Alliance for a Better Minnesota ran television ads against the Minnesota senator and other Republicans during this year's election. Its executive director, Denise Cardinal, said letters were sent to the committee and the FBI requesting the investigations.

"All we want is to find out what happened," she said.

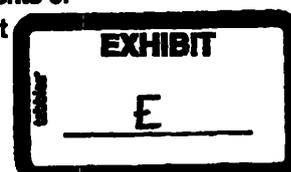
Coleman, awaiting a recount to determine whether he won reelection, said the alliance's motivations also bear a closer look.

"I reiterate that none of the allegations which attempt to besmirch my family's good name and reputation are true," he said in the statement.

As a practice, neither the FBI nor the Senate Ethics Committee confirms whether it is investigating someone. The committee's work becomes public only if the panel, comprising three Democrats and three Republicans, decides to act after a preliminary inquiry. The committee has the authority to subpoena witnesses and documents, and recommend to the Senate a range of sanctions.

Two lawsuits filed the week before the election allege that Coleman's close family friend and campaign contributor, Nasser Kazeminy, funneled \$75,000 last year to Minneapolis-based Hays Companies, the insurance agency where Laurie Coleman is employed as an independent contractor.

The suits were filed in Texas and Delaware, respectively, by the founder and minority shareholders of Deep Marine Technology of Houston, an underwater services company controlled by Kazeminy. The suits allege Kazeminy told officials at Deep Marine that he wanted to help Coleman financially. Hays allegedly received three quarterly payments of \$25,000. Deep Marine founder and former CEO Paul McKim has said Hays did not provide goods or services in return for the money.



Kazeminy has vehemently denied the allegations, and Hays has called them libelous and defamatory. Neither Hays nor the Colemans are being sued, but they are mentioned in the suits. Laurie Coleman has not commented.

The allegations surfaced in the last week of Coleman's campaign for a second term. He has declared himself the winner in the close race, but DFLer Al Franken has not conceded. The latest unofficial tally puts Coleman up by 208 votes, and the confirmed victor won't be clear until a recount is completed next month.

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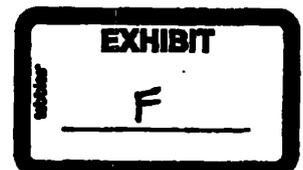


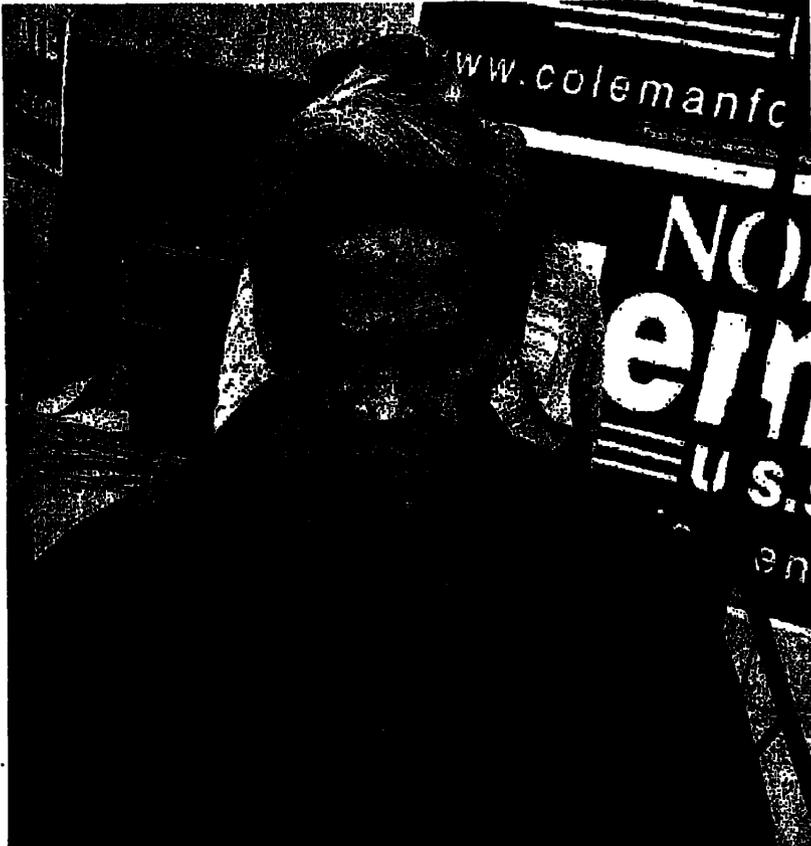
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[Advocacy group calls for investigations into 'DonorGate' allegations](#)

  By [Paul Demko](#) 11/12/08 1:34 PM





Alliance for a Better Minnesota has sent letters to the U.S. Senate Select Committee on Ethics and the FBI calling for investigations into allegations contained in a recently filed lawsuit involving Sen. Norm Coleman. The lawsuit, filed in a Texas court, alleges that Nasser Kazeminy, a longtime associate of the Senator, funneled \$75,000 that was intended to benefit Coleman to a Minneapolis insurance firm.

"These are serious allegations," said Donald McFarland, a spokesman for Alliance for a Better Minnesota, at a press conference this afternoon. "We need to know what actually happened. There should be a thorough and formal investigation. Minnesotans deserve to know the truth."

The letters question whether Coleman has violated federal laws, as well as senate rules for accepting gifts. Alliance for a Better Minnesota, a liberal advocacy group, also references a [report](#) in Harper's Magazine stating that Kazeminy footed the bill for Coleman's shopping trips to Neiman Marcus.

A [second lawsuit](#) against Kazeminy, filed in a Delaware court, echoes the allegations against the Republican Senator. Coleman has denied receiving improper gifts or compensation from Kazeminy. The incumbent currently holds a precarious 206-vote lead over challenger AJ Franken in a race that's headed for a state-mandated recount.

McFarland said he was uncertain how soon the ethics committee might be able to act on the request given that the Senate is not currently in session. "Our hope is that they'll act quickly," he said. "It seems that the ethics committee typically doesn't drag their feet." A [similar complaint](#), however, filed by Citizens for Responsibility and Ethics in Washington in July over Coleman's living arrangement in Washington, has prompted no action by the committee.

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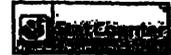
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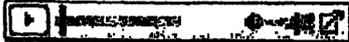


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## Coleman: Allegations should be investigated

by  
Elizabeth  
Stawicki,  
Minnesota  
Public  
Radio  
November  
12,  
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EMBED | HELP

A  
liberal  
group  
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**Senate and the FBI to investigate allegations that Sen. Norm Coleman may have violated ethics rules. Coleman's campaign responded with a statement that said the allegations are not true and that he welcomes the investigation.**

Minneapolis — The Alliance for a Better Minnesota bills itself as a "grassroots lobbying...organizing group that works with progressive organizations." It's also known as a coalition of Democratic-leaning groups.

The alliance says it sent certified letters to the chairwoman and vice chairman of the U.S. Senate Ethics Committee and the Minneapolis FBI, asking them to investigate whether Coleman violated the Senate code of conduct and the law.

The allegations first arose in a Texas lawsuit filed less than a week before the election.

The suit, filed by the former CEO of Texas-based Deep Marine Holdings, claimed that Minnesota businessman Nasser Kazeminy used the company to funnel money to an insurance company that employs Coleman's wife.

A second lawsuit, filed in Delaware by Deep Marine shareholders, makes similar allegations.

"These are very serious allegations with criminal and ethical ramifications," said the alliance's Donald McFarland. "What actually happened, we don't know. That's why we're here. We'd like to know what actually happened."

When asked whether Al Franken was involved in seeking the investigations, McFarland said his organization did talk to the Franken campaign, and asked it if the campaign were going forward with a letter requesting an investigation. The answer, McFarland said, was "no." So the alliance moved forward.

**"What actually happened, we don't know. That's why we're here."**

**- Donald McFarland, Alliance for a Better Minnesota**

McFarland also denies the action was politically motivated. He says the group waited until after the election to raise the issue.

Coleman is headed toward a recount in the U.S. Senate race where he currently holds a 206-vote lead over Democrat Al Franken.

In a statement from his campaign, Coleman denied the allegations and suggested he's an innocent bystander in the lawsuits.

Coleman said he and his family are "being used as a tool of extortion by private parties," and that "should be of concern to all Minnesotans."

Coleman said he not only welcomes the investigation, but is also eager to have it move forward immediately.

Former Republican U.S. Sen. David Durenberger of Minnesota faced a Senate ethics inquiry of his own nearly 20 years ago. He said in interview prior to the ethics complaint that it's too early for any investigation about Coleman.

Durenberger says there's no question in his mind that the allegations are politically motivated.

"I see all of this as politics, and it upsets me greatly," said Durenberger. "It reminds me of something I went through. In this case, I don't think this is anything more than a political allegation."

The Senate unanimously denounced Durenberger in 1990 for financial improprieties.

**On the Coleman allegations, congressional analyst Norm Ornstein says at this point, there's no proof of anything other than a disgruntled former executive for a company filing a lawsuit against somebody who's known to have a very close relationship with Coleman.**

**Ornstein is a resident scholar at the American Enterprise Institute in Washington. He says he knows Coleman and considers Franken a friend. He says the ethics charge is all speculation at this point.**

**"If this turns out that this was indeed simply an effort to get money to the Coleman family from a longtime benefactor of theirs -- laundered in a fashion so that nobody would know that the money was coming, and had nothing to do with any work done by Coleman's wife -- then you've got an ethics issue. But in the absence of that, you don't," said Ornstein.**

**A spokesman for the U.S. Senate Committee on Ethics said there are three phases to the committee's investigation of a complaint. At the first step, the committee makes a decision on whether the complaint is credible on its face. If so, then the committee moves on to step 2.**

**At that point, the committee authorizes a preliminary inquiry to determine whether a violation occurred -- essentially whether it's more likely than not that ethics rules were broken.**

**At that stage, the committee has subpoena authority to get records, depose witnesses, and can issue a public or private admonition to the senator.**

**The third step is reserved for the most egregious rule violations and is more like a court review. At this point, the committee would have found serious rule violations, and can consider censuring or even expelling the senator.**

**(The Associated Press contributed to this report)**

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**December 12, 2008**

**Honorable Barbara Boxer  
Honorable John Cornyn  
Senate Select Committee on Ethics  
Hart Building, 2<sup>nd</sup> & C Sts., NE  
Room 220  
Washington, DC 20510**

**Re: Recent News Coverage of Illegal Gifts to Sen. Coleman**

**Dear Messrs. Chairwoman and Vice Chairman:**

**This letter is an addition to a previous letter sent as a complaint against Senator Norm Coleman pursuant to Rule 2 of the Rules of Procedure of the Senate Select Committee on Ethics, which authorizes any person to file a sworn complaint with the Senate Ethics Committee "alleging that any Senator...has violated a law [or] the Senate Code of Office Conduct...in the performance of his or her duty as a Member...or has engaged in improper conduct which may reflect upon the Senate."**

**As stated in our previous letter, dated November 12 and attached, a recent civil complaint, sworn to under penalty of perjury, indicates that in May and June of 2007, a Texas businessman may have given \$75,000 in payments to Senator Coleman, through his wife, Laurie Coleman.**

**The letter details the allegations made in the lawsuit, as well as the Senate rules that would have been violated if the allegations are true.**

**This letter is being sent to share with the committee recent news coverage of the allegations in question. Specifically, On December 10, 2008 the Saint Paul Pioneer Press reported that the Federal Bureau of Investigation (FBI) is looking into the allegations made in the lawsuit. The next day, several other Minnesota-based news outlets ran similar stories.**

**On the evening of December 11, 2008, KMSP (Fox News 9) broadcast a news report about extensive renovations to Senator Coleman's house that cost more than \$400,000 and were conducted right before the alleged funneling of money took place. According to the news reports, Senator Coleman refused to sit down for an interview or answer reporters questions about the timing of this renovation and any possible relation it has to the allegations made in the lawsuit.**

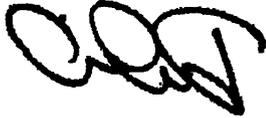
**Once again, as stated in our previous letter, these actions constitute a potential ethical violation on the part of Senator Coleman, and deserve further investigation by the Senate Ethics Committee. As the recent conviction of Senator Coleman's colleague Senator Ted Stevens demonstrates, strict enforcement of the Senate's gift rules is critical to**



**maintaining the public trust. We request that the Committee undertake this investigation immediately.**

**Along with the citizens of Minnesota, we look forward to a response to this request.**

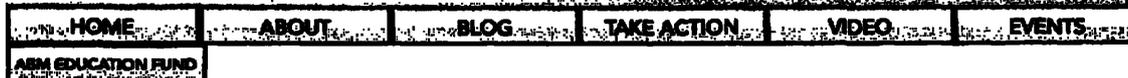
**Very truly yours,**

A handwritten signature in black ink, appearing to read "Denise Cardinal". The signature is stylized and somewhat cursive.

**Denise Cardinal  
Alliance for a Better Minnesota  
1600 University Ave. W.  
Suite 309B  
Saint Paul, MN 55104**

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The full text of the letters ABM has sent to the Senate Select Committee on Ethics and to the FBI requesting an investigation is below the fold. For more information on the scandal, check out Eric Black's story on MinnPost [here](#).

Honorable Barbara Boxer  
Honorable John Cornyn  
Senate Select Committee on Ethics  
Hart Building, 2nd & C Sts., NE  
Room 220  
Washington, DC 20510

Re: Illegal Gifts to Sen. Coleman

Dear Messrs. Chairwoman and Vice Chairman:

This letter constitutes a complaint against Senator Norm Coleman pursuant to Rule 2 of the Rules of Procedure of the Senate Select Committee on Ethics, which authorizes any person to file a sworn complaint with the Senate Ethics Committee "alleging that any Senator... has violated a law [or] the Senate Code of Office Conduct... in the performance of his or her duty as a Member... or has engaged in improper conduct which may reflect upon the Senate." It has come to our attention that Senator Coleman may have violated Senate Rule 35 by accepting gifts totaling ,000 in value, and failing to disclose said gifts in violation of Senate Rule 34 and the Ethics in Government Act, 5 U.S.C. app.101 et seq.

A recent civil complaint, sworn to under penalty of perjury, indicates that in May and June of 2007, a Texas businessman may have given ,000 in payments to Senator Coleman, through his wife, Laurie Coleman. On October 27, 2008, Paul McKim, the founder and CEO of Houston-based Deep Marine Technologies ("DMT"), filed a sworn, notarized complaint in Texas state court against a group of DMT directors. In his complaint, McKim alleged that a former controlling shareholder of DMT, Nasser Kazeminy, ordered McKim to transfer installments of ,000 to Coleman. The payments were disguised as payments for insurance, and were made to his wife's employer, the Hays Companies, an insurance broker in Minneapolis. Copies of the complaint and a news account describing the complaint are attached.

Kazeminy's relationship with Senator Coleman has been well documented; in 2004 and 2005, for instance, Kazeminy provided Coleman and his family with a private plane for travel to Paris and the Bahamas, a reported value of almost seven thousand dollars for the two trips combined. More recently, it has been reported that Kazeminy also funded Coleman's shopping sprees at Neiman Marcus; the dates and dollar amounts remain unknown, leaving in question whether those purchases violated Senate Rule 35.

**Illegal Gifts**

Senate Rule 35 prohibits any member of the Senate from knowingly accepting a gift valued at or more. Rule 35.1 (a)(1). A gift to a family member of a Member based on that individual's relationship with the Member is considered a gift to the Member "if it is given with the knowledge and acquiescence of the Member" and the Member "has reason to believe the gift was given because of the official position of the Member...." Rule 35.1(b)(2)(A).

McKim's sworn complaint alleges that DMT, at the behest of Kazeminy, made three payments of ,000 to Hays Companies, and that these payments were intended to be transferred to Senator Coleman's wife, for

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the purpose of financially assisting Senator Coleman. The Committee should investigate whether Senator Coleman or his wife received such a gift in violation of Senate Rule 35.

#### Failure to Disclose

Under the Ethics in Government Act and Senate Rule 34, Members of Congress must file an annual financial disclaimer report in which they disclose, inter alia, all gifts aggregating 0 or more, and all sources of income that exceed 0 in value. 5 U.S.C. app. 102(a)(2).

McKim's signed, notarized complaint alleges that DMT made three payments of ,000 to Coleman in May or June of 2007, by way of Hayes Companies. Senator Coleman did not report these payments in his 2008 financial disclosure report. The Committee should investigate whether Senator Coleman failed to report any gifts in violation of the Ethics in Government Act and Senate Rule 34.

As described above, Senator Coleman and his wife may have accepted and, subsequently, failed to report gifts worth ,000. These actions constitute a potential ethical violation on the part of Senator Coleman, and deserve further investigation by the Senate Ethics Committee. As the recent conviction of Senator Coleman's colleague Senator Ted Stevens demonstrates, strict enforcement of the Senate's gift rules is critical to maintaining the public trust. We request that the Committee undertake this investigation immediately.

Very truly yours,

Denise Cardinal  
Alliance for a Better Minnesota

Special Agent in Charge Ralph S. Boelter  
Minneapolis Office  
Federal Bureau of Investigation  
Suite 1100  
111 Washington Avenue South  
Minneapolis, MN 55401

Re: Nasser Kazeminy and Others  
Dear SAC Boelter:

I write to request that you investigate allegations of fraud alleged under oath in a lawsuit filed on October 27, 2008, and refiled on October 30 in Harris County, Texas. Captioned McKim v. Kazeminy, et al. I write to you because many of the alleged fraudulent acts were allegedly committed by Minnesota residents and companies and were allegedly pursuant to a scheme to benefit one of Minnesota's U.S. Senators, Norm Coleman.

The sworn complaint, a copy of which is enclosed, alleges that:

1. Nasser Kazeminy, a Minnesota resident, fraudulently ordered the payment of corporate funds from Texas to Minnesota to financially assist Senator Coleman.
2. Kazeminy directed that paperwork be created to make it appear that payments intended for Senator Coleman appeared to be legitimate transactions when, in fact, they were not.
3. Kazeminy used threats and intimidation to cause others to make ,000 in payments to a Minnesota entity, Hays Companies, for the benefit of Senator Coleman, totaling ,000. The scheme alleged is that money was to be funneled to Senator Coleman or his spouse through Hays Companies.
4. John Hudgens, a Minnesota resident under the influence of Kazeminy, directed the hiding or destruction of evidence of the fraudulent scheme.

If the allegations of the complaint are true, there is federal jurisdiction under the mail fraud, wire fraud and money laundering statutes. Further the alleged scheme was purportedly to provide an unlawful benefit to a United States Senator. Obviously, it is an important matter to determine whether Senator Coleman had knowledge of the alleged scheme received benefits from it, and properly disclosed and accounted for what might be a substantial gift.

Finally, there have been published reports that Senator Coleman or his family received undisclosed gifts of clothing, airfare, and other items of value from Mr. Kazeminy. I do not know whether such gifts were made and, if they were, they were made at a time when Senator Coleman was obligated to disclose them. We request that these matters be investigated also.

I request that you notify me if the Bureau undertakes a preliminary investigation. Thank you for your consideration.

Sincerely,

Denise Cardinal  
Executive Director  
Alliance for a Better Minnesota

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# CREW | citizens for responsibility and ethics in washington

July 1, 2008

The Honorable Barbara Boxer, Chair  
The Honorable John Cornyn, Vice Chair  
Select Committee on Ethics  
United States Senate  
Room 220 Senate Hart Office Building  
Washington, D.C. 20530

BY FAX: 202-224-7416

Re: Request for Investigation of Sen. Norm Coleman

Dear Chairwoman Boxer and Vice Chairman Cornyn:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Senate Select Committee on Ethics investigate whether Sen. Norm Coleman (R-MN) has accepted lodging in violation of the Senate gifts rule.

According to a recent article, when in Washington Sen. Coleman lives in a basement apartment in the Capitol Hill townhouse of Republican operative Jeff Larson. Edward T. Pound, Friendly Dealings, *National Journal*, June 28, 2008 (attached). Mr. Larson runs FLS Connect, a telemarketing firm, which has been paid over \$1 million since 2001 by Sen. Coleman's leadership political action committee ("PAC") and two campaign committees. Mr. Larson is also the treasurer of Sen. Coleman's PAC and provides it with office space in St. Paul, MN. *Id.* Adding to the relationship between the pair, Mr. Larson's wife, Dorene Kainz, has been employed as a casework supervisor in Sen. Coleman's St. Paul office, though after *National Journal* questioned Sen. Coleman about this, his staff announced that she would be leaving the office on July 10, 2008. *Id.*

In July 2007, Sen. Coleman began paying Mr. Larson \$600 per month to rent a portion of the basement apartment. After the magazine began asking Sen. Coleman and Mr. Larson about the senator's living arrangement, the senator "discovered" that he had failed to pay rent in November 2007 and January 2008, leading his wife to provide Mr. Larson with a personal check for the \$1,200. *Id.* Last year, Sen. Coleman sold Mr. Larson some furniture -- a couch, table and chairs and a desk -- to cover one month's rent, and Mr. Larson held onto Sen. Coleman's March rent check for three months, until June 17, before cashing it only days after *National Journal* began making inquiries. *Id.*

Thus, over the past year, Sen. Coleman appears to have accepted lodging from Mr. Larson for at least three months without paying the agreed upon rent until caught by *National Journal*. Although Sen. Coleman recently paid \$1,200 and Mr. Larson cashed a check for an

The Honorable Barbara Boxer

The Honorable John Cornyn

July 1, 2008

Page Two

additional \$600 after *National Journal* questioned the pair about the payments, the fact that the payments were not made until flagged by the media heightens rather than diminishes the concerns over Sen. Coleman's conduct. Sen. Coleman's repeated missed rent payments and Mr. Larson's failure to cash Sen. Coleman's check suggest that Mr. Larson was not, in fact, necessarily expecting payment. Moreover, it is unclear whether the \$600 rental rate represents the fair market value of the apartment considering other rental rates in the Capitol Hill neighborhood.

Rule 35, paragraph 1(a)(1) of the Senate Code of Official Conduct states that "No Member, officer or employee of the Senate shall knowingly accept a gift except as provided in this rule." Senate Ethics Manual, Select Committee on Ethics, U.S. Senate, p. 314 (2003 ed.). The Ethics Manual defines "gift" to mean "any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred." Rule 35, paragraph 1(b)(1).

Because lodging clearly falls within the Senate's definition of "gift," by failing to pay Mr. Larson rent, Sen. Coleman accepted a gift from Mr. Larson. Acceptance of such a gift is permitted only in two limited situations, neither of which exists here.

First, members may accept "anything, including personal hospitality," which includes lodging, if it is provided by an individual "on the basis of personal friendship." Rule 35, paragraph 1(c)(4). Such a gift may not be accepted, however, if the member has "reason to believe that the gift was provided because of the official position of the Member . . . and not because of personal friendship." *Id.*

In determining whether a gift has been made on the basis of personal friendship, the member must consider the circumstances under which the gift was offered, such as the relationship between the giver and recipient, and whether gifts have been exchanged between the two previously. Other illuminating factors are whether the gift was paid for personally by the giver and whether the giver gave similar gifts to other members. Rule 35.1(c)(4)(A). Even if the gift is determined to be made on the basis of personal friendship, it nevertheless may not be of a value greater than \$250, unless approved by the Senate Select Committee on Ethics. Rule 35.1(e).

Here, although Sen. Coleman and Mr. Larson may have had a long-term relationship, it appears to be based on business rather than personal friendship. Sen. Coleman's campaign committees and PAC have paid Mr. Larson's firm, FLS Connect, the considerable sum of \$1.6

The Honorable Barbara Boxer  
The Honorable John Cornyn  
July 1, 2008  
Page Three

million since 2001. Pound, *National Journal*, June 28, 2008. In fact, given that Mr. Larson's business is to conduct telemarketing for candidates, Mr. Larson may well have allowed Sen. Coleman to avoid paying rent for the very reason that he has made and stands to make a great deal of money by working for the senator. In other words, Mr. Larson appears to have given Sen. Coleman the gift of lodging because of Sen. Coleman's position as a member of the Senate -- exactly what is prohibited by the gifts rule.

Moreover, Sen. Coleman has not claimed to have exchanged gifts with Mr. Larson in the past, nor has he offered any other evidence that Mr. Larson allowed Sen. Coleman to live in the townhouse rent-free because of a personal friendship. Indeed, when confronted about the unpaid rent, Sen. Coleman paid it rather than claiming Mr. Larson as a personal friend, suggesting that Sen. Coleman himself does not believe the personal friendship exception applies.

Finally, the value of the lodging -- at \$600 per month -- exceeds the \$250 gift limit, meaning that Sen. Coleman would have needed Ethics Committee advance approval to accept the gift, something he does not appear to have sought or received.

Thus, the facts make clear that Sen. Coleman could not have accepted Mr. Larson's gift of lodging under Rule 35, paragraph 1(c)(4).

The second exception allows members to accept "personal hospitality, other than from a registered lobbyist or agent of a foreign principal." Rule 35, paragraph 1(c)(17). This personal hospitality exception is intended to cover hospitality in any personal residence owned or leased by an individual, unrelated to that individual's employment. Senate Ethics Manual, p. 37. Generally, "to qualify for the exemption, the residence or other property should not be property which is rented out to others by the individual providing the hospitality." *Id* (emphasis in original).

Here, Mr. Larson does not live in the Capitol Hill townhouse where Sen. Coleman stays. Rather, Mr. Larson rents the top two floors of the house to Rich Beeson, an FLS Connect partner on an unpaid leave of absence while serving as the political director of the Republican National Committee. Pound, *National Journal*, June 28, 2008. Given that Mr. Larson is not living in the house or using it for personal purposes but is leasing it to others, he is not actually "hosting" Sen. Coleman and the personal hospitality exception does not apply.

Thus, Sen. Coleman appears to have violated the Senate gifts rule by accepting free lodging from Mr. Larson, someone who financially benefits from his relationship with the senator. Further complicating the issue is the question of whether the salary paid to Mr. Larson's wife as an employee in Sen. Coleman's office might constitute the true payment of the rent. Also

The Honorable Barbara Boxer  
The Honorable John Cornyn  
July 1, 2008  
Page Four

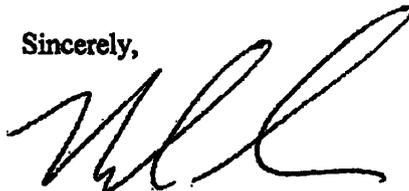
troubling is the fact that Sen. Coleman paid his back rent, and Mr. Larson cashed Sen. Coleman's checks, only once the media began questioning the living arrangement.

Therefore, CREW respectfully requests that the Select Committee on Ethics investigate this matter to determine whether Sen. Coleman has violated the Senate gifts rule. The Committee should inquire as to whether or not Sen. Coleman is paying fair market value for the apartment, whether Sen. Coleman would have paid the November 2007 and January 2008 rent had *National Journal* not raised the non-payment as an issue, whether Sen. Coleman and Mr. Larson had agreed that Mr. Larson would not cash the March 2008 rent check, why Sen. Coleman suddenly made up his back rent after *National Journal* asked questions about it, and why Sen. Coleman's office announced that Ms. Kainz would be leaving the senator's employ -- again once *National Journal* asked about her position in the senator's office.

Few Americans are lucky enough to have landlords who sometimes fail to cash their rent checks, ignore unpaid rent, or accept furniture in lieu of rent. That Sen. Coleman has just such a landlord, who also happens to financially benefit from his relationship with the senator creates exactly the sort of appearance of impropriety that undermines the public's faith in government, which the Select Committee on Ethics is empowered to investigate.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'MS', is written over a large, faint, stylized watermark of the letters 'ML'.

Melanie Sloan  
Executive Director

Encl.



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

-----X

FLI DEEP MARINE LLC and BRESSNER PARTNERS LTD., Derivatively on behalf of Deep Marine Holdings, Inc. and Deep Marine Technology, Inc.,	:	
	:	
Plaintiffs,	:	
	:	
-against-	:	Civil Action No.
	:	
PAUL McKIM, DANIEL ERICKSON, FRANCIS WADE ABADIE, OTTO CANDIES, III, EUGENE DePALMA, LARRY LENIG, BRUCE GILMAN, JOHN HUDGENS, in their Capacities as Officers and Directors,	:	VERIFIED
	:	<u>COMPLAINT</u>
	:	
NASSER KAZEMINY, NJK HOLDINGS CORPORATION, DCC VENTURES, LLC, OTTO CANDIES, LLC and OTTO CANDIES, JR.,	:	
	:	
Defendants,	:	
	:	
DEEP MARINE HOLDINGS, INC. and DEEP MARINE TECHNOLOGY, INC.,	:	
	:	
Nominal Defendants.	:	

-----X

As and for their Verified Complaint against the Defendants, Plaintiffs allege:

**NATURE OF THE ACTION**

1. This is shareholders' derivative action brought in the right, and for the benefit of, Deep Marine Holdings, Inc. ("Deep Marine Holdings") and its wholly owned subsidiary, Deep Marine Technology, Inc. ("Deep Marine Technology," together "DMT") asserting claims against certain officers and directors of DMT and the controlling shareholders of



**DMT for breach of fiduciary duty, corporate waste, misappropriation, fraud, gross negligence and mismanagement and unjust enrichment.**

**2. Either intentionally, or through gross negligence and mismanagement, these officers and directors have aided or allowed DMT's Controlling Shareholders -- Defendants Nasser Kazeminy and Otto Candies, LLC ("Otto Candies") and entities or persons within their control or acting at their direction -- to exploit and loot the corporation for their own economic benefit and/or improper purposes.**

**3. At Kazeminy's instruction, DMT has been used to disguise improper payments in 2007 of at least \$75,000 to the wife of a United States Senator for no legitimate business purpose. In addition, outright gifts of DMT corporate cash have been made to a relative of Mr. Kazeminy.**

**4. During the period August 2004 to present, DMT has been victimized by egregious self-dealing and corporate waste in its transactions with Otto Candies. DMT has paid millions of dollars to Otto Candies needlessly in connection with vessels DMT has leased, chartered and purchased from that entity.**

**5. DMT has been looted for the personal gain of the Controlling Shareholders to the detriment of the minority stockholders and DMT.**

**6. Defendants' actions have caused millions of dollars of damage to DMT and have impaired Plaintiffs' interests in the corporation and will continue, unless halted and remedied.**

## **THE PARTIES**

### **The Plaintiffs**

7. Plaintiff *FLI Deep Marine LLC* and *Bressner Partners Ltd.* are minority shareholders in *Deep Marine Holdings*. Together they own more than 5% of *Deep Marine Holdings* and have owned those shares at all relevant times hereto. *Deep Marine Holdings* owns all of the stock of *Deep Marine Technology*. Plaintiffs bring this action derivatively on behalf of *DMT* and to recoup the losses they have suffered as a result of the wrongdoing pleaded herein.

### **The Officer and Director Defendants**

8. According to *DMT*, Defendant *Paul McKim* is a member of the Board of Directors of *DMT* and was until recently, the Chief Executive Officer of *DMT*.

9. According to *DMT*, Defendant *Daniel Erickson* was until mid-October 2008 a member of the Board of Directors of *DMT*.

10. According to *DMT*, Defendant *Francis Wade Abadie* was until mid-October 2008 a member of the Board of Directors of *DMT* and is also an officer of *DMT*.

11. According to *DMT*, Defendant *Otto Candies, III* was until mid-October 2008 a member of the Board of Directors of *DMT*.

12. According to *DMT*, Defendant *Eugene DePalma* was until mid-October 2008 a member of the Board of Directors of *DMT*.

13. According to *DMT*, Defendant *Larry Lenig* is a member of the Board of Directors of *DMT*.

14. According to *DMT*, Defendant *Bruce Gilman* is a member of the Board of Directors of *DMT* and an officer of *DMT*. On certain *DMT* documents, Defendant *Gilman* is listed as the Chairman of the Board.

15. According to DMT, Defendant John Hudgens is the Chief Financial Officer of DMT.

16. Together, Defendants McKim, Erickson, Abadie, Otto Candies, III, DePalma, Lenig, Gilman and Hudgens are referred to herein as the "Officer and Director Defendants."

**The Controlling Shareholder Defendants**

17. Defendant Nasser Kazeminy, and entities he owns or controls are major shareholders of DMT. Mr. Kazeminy refers to himself as the "Controlling Shareholder" in DMT.

18. Defendant Otto Candies, LLC ("Otto Candies") and entities it controls are major shareholders of DMT. On information and belief, Otto Candies, a Louisiana corporation, is a marine transportation company with its principal offices located at 17271 Hwy. 90, Des Allemandes, Louisiana, 70030-0025.

19. On information and belief, Defendant Otto Candies, Jr. and Otto Candies, III own or control Otto Candies, LLC.

20. On information and belief, Defendant NJK Holdings Corporation ("NJK Holdings") is a Minnesota corporation, owned and/or controlled by Defendant Nasser Kazeminy, with its principal offices located at 8500 Normandale Lake Boulevard, Minneapolis, Minnesota, 55437.

21. On information and belief, Defendant DCC Ventures, LLC ("DCC Ventures") is a private investment company owned or controlled by Defendant Kazeminy with offices in Minneapolis, Minnesota. On information and belief, DCC Ventures is a shareholder of DMT.

22. On information and belief, at all times relevant hereto, Defendants Kazeminy, Otto Candies, Jr., NJK Holdings, DCC Ventures and Otto Candies, LLC dominated and controlled the company and used it for their own personal financial gain. Further, on information and belief, Defendants Kazeminy, Otto Candies, Jr., NJK Holdings, DCC Ventures and Otto Candies, LLC directed and caused the Officer and Director Defendants to ignore corporate formalities and reasonable business practices. On information and belief, the wrongdoing complained of herein was undertaken purely for the economic benefit of the Defendants Kazeminy, Otto Candies, Jr., NJK Holdings, DCC Ventures and Otto Candies, LLC, the Officer and Director Defendants, and that of their various friends and allies.

23. Defendants Kazeminy, NJK Holdings, DCC Ventures, Otto Candies, Jr. and Otto Candies are referred to herein as the "Controlling Shareholder Defendants."

**The Nominal Defendant Corporations**

24. On information and belief, Deep Marine Holdings is a Delaware corporation, with its principal offices located at 20411 Imperial Valley Drive, Houston, Texas, 77073.

25. On information and belief, Deep Marine Technology, a Texas corporation, also has its principal offices located at 20411 Imperial Valley Drive, Houston, Texas, 77073.

26. DMT is a company established in 2002 that provides comprehensive subsea services to the offshore oil and gas industries, with a significant presence in the Gulf of Mexico.

27. DMT is dominated and controlled by DMT shareholders Nasser Kazeminy and Otto Candies, LLC (which, in turn is controlled by Defendants Otto Candies, Jr. and Otto Candies, III).

**DUTIES OF THE OFFICERS AND DIRECTORS OF DMT**

28. By reason of their positions as officers and directors, and their ability to control the business and corporate affairs of DMT, the Officer and Director Defendants owed DMT and its stockholders the fiduciary obligations of good faith, loyalty and due care. The Officer and Director Defendants were required to use their utmost ability to control and manage DMT in a fair, just, honest and equitable manner.

29. To discharge those duties, the Officer and Director Defendants were required to exercise reasonable and prudent supervision over the management, policies, practices, controls and financial affairs of DMT. The Officer and Director Defendants were required to protect the interests of the shareholders and not act to the detriment of the company and its shareholders.

**GROSS MISUSE OF CORPORATE FUNDS AT  
DEFENDANT KAZEMINY'S DIRECTION FOR IMPROPER  
PAYMENTS TO SENATOR NORMAN COLEMAN'S WIFE**

30. Plaintiffs have been informed by a Confidential Source that in the spring of 2007, Defendant Kazeminy instructed DMT's then Chief Financial Officer, B.J. Thomas, and Chief Executive Officer, Defendant McKim, to have DMT send quarterly payments of \$25,000 to Senator Norman Coleman of Minnesota. Mr. Kazeminy stated to the Confidential Source: "We have to get some money to Senator Coleman" because the Senator "needs the money."

31. News articles have reported that Defendant Kazeminy is a large donor to Senator Coleman's campaign and that the two men have vacationed together at Kazeminy's expense using Kazeminy's private plane in 2004 and 2005.

32. News articles have reported that Kazeminy may have paid large bills for clothing purchases at Neiman Marcus in Minneapolis by Senator Coleman and his wife.

33. According to the Confidential Source, both Thomas and McKim advised Defendant Kazeminy that such payments by DMT to Senator Coleman would be improper. On information and belief, at that time both Mr. Thomas and Defendant McKim refused to make such payments for DMT.

34. According to the Confidential Source, Defendant Kazeminy then directed that DMT make payments of \$25,000 to an insurance agency in Minneapolis, Minnesota, Hays Companies ("Hays"). Hays employs Laurie Coleman, the wife of Senator Coleman. According to the Confidential Source, the company conducts no business in Minnesota. According to the Confidential Source, the company's insurance needs had been placed through Aon, a leading global insurance brokerage. According to the Confidential Source, no person in management ever suggested that any problem existed with the services provided by Aon. According to the Confidential Source, no person in management ever identified a problem or shortcoming with the company's insurance coverage or programs.

35. On information and belief, in May 2007, pursuant to Mr. Kazeminy's instructions, DMT paid \$25,000 to Hays purportedly for payment of "service fees".

36. On information and belief, at Defendant Kazeminy's request, DMT made two subsequent payments of \$25,000 each to Hays in September 2007.

37. Invoices dated September 4, 2007 and December 3, 2007 from Hays addressed to Deep Marine Technology, Inc. each show a charge of \$25,000 for "quarterly installment of service fee." (Those invoices are attached hereto as Exhibit A.)

38. The record for "Hays" from DMT's Vendor Trial Balance database indicates that DMT received four invoices from Hays, each for \$25,000, dated May 16, 2007, June 1, 2007, September 4, 2007 and December 3, 2007. That record also reflects four DMT

checks, each for \$25,000, made payable to Hays, dated May 16, 2007, September 10, 2007, September 14, 2007 and November 26, 2007. The fourth check may not have been cashed. (That record is attached hereto as Exhibit B.)

39. According to the Confidential Source, the purported insurance policy placed by Hays does not exist and there was no valid business reason for a payment to Hays of any amount; Hays provided no services of any type to DMT. According to the Confidential Source, all of the company's insurance needs were in place, proper and appropriate, both prior to and during the time the payments to Hays were made.

40. On information and belief, DMT, through its officers, falsified documents in order to make these payments appear to be legitimate corporate expenses.

41. According to the Confidential Source, in 2008, DMT's new Chief Financial Officer, Defendant John Hudgens, instructed his controller to delete references to the Hays invoices from DMT's records in an apparent effort to cover up evidence of DMT's payments to Hays. DMT's record for Aged AP-Past Due-Summary reflects a past due balance of \$25,000 owed to Hays. The Hays line is circled and underneath it a handwritten note provides: "Please pull this detail and delete per John Hudgens. AMC 8/19/08." Another handwritten note states: "Debit Adj. per John." (That record is attached hereto as Exhibit C.) Upon information and belief, this was done to hide the wrongdoing that Defendant Kazeminy had directed and that had been effected by certain of the Officer and Director Defendants.

42. These fraudulent and grossly improper payments cost DMT at least \$75,000 and brought absolutely no value to the company. Further, based on the facts disclosed by the Confidential Source, these payments expose the Company to serious potential criminal and civil liability. As such, they constitute at the very least corporate waste. Certain of the

Officer and Director Defendants should have prevented this wrongdoing or should not have participated in it or should have reported it to appropriate authorities promptly upon learning of it.

43. On information and belief, at Defendant Kazeminy's instruction, DMT forced then Chief Financial Officer Thomas to resign. This act, according to the Confidential Source, was based in part on Thomas' refusal to use DMT funds to pay Senator Coleman.

44. On information and belief, also at Defendant Kazeminy's instruction, DMT terminated the employment of Defendant McKim as Chief Executive Officer of DMT.

#### **IMPROPER DMT PAYMENT TO MR. KAZEMINY'S FAMILY MEMBER**

45. On or about August 12, 2008, DMT issued a check to Behnaz Ghaufouri, a relative of Defendant Kazeminy for \$6,000, purportedly for services rendered to DMT. The check was signed by DMT's Chief Financial Officer John Hudgens. (A copy of the cancelled check is attached hereto as Exhibit D.)

46. According to the Confidential Source, Ms. Ghaufouri never worked for the company in any capacity. According to the Confidential Source, Ms. Ghaufouri never provided services of any type to DMT. The payment made by the company to Ms. Ghaufouri, through the actions of certain of the Officer and Director Defendants, served no legitimate business purpose. In reality, this transaction was a gift of DMT's cash to a relative of Defendant Kazeminy and was wrong.

#### **CORPORATE LOOTING BY DEFENDANT OTTO CANDIES FOR ITS VESSELS**

47. DMT regularly does business with Otto Candies, which supplies vessels for DMT's subsea projects. Due to Otto Candies' control over the Officer and Directors

Defendants, DMT has not conducted arms-length transactions with Otto Candies. As a result, DMT has overpaid consistently for using and buying Otto Candies' vessels.

48. According to the Confidential Source, in or about May 2007, Otto Candies' undue influence on the Officer and Director Defendants caused DMT to pay (and waste) \$6 million above the agreed price to purchase the vessel Emerald, simply because Otto Candies demanded that amount at the closing of the sale transaction. This arbitrary hold-up was entirely one sided in Otto Candies' favor. DMT did not receive consideration for its payment to Otto Candies of the additional \$6 million.

49. According to the Confidential Source, during 2006, 2007 and 2008, Otto Candies repeatedly misrepresented the state of its vessels and then charged DMT hundreds of thousands of dollars to lease and charter vessels which were broken, poorly built or not able to meet US Coast Guard regulations, and for crews which were not provided at the last minute. The Otto Candies vessels at issue were not delivered to DMT as agreed, and needed hundreds of thousands of dollars worth of work and many months to be ready for operation for DMT's needs. This forced DMT to pay to repair the defective vessels that Otto Candies had off-loaded onto it. In addition, DMT lost valuable contracts with its customers and millions of dollars in revenue as a result of the substantial deficiencies in the Otto Candies vessels and the time delays involved in fixing those vessels. Otto Candies unreasonably left vessels promised to DMT in dry dock for months while DMT waited. Yet, DMT continued to pay above-market rates for substandard and broken vessels simply because Otto Candies was on both sides of the deals.

50. DMT contracted with Otto Candies for and paid for a new crane. Otto Candies actually delivered a used crane that was not operable. On information and belief, Otto Candies delivered the new crane, promised to DMT, to a DMT competitor.

51. These transactions all involved self-dealing by Otto Candies which the Officer and Director Defendants countenanced and aided. Otto Candies, Otto Candies, Jr. and Otto Candies, III acted to enrich itself and themselves at the expense of the corporation.

52. The Officer and Director Defendants failed to exercise ordinary diligence in evaluating DMT's transactions with Otto Candies and failed to use outside experts or consultants to assist them in valuing such transactions.

53. These improper transactions cost DMT millions of dollars in wasted corporate assets.

**DMT'S UTTER FAILURE TO FOLLOW REQUIRED CORPORATE FORMALITIES**

54. DMT, acting through the Officer and Director Defendants, consistently has failed to follow Delaware or Texas corporate law requirements as to board meetings, appointment or election of directors, record-keeping and notices of actions taken by written consent.

55. DMT's corporate filings both in the State of Texas and in the State of Delaware are inconsistent with each other as to the names and titles of the members of the beneficial owners of DMT, the members of the Board of Directors and the officers of the company. These filings are also inconsistent with DMT memoranda from Defendant Kazeminy and material on the DMT website as to the officers and directors of DMT.

56. For example, a September 8, 2008 press release on the DMT website states that Defendant Bruce Gilman has served as Chairman of the Board of DMT for several years; however, a DMT memorandum from Defendant Kazeminy to all DMT employees stated in July 2008 that Defendant Paul McKim had been promoted to the position of Chairman of the Board. (Compare Exhibit E attached hereto with Exhibit F attached hereto.)

57. Certain DMT filings as well as internal DMT documents reflect that Defendant McKim is the current Chief Executive Officer of DMT while other DMT documents state that he no longer has that title but remains as a Director of the company.

58. Prior to October 2008, Defendants Gilman, McKim, Lenig and Erickson and Mr. John Ellingboe held themselves out as the directors of DMT (the "Pre-October Board").

59. On information and belief, in early to mid-October 2008, Defendant John Hudgens alone, acting for Deep Marine Holdings, purportedly appointed Defendants Erickson, DePalma, Abadie and Otto Candies, III to the Deep Marine Technology Board of Directors, joining Defendants Gilman, Lenig and McKim, purportedly already on the Board of Directors. (These seven individuals are referred to herein as the "Mid-October Board.")

60. Plaintiffs do not believe that the Mid-October Board members were put on the Board properly.

61. Plaintiffs learned on or about October 18, 2008, and after the time they delivered a Demand to the Company that Defendants Erickson, Abadie, Otto Candies, III and DePalma of the October Board had suddenly resigned from the DMT Board of Directors. Thus, according to DMT, the DMT Board now consists of only Defendants McKim, Gilman and Lenig (the "Late October Board.")

62. Plaintiffs have never received notices pertaining to any of the elections, appointments or resignations of the various members of the Pre-October Board, the Mid-October Board or the Late October Board of Directors of DMT.

63. It is unclear who the legal members of the Board of Directors and the officers of DMT actually are.

64. In addition, minority shareholders were not made aware of the real facts concerning the Otto Candies transactions described above.

65. By consistently operating outside the rules of corporate law as to corporate governance, record-keeping and notices, the Officer and Director Defendants have breached their duties to the company.

#### **GROSS MISMANAGEMENT OF DMT**

66. The lack of legitimate corporate governance at DMT has furthered the interests of the Controlling Shareholder Defendants in running DMT according to their own agenda to the detriment of the company.

67. At all relevant times, the Officer and Director Defendants did not act in good faith in the interests of DMT and acted in reckless disregard of their duties as officers and directors of DMT.

#### **DEMAND ON THE DMT BOARD OF DIRECTORS**

68. On October 10, 2008, Plaintiffs sent a shareholder demand letter (the "Demand Letter") to the five individuals purportedly on the Pre-October Board of DMT: Defendants Gilman, McKim, Lemig and Erickson and Mr. John Ellingboe. (A copy of the Demand Letter is attached hereto as Exhibit G.) In that letter, plaintiffs demanded that the Board: A) investigate the wrongdoing alleged herein; B) take action to end all fraudulent activities; C) bring actions to recover funds wrongfully diverted from DMT and for compensatory damages; and D) establish procedures to ensure that similar wrongdoing would not occur in the future. Plaintiffs also asked for an assurance that DMT would take steps to preserve documents and guard against destruction or spoliation of evidence.

69. On October 13, 2008, in response to Plaintiffs' Demand Letter, DMT stated that it had established a Special Litigation Committee to investigate the allegations raised in the Demand Letter.

70. At that time, DMT represented to Plaintiffs that the members of the DMT Board were: Defendants McKim, Erickson, Abadie, Candies, DePalma, Lenig and Gilman, the Mid-October Board.

71. On information and belief, all of the purported members of the DMT Mid-October Board received and reviewed the Demand Letter.

72. Plaintiffs learned on or about October 13, 2008 that the members of the DMT Special Litigation Committee were Defendants Gilman and Lenig.

73. Plaintiffs learned on or about October 18, 2008 that after reviewing the Demand Letter, four members of the DMT Mid-October Board of Directors resigned, leaving the three members of the Late October Board.

74. Neither the DMT Board nor the Special Litigation Committee has taken the steps Plaintiffs demanded in the Demand Letter.

75. The Special Litigation Committee has not provided a written refutation of the claims made in the Demand Letter.

76. To date, the Special Litigation Committee has refused to assure Plaintiffs in writing that it has taken steps to preserve documents and records and caution all of the DMT employees and Board members against spoliation of evidence. This is particularly troubling because of the evidence of deletion of DMT records concerning the payments to Hays, which Plaintiffs raised in the Demand Letter.

77. Although Plaintiffs made a demand on the DMT Board as described above and then communicated with counsel for the DMT Special Committee to achieve the goals of this action, such demand and any expectation of reasonable action from the DMT Special Litigation Committee is futile because the Board members (on any of the Pre-October Board, the Mid-October Board or the Late October Board), and both of the members of the Special Litigation Committee, are not disinterested in the issues alleged here. These individuals are beholden to the Controlling Shareholders and as such, they are not capable of conducting an independent and disinterested investigation; nor are they capable of making an independent and disinterested decision to initiate and vigorously prosecute this action on behalf of DMT.

78. All of the members and recent former members of the DMT Board are either beholden to or controlled by the Controlling Shareholder Defendants.

79. Defendant Paul McKim, as former Chief Executive Officer and current member of the Board of Directors, is beholden to the Controlling Shareholder Defendants, and to other Officer and Director Defendants, for a severance package in connection with the termination of his employment. On information and belief, Defendant McKim has made demands upon the company, the Controlling Shareholders and certain Officer and Director Defendants that he be granted such a severance package. In addition, many of Defendant McKim's actions and omissions are factually at the heart of the improper payments to Hays made at the behest of Defendant Kazeminy and at the self-dealing engaged in by Otto Candies. Therefore, Defendant McKim cannot be objective or disinterested in any investigation of the issues alleged herein.

80. On information and belief, Defendant Erickson is a long time business associate of Defendant Kazeminy and works or used to work at Kazeminy's company, NJK Holdings. Defendant Kazeminy hand-picked Mr. Erickson for the Board.

81. On information and belief, Defendant Abadie is a current officer of DMT and as such is beholden to the Controlling Shareholder Defendants for his livelihood.

82. On information and belief, Defendant Otto Candies, III owns or controls Otto Candies, LLC, an entity at the center of the allegations herein. Therefore, Defendant Otto Candies, III cannot be disinterested in an investigation of these allegations.

83. On information and belief, Defendant DePalma is a business associate of Defendant Kazeminy and works for or used to work at NJK Holdings, Mr. Kazeminy's company.

84. On information and belief, Defendant Gilman is an officer of DMT and as such, is beholden to the Controlling shareholders for his continued employment. In addition, Mr. Gilman is the recipient of certain DMT options which could be impacted by the outcome of this action.

85. On information and belief, Defendant Lenig works for a company that manages property for Defendant Kazeminy; he is therefore beholden to Mr. Kazeminy. Mr. Lenig is a long-term business associate of Mr. Kazeminy and was hand-picked by Mr. Kazeminy to sit on the DMT Board.

86. As is described above, the two members of the Special Litigation Committee, Defendants Gilman and Lenig, are closely aligned with and beholden to Defendant Kazeminy and are not disinterested or independent directors.

87. The now current Late October Board members, Defendants Gilman, Lenig and McKim, as a subset of the Mid-October Board, are not disinterested or independent directors.

88. Demand on the Board was futile, as evidenced by the individuals the Board placed on the Special Litigation Committee. Accordingly, demand should be excused in this instance as futile.

**FIRST CAUSE OF ACTION**  
**(Claim Against the Officer and Director**  
**Defendants for Breaches of Their Fiduciary Duties)**

89. Plaintiffs incorporate herein by reference paragraphs 1 through 88 of this Complaint as if set forth herein.

90. The foregoing actions by the Officer and Director Defendants in aiding and approving DMT actions for the private purposes of the Controlling Shareholder Defendants were without merit, served no legitimate business purpose and were not in the best interests of DMT and its shareholders. These actions were taken to enrich the Controlling Shareholder Defendants at great expense to DMT and its minority shareholders.

91. By these actions, the Officer and Director Defendants breached their fiduciary duties of care, loyalty and good faith to DMT and its shareholders.

92. As a result of the Officer and Director Defendants' breaches of their fiduciary duties, DMT has suffered injury and damages in an amount to be proved at trial.

**SECOND CAUSE OF ACTION**  
**(Claim Against the Officer and Director**  
**Defendants for Waste of Corporate Assets)**

93. Plaintiffs incorporate herein by reference paragraphs 1 through 92 of this Complaint as if set forth herein.

94. The Officer and Director Defendants allowed the Controlling Shareholder Defendants to divert millions of dollars in corporate assets for their own purposes and to their own entities.

95. By these actions the Officer and Director Defendants wasted millions of dollars of corporate assets, causing injury to DMT and its minority shareholders and making them liable for damages in an amount to be proved at trial.

**THIRD CAUSE OF ACTION**  
**(Claim Against the Officer and Director Defendants  
for Negligence and Gross Mismanagement of DMT)**

96. Plaintiffs incorporate herein by reference paragraphs 1 through 95 of this Complaint as if set forth herein.

97. The foregoing actions constitute negligence and/or gross mismanagement of DMT by the Officer and Director Defendants.

98. By this negligence and gross mismanagement, the Officer and Director Defendants have injured DMT and its minority shareholders and caused them to suffer injury and damages in an amount to be proved at trial.

**FOURTH CAUSE OF ACTION**  
**(Claim Against the Controlling Shareholder  
Defendants for Unjust Enrichment)**

99. Plaintiffs incorporate herein by reference paragraphs 1 through 98 of this Complaint as if set forth herein.

100. By reason of the actions described above, the Controlling Shareholder Defendants have been unjustly enriched with DMT's corporate assets.

**FIFTH CAUSE OF ACTION**  
**(Claim Against the Officer and  
Director Defendants for Fraud)**

101. Plaintiffs incorporate herein by reference paragraphs 1 through 100 of this Complaint as if set forth herein.

102. The foregoing actions constitute fraud by the Officer and Director Defendants.

103. By this, the Officer and Director Defendants have injured DMT and its minority shareholders and caused them to suffer injury and damages in an amount to be proved at trial.

**SIXTH CAUSE OF ACTION**  
**(Claim Against the Controlling  
Shareholder Kazeminy for Misappropriation)**

104. Plaintiffs incorporate herein by reference paragraphs 1 through 103 of this Complaint as if set forth herein.

105. The foregoing actions constitute misappropriation of the company's assets by Defendant Kazeminy.

106. By this, Defendant Kazeminy has injured DMT and its minority shareholders and caused them to suffer injury and damages in an amount to be proved at trial.

WHEREFORE, Plaintiffs respectfully request that the Court grant them the following relief:

- a) Declaring that the Officer and Director Defendants have breached their fiduciary duties to DMT and that the actions described herein constitute gross mismanagement and waste of corporate assets;
- b) Enjoining the Officer and Director Defendants from allowing any further self-dealing or unjust enrichment by the Controlling Shareholder Defendants;

- c) Awarding damages to compensate DMT for the losses it has suffered caused by the Officer and Director Defendants' negligence, fraud, breaches of their duties and wasting of corporate assets;
- d) Ordering that any unjust enrichment of or misappropriation by the Controlling Shareholders be paid back to DMT;
- e) Ordering that DMT conduct legal elections or appointments of its directors according to Delaware corporate law;
- f) Awarding to Plaintiffs their reasonable attorneys' fees, experts' fees, costs and disbursements; and
- g) Such other and further relief as the Court deems just and proper.

Dated: November 3, 2008

Respectfully submitted,

/s/ Laurie Schenker Polleck  
Laurie Schenker Polleck (No. 4300)  
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(212) 785-9100

*Special Counsel for Plaintiffs*



## NATURE OF THE ACTION

The issues now before the court arise at the intersection of four principles of American law and society. The first principle is that where corporate governance is concerned, three of the most vital elements are honesty, trust and accountability. The second principle, a corollary of the first, is that the fiduciary duties of those in charge of corporate governance cannot be delegated or disregarded without consequence. The third principle, and one that is a hallmark in the laws of every state throughout the nation, is that employees in a corporation should never be forced or coerced into committing acts that are illegal, oppressive or fraudulent. The fourth principle, while perhaps not the stuff of statutes, is the aphorism "might makes right," which reflects society's view that right and wrong are often determined by power and money.

From Abscam to Adelphia, for many years American principles of corporate governance have been disregarded in the name of "might makes right." And from Pete Williams to David Durenberger, political alchemy involving business, power and money has proven not to be so rare. But rare is the occasion when a person, such as Sherron Watkins at Enron, stands up against oppression and wrongdoing. Where Deep Marine Holdings, Inc. ("DMH") and Deep Marine Technologies, Incorporated ("DMT") are concerned, Paul McKim is that person. Mr. McKim has consistently stood up against the wrongful acts of those in control of DMH and DMT when they acted in a manner that was illegal, oppressive or fraudulent, and resulted in the corporate assets of DMH and DMT being misapplied or wasted.

This lawsuit is in response to and defense of claims first made against DMH, DMT, Mr. McKim and certain of the Defendants, pursuant to a written demand for monetary or non-monetary relief made by some shareholders of DMH and former shareholders of DMT on or about October 10, 2008 (the "Claims"). The Claims were made against Mr. McKim and others

in their capacities as employees, directors and officers of DMH and DMT. Since the date of the Claims, Mr. McKim has been engaged in an investigation of the Claims, and has taken no action or failed to take any required action that would prejudice the rights of DMH, DMT or himself with respect to the Claims. This lawsuit is also a shareholder's derivative action brought in defense of the Claims and for the benefit of nominal defendants DMH and DMT. This lawsuit is also an individual suit by Paul McKim in defense of the Claims against certain members of the DMH's and DMT's Board of Directors, executive officers, and controlling shareholders. This lawsuit is also an individual suit by Paul McKim prosecuting wrongs against him as an officer, board member, and shareholder of DMH and DMT. It seeks to remedy Defendants' breaches of fiduciary duties, fraud, unjust enrichment, conspiracy, knowing interference with fiduciary duties, aiding and abetting breaches of fiduciary duties, neglect, errors, misstatements, misleading statements, omissions and other acts in violation of laws dealing with the operation and governance of DMH and its wholly owned subsidiary, DMT.

#### **DISCOVERY**

Plaintiff requests that discovery be conducted pursuant to Texas Rule of Civil Procedure 190.4—Level 3.

#### **PARTIES**

Plaintiff, Paul McKim ("Plaintiff"), a Texas resident, was at all relevant times, a shareholder, Chief Executive Officer, and Director of Nominal Defendants DMH and DMT.

Nominal defendant Deep Marine Holdings, Inc., a Delaware corporation with its principal executive offices located in Houston, Texas, may be served with process through its registered agent at The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801.

Nominal defendant Deep Marine Technologies, Inc., a Texas corporation with its principal executive offices located in Houston, Texas, may be served with process through its registered agent, John Hudgens, at 20411 Imperial Valley Dr., Houston, Texas 77086.

Defendant Nasser Kazeminy ("Kazeminy") is a current shareholder of DMH, directly and indirectly, and a former shareholder of DMT, directly and indirectly. Kazeminy is a resident of Minnesota, and may be served with process at NJK Holding Corporation, 7803 Glenroy Rd., #300, Bloomington, MN 55439.

DCC Ventures, LLC ("DCC"), a Nevada limited liability company, is a current shareholder of DMH and former shareholder of DMT. DCC has its principal executive offices in Minneapolis, Minnesota. On October 1, 2008, DCC went into default status with the Secretary of State of Nevada, and as such is not in good standing as of the date this lawsuit is filed, and has forfeited its charter in the State of Nevada. At the time of default and forfeiture of its charter, DCC's registered agent was listed as The Corporation Trust Company of Nevada, 6100 Neil Road, Suite 500, Reno, Nevada, 89511, and its officers were listed as Michael T. Davies and Mohannad Gharib, at 3960 Howard Hughes Parkway, 5<sup>th</sup> Floor, Las Vegas, Nevada 89101. DCC is controlled by Kazeminy. DCC may be served with process through Kazeminy or the registered agent or officers listed as of the date of its default and forfeiture of its charter in the State of Nevada.

NJK Holding Corporation ("NJK"), a Minnesota corporation, is controlled by Kazeminy. NJK has its principal executive offices in Minneapolis, Minnesota. Although registered with the Minnesota Secretary of State, there is no registered agent listed for NJK. However, the registered address for NJK in the State of Minnesota is 8500 Normandale Lake Blvd., #600,

Minneapolis, Minnesota 55437. NJK may be served with process through Kazeminy at the above registered address.

Otto Candies, LLC ("Otto") is a current shareholder of DMH and a former shareholder of DMT. Defendant Otto is a Louisiana limited liability company with its principal executive offices at 17271 Hwy. 90, Des-Allemands, LA 70030. DCC may be served with process through its registered agent Paul B. Candies, 17271 Hwy. 90, Des Allemands, LA 70030.

Otto B. Candies, Jr. ("Candies") is Chairman of the Board and Chief Executive Officer of Defendant Otto Candies, LLC. Candies directly participated in the wrongful conduct alleged herein. Candies is a resident of Louisiana, and may be served with process at Otto Candies, LLC., 17271 Hwy. 90, Des Allemands, LA 70030.

Otto B. Candies, III ("Candies III") is Secretary of Defendant Otto Candies, LLC. Candies directly participated in the wrongful conduct alleged herein by and through his involvement as a member of the Board of Directors of DMH and DMT. Candies III is a resident of Louisiana, and may be served with process at Otto Candies, LLC., 17271 Hwy. 90, Des Allemands, LA 70030.

John Hudgens is the chief financial officer of DMH and/or DMT. Hudgens directly participated in the wrongful conduct alleged herein. Hudgens is a resident of Minnesota and may be served with process at the office of his employer, Deep Marine Technology, Inc., 20411 Imperial Valley Dr., Houston, Texas 77089, or at the office of NJK Holding Corporation, 7803 Glenroy Rd., #300, Bloomington, MN 55439, which is his current or former employer.

Defendant Larry Lenig, Jr. ("Lenig") is a current member of the Board of Directors of DMH and DMT. Lenig directly participated in the wrongful conduct alleged herein by and through his involvement as a member of the Board of Directors of DMH and DMT. Lenig is a

resident of Florida and may be served with process at his employer, ComVest, at One Clematis Street, Suite 300, West Palm Beach, Florida 33401.

Defendant John Ellingboe ("Ellingboe") is a former member of the Board of Directors of DMH and DMT. Ellingboe directly participated in the wrongful conduct alleged herein by and through his involvement as a member of the Board of Directors of DMH and DMT. Ellingboe is a resident of Minnesota and may be served with process at 7123 Tupa Dr., Minneapolis, MN 55439, or at the office of NJK Holding Corporation, 7803 Glenroy Rd., #300, Bloomington, MN 55439, which is his current or former employer.

Defendant Daniel Erickson ("Erickson") is a former member of the Board of Directors of DMH and DMT. Erickson directly participated in the wrongful conduct alleged herein by and through his involvement as a member of the Board of Directors of DMH and DMT. Erickson is a resident of Minnesota and may be served with process at Deep Marine Technology, Inc., 20411 Imperial Valley Dr., Houston, Texas 77089, or at the office of NJK Holding Corporation, 7803 Glenroy Rd., #300, Bloomington, MN 55439, which is his current or former employer.

Defendant Bruce C. Gilman ("Gilman") is a member of the Board of Directors and an employee of DMH and/or DMT. Gilman directly participated in the wrongful conduct alleged herein by and through his involvement as a member of the Board of Directors of DMH and DMT. Gilman is a resident of Texas and may be served with process at 514 Rancho Bauer Drive, Houston, Texas 77079.

Defendant Eugene DePalma ("DePalma") is a former member of the Board of Directors of DMH and DMT. DePalma directly participated in the wrongful conduct alleged herein by and through his involvement as a member of the Board of Directors of DMH and DMT. DePalma is a resident of Minnesota and may be served with process at the office of Deep Marine

Technology, Inc., 20411 Imperial Valley Dr., Houston, Texas 77089 or at the office of NJK Holding Corporation, 7803 Glenroy Rd., #300, Bloomington, MN 55439, which is his current or former employer.

Defendant Wade Abadie, Jr. ("Abadie") is a former member of the Board of Directors of DMH and DMT. Abadie directly participated in the wrongful conduct alleged herein by and through his involvement as a member of the Board of Directors of DMH and DMT. Abadie is a resident of Texas and may be served with process at the office of Deep Marine Technology, Inc., 20411 Imperial Valley Dr., Houston, Texas 77089, which is his current employer.

#### **JURISDICTION AND VENUE**

This Court has jurisdiction over this matter because the amount in controversy is within the jurisdictional limits of this Court and the Defendants are subject to the laws of the State of Texas and subject to the service of process.

Venue is proper in this Court under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because all or a substantial part of the events or omissions giving rise to the claims occurred in Harris County, Texas.

#### **BACKGROUND**

Founded and incorporated in 2001 by Plaintiff Paul McKim, DMT provides comprehensive subsea services to the offshore oil and gas industry. Since its inception, Mr. McKim has served as a Director and Chief Executive Officer for DMT. As DMT began to expand, Mr. McKim sought additional outside capital support to help grow the company. A number of entities were approached and bought shares in DMT. One of these individuals was Nasser Kazeminy. The other was Otto Candies, Jr. Kazeminy, along with his co-Defendants,

disregarded the best interests of DMH and DMT and utilized the companies and their assets as their own personal bank account.

*a. Nasser Kazeminy*

Kazeminy, an Iranian businessman who has lived in the United States for 35 years, is the principal owner and controlling shareholder of NJK Holding Corporation ("NJK"), a Minnesota based investment company. Kazeminy also owns DCC Ventures, LLC, a privately-held investment company located in Minneapolis, Minnesota. DCC is a controlling shareholder of DMH, and formerly a controlling shareholder of DMT. In 2004, DCC Ventures invested approximately \$1,000,000.00 in DMT and subsequently increased its ownership to over ten million shares making it the largest single shareholder. In addition, Kazeminy personally purchased over 500,000 shares in DMT. Over time, Kazeminy exerted increasing control over the Board of Directors and day-to-day operations of DMT. Kazeminy, as a controlling shareholder, treated DMT as "his company" and dealt swiftly and harshly with dissenting board members and executive management.

In June 2006, Kazeminy solidified his strong hold on DMT by forcing DMT into an Oversight Services Agreement (the "OSA")<sup>1</sup>. The OSA between DMT and NJK, granted Kazeminy, by and through his control of NJK, the putative power to—at his own discretion—designate advisory, consulting and other services in relation to the day-to-day operations of DMT. Under the auspices of the OSA and his position as a controlling shareholder, Kazeminy unilaterally and without authority filled the Board of Directors and senior management with his own hand-picked individuals—many of whom previously worked directly with or for NJK—despite the fact that the OSA did not delegate any duties of the Board of Directors to NJK or

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<sup>1</sup> After the formation of DMH, a new Oversight Services Agreement was entered into on May 31, 2008 between DMH and NJK (the "DMH Oversight Agreement").

Kazeminy. Moreover, nothing in the OSA gave NJK or Kazeminy the rights afforded the directors or shareholders of DMT, nor did such OSA operate as a valid proxy, voting trust or voting agreement.

*b. Otto Candies, Jr.*

Otto Candies, Jr. ("Candies") serves as Chairman and Chief Executive Officer of Otto Candies, LLC ("Otto"), a Louisiana offshore oil company with more than 100 vessels and interests in the Gulf of Mexico, Mexico and Central and South America. DMT had dealings with Otto going back to 2004—most of which were troubled—but Otto did not receive shares in DMT until 2005 when an interest in DMT was given in exchange for the MV Diamond. With that, Otto had a foothold in DMT and a connection to Kazeminy that only grew over time. In November 2007, Candies and Kazeminy struck a deal among themselves that resulted in Otto Candies, LLC receiving an almost twenty percent interest in DMT in exchange for two vessels, the MV Agnes and Kelly Ann. With over nine million shares in DMH, Otto Candies, LLC has only a slightly smaller shareholder interest than DCC Ventures and Kazeminy, combined.

*c. Deep Marine Holdings, Inc. Restructuring*

DMT continued to operate as an independent corporate entity until May 2007 when the company underwent a restructuring. Deep Marine Holdings, Inc., a Delaware corporation, was created and became the sole owner of all outstanding stock of DMT in an exchange transaction. All assets and operations remain under DMT and four other subsidiaries. DMH and DMT now share the same current Board of Directors—McKim, Lenig, and Gilman. DMH has no independent operations or assets separate and aside from those contained within DMT.

The two controlling shareholders—Kazeminy and Candies—with the assistance of Co-Defendants, have continued to disregard the best interests of DMH and DMT after the

restructuring, and utilize the businesses as their own personal bank account. The wrongful activities range from dishonest to possibly criminal, but all are outside the duties owed to a corporation by those in charge. Defendants misused corporate funds, committed waste, wrongfully terminated senior management, disregarded corporate formalities, and committed numerous frauds. These actions have resulted in significant damage to DMH's finances, executive structure, and business reputation.

### **FACTUAL ALLEGATIONS**

The relationship between DMT and its controlling shareholders – Kazeminy and Candies – was troubled from the beginning. In March 2007, however, trouble escalated. It was then that Mr. McKim and others began to challenge transactions and activities being undertaken by or at the instruction of Kazeminy and Candies. Questioning this authority, however, was not allowed and would eventually lead to the termination of several members of senior management as well as the attempted but failed ouster of Mr. McKim. Defendants' wrongful actions are numerous and include the following:

#### ***a. Payments to Hays Companies***

In March 2007, Kazeminy began ordering the payment of corporate funds to companies and individuals who tendered no goods or services to DMT for the stated purpose of trying to financially assist United States Senator Norm Coleman of Minnesota. In March 2007, Kazeminy telephoned B.J. Thomas, then DMT's Chief Financial Officer. In that conversation, Kazeminy told Mr. Thomas that "U.S. Senators don't make [expletive deleted]" and that he was going to find a way to get money to United States Senator Norm Coleman of Minnesota and wanted to utilize DMT in the process. Mr. Thomas later approached Mr. McKim, asking him whether this was appropriate and whether they should follow Kazeminy's orders. Mr. McKim told him that it

was not appropriate, and shortly thereafter he also spoke with Kazeminy. In his conversation with Kazeminy, Mr. McKim was informed of the same purpose as was Mr. Thomas in his conversation with Kazeminy. In this same conversation, Kazeminy told Mr. McKim that he [Kazeminy] would make sure there was paperwork to make it appear as though the payments were made in connection with legitimate transactions, explaining further that Senator Coleman's wife, Laurie, worked for the Hays Companies ("Hays"), an insurance broker in Minneapolis, and that the payments could be made to Hays for insurance. When Mr. McKim made further objections, Kazeminy repeatedly threatened to fire Mr. McKim, telling him "this is my company" and that he and Mr. Thomas had better follow his orders in paying Hays. Subsequently, Kazeminy caused Hays to produce a document entitled "Disclosure of Service Fee" which purported to legitimize the basis of the payments to be made to Hays by DMT. After coercing Mr. McKim into signing the Disclosure of Service Fee document, Kazeminy continued to make threats, use intimidating tactics and undue influence on Messrs. Thomas and McKim.

In subsequent conversations, Kazeminy threatened Mr. McKim and further coerced him into approving the first monthly payment of \$25,000.00 from DMT to Hays. Mr. McKim told Mr. Thomas and others of his objections to Kazeminy's demand, and subsequently refused to approve any further payments. Kazeminy, extremely unhappy with Mr. McKim's refusal to approve any additional payments, threatened to terminate Mr. Thomas if he did not continue to take care of making the payments to Hays. Two additional payments of \$25,000 each were made without Mr. McKim's approval. DMT received and made payment on three separate invoices from Hays for "Quarterly Installment of Service Fee" on May 16, 2007, June 1, 2007, and September 4, 2007. A fourth invoice was received on December 11, 2007. When a fourth payment of \$25,000 was in the process of being made, Mr. McKim found out about it and

stopped the internal process of making the payment. Mr. McKim subsequently discussed this with Kazeminy, who again threatened to terminate Mr. McKim for his refusal to approve the payments, always alluding to the fact that he felt like his integrity was being challenged when Mr. McKim raised objections to the payments to Hays.

Hays provides risk management, insurance, and employee benefits consulting. It is also the employer of Senator Coleman's wife, Laurie, who is an aspiring actress and holds no insurance licenses in the State of Texas. Kazeminy informed Messrs. McKim and Thomas that Hays would funnel the money from DMT to Senator Coleman through the payment of compensation to his wife, Laurie, and that there was nothing to worry about. Laurie Coleman never provided any type of services or products to DMT, nor has any other person on behalf of Hays provided any type of services or products to DMT. Furthermore, at no time has Hays been licensed to broker insurance in the State of Texas. An affiliate of Hays previously filed paperwork with the Secretary of State of Texas to apply for the authority to conduct business in the State of Texas, listing "insurance brokerage" as the purpose for the filing. However, such filing is insufficient by itself to allow a company to broker insurance in the State of Texas. Hays was not then and is not now licensed with the Texas Department of Insurance. Neither Hays nor any of its affiliated companies have ever provided any goods or services to DMT. DMT has no other "service fee" agreements like this, and has never utilized the services of Hays, despite the fraudulent paperwork promoted by Kazeminy to ostensibly support some type of transaction between Hays and DMT. To the contrary, AON Inc., was, and continues to this day, to provide for DMT's insurance, risk management, and employee benefits needs.

Mr. Thomas' successor as chief financial officer of DMT is John Hudgens, an affiliate of Kazeminy and NJK. Mr. Hudgens was unilaterally hired for this position by Kazeminy, and in

such capacity has been essentially a puppet for Kazeminy, seeking to further Kazeminy's personal interests by either aiding and abetting additional wrongdoings or assisting in the cover-up of past wrongdoings. On or about August 19, 2008, Mr. Hudgens attempted to hide at least one invoice by ordering employees of DMT to pull the detail on the Hays payments and delete such data from the books and records of DMT. As is discussed subsequently in this Petition, when the putative counsel for the putative special litigation committee for DMT and DMH provided Mr. McKim with records he requested subsequent to the Claims, the cancelled checks to Hays, the Hays invoices, and the Aged A/P Summary reflecting Mr. Hudgens' instructions to pull and delete the detail on the Hays account were not provided, due to the fact that they were either concealed, destroyed or otherwise obstructed.

**b. *Payments to Behnaz Ghaufouri***

In addition to causing payments to be made to Hays in exchange for no goods or services, Kazeminy ordered payment be made to one of his relatives, Behnaz Ghaufouri. On June 12, 2008, a \$6,000.00 payment from Deep Marine Technology, Inc. was made to Ghaufouri in exchange for no corporate benefit. Defendant Hudgens signed the check.

**c. *Dealings with Otto Candies, LLC***

As Kazeminy's dominance and manipulation of DMH and DMT grew, so did the troubles with another large shareholder—Otto Candies, LLC and its Chief Executive Officer, Otto Candies, Jr. Both men—often in concert—acted in their own best interest and not in the interests of DMH or DMT. Mr. McKim's dissatisfaction with both of these men grew over time, but his dealings with Otto first began in 2004.

1. *MV Mother Theresa*

In August 2004, DMT entered in to a number of transactions with Otto that resulted in significant loss and delay to DMT and financial gain to Otto. The first of these transactions, in August 2004, was the chartering of MV Mother Theresa from Otto. The agreement provided for a two year charter with a termination subject to prior written notice. DMT wished to terminate and provided notice to Otto, but Otto continued to invoice DMT. Otto contends to this day that DMT owes it an additional \$1.2 million dollars even though the contract was terminated pursuant to the terms of the contract. This type of self-interested dealing would continue throughout DMT's relationship with Otto.

2. *MV Agnes*

In June 2006, DMT leased the MV Agnes from Otto. The rate was to be approximately \$30,000 per day which was to include crew and maintenance. Prior to leasing the vessel, Otto Candies, Jr. represented to McKim that the vessel would meet all United States Coast Guard requirements to perform dive operations. After DMT took delivery of the vessel, its independent inspectors revealed that the vessel system did not meet regulations necessary to perform diving operations. DMT was therefore required to invest a significant amount of time and money in bringing the vessel up to Coast Guard standards, even though Otto had contractually agreed to supply a sea ready vessel and DMT had paid for the same. During this time, Otto continued to charge DMT \$30,000 per day for the lease despite DMT's inability to utilize the vessel.

The Agnes continued to have problems through October 2007. DMT sent the MV Agnes to Boston on a contract of \$125,000.00 per day to work for Horizon Offshore. Due to a lack of maintenance by Otto, the vessel had significant mechanical difficulties and could not be utilized

for two months. The delay cost DMT \$7,500,000 in revenue, in addition to all the additional charges for Otto during his period.

3. *MV Emerald*

In May 2007, DMT agreed to purchase from Otto the MV Emerald for \$22,000,000.00. During the one year build-out of the vessel, Candies continuously represented that Otto would provide the necessary crew and maintenance contract for the vessel. Based upon this promise, DMT secured a contract with BP utilizing the vessel. Otto failed to provide a crew or to make the vessel ready by deadline. Two weeks prior to vessel completion, Candies informed McKim that he would not provide the crew thus leaving DMT with a contractual obligation with BP and no way to fulfill it. McKim was forced to hire other crews. In addition, at the time of closing, Candies informed DMT that the purchase price had been arbitrarily increased by \$6,000,000, without justification or any legal basis. Candies stated that DMT could "take it or leave it," disregarding the terms of the binding contract between DMT and Otto.

4. *MV Diamond*

Thereafter, in December 2007, yet another Otto provided vessel began to cause DMT problems. These mechanical problems were only compounded by the lack of diligence by Otto's repair crews. The MV Diamond inspections revealed the vessel required repairs to the port propulsion unit and other areas before it could continue to work. For four months the vessel was unusable. During this time, however, Otto's maintenance crew was not performing repairs and was indifferent to the urgency of returning the vessel to work. McKim eventually had Otto's crews removed from maintenance. The repair time cost DMT \$8,000,000.00 in revenues.

In July 2008, DMT was to be awarded a contract from Technip for the MV Diamond. An audit of the vessel revealed over 160 outstanding and unacceptable items. Technip informed

DMT that it would not enter into a contract without correction of these items and replacement of the Otto Candies crew. In order to secure the contract, McKim immediately replaced the crew on the MV Diamond. This action ultimately led to McKim's attempted ouster from DMH and DMT.

#### *5. MV Sapphire*

In January 2008, DMT purchased an additional vessel from Otto that was to have a new crane installed. The crane cost \$700,000. Rather than provide the purchased crane, Otto provided it to a DMT competitor to whom Otto also leases other vessels. Another used crane that was painted to appear new was instead provided. On January 14, 2008, DMT hired a specialized crane service company to inspect and to confirm that the crane was used. When Candies was informed by McKim about the findings, he stated that it was a "new crane—take it or leave it."

All of the wrongful dealings with Otto were sanctioned by the Board of Director Defendants either expressly or by acquiescence resulting in ongoing damage to DMH and/or DMT. Even in the face of increasing complaints and protest by Mr. McKim, DMT continued to deal with Otto at the direction of Kazeminy and with the consent or acquiescence of other board members, who are Defendants in this lawsuit.

#### *d. Wrongful Bank Transactions*

This same attitude has pervaded numerous wrongful banking and accounting transactions at the instruction of Kazeminy and Candies. Money has been flowing in and out of DMT's cash accounts to and from Otto Candies. The first of these occurred on August 18, 2008 when Otto Candies, Inc. transferred two (2) million dollars to the DMT Cash Concentration Account. The money was then booked at the direction of John Hudgens on the DMT General ledger as a

Candies Customer Advance. Otto Candies, however, was not a customer of DMT. To the contrary, it was DMT who purchased goods and services from Otto.

These "advances" continued on September 9, 2008, when DMT received a \$500,000.00 payment from Otto Candies Inc. that was deposited into the DMT Cash Concentration Account. Just over a week later, on September 17, 2008, however, this money was seemingly returned to Otto Candies, LLC. On that date, Defendant Hudgens approved a \$500,000.00 payment back to Otto. The payment and subsequent return of the money had no business purpose and was not in connection with any proper business transaction.

These transactions are for no legitimate purpose and appear to have been undertaken in order to avoid bank covenants limiting the maximum amount of loans that DMT can take from investors. Kazeminy, Hudgens, and Candies, acted in concert to disguise improper cash advances. These actions created a substantial risk to DMT, DMH and their shareholders for possible allegations of fraud and could significantly impact the Company's financial stability.

*e. Failure to Comply with Corporate Formalities*

Many of the wrongful acts made the subject of the Claims and this lawsuit were accomplished through a complete disregard for corporate formalities. Many of the corporate activities occurred in this fashion. Kazeminy thought of DMH and DMT as "his companies" and involved only those individuals who he had handpicked in the decision making process. There were no board meetings—but there were "Nasser Meetings," which many people regarded as having the equivalent effect of board meetings. The most recent example occurred at the October 13, 2008 Special Board Meeting that was called to address the Claims. Upon calling in to the teleconferenced meeting, Mr. McKim—Chairman of the Board—learned for the first time that four new board members had been added. Mr. McKim was not notified, did not participate,

or have opportunity to vote on any of these members—all of who subsequently resigned after hearing many of these allegations. Invited to the meeting as a special guest was Otto Candies, Jr.—again without any notice to, comment or approval sought by, Mr. McKim. At one point in the meeting, Defendant Gilman called Kazeminy by name, seeking to have him confirm his attendance in a roll call. Kazeminy remained silent.

Furthermore, Kazeminy and other Co-Defendants backdated documents and records of DMH and DMT to make it appear as though persons signed particular documents on certain dates, in an attempt to legitimize various putative actions by the Board of Directors. For example, resolutions purporting to be valid corporate actions by DMH and DMT were first circulated and signed subsequent to the October 13, 2008 board meeting, but such resolutions reflected a signature date of October 3, 2008 and a conflicting facsimile transmission date of October 10, 2008 for Defendant Lenig. These resolutions purported to appoint Candies, III to the Board of Directors of DMH and DMT. Evidencing the fact that no board meeting was ever called to approve those resolutions and that such resolutions were improper, Candies, III expressed his surprise at being on the board when he participated in the October 13, 2008 meeting. Often times, there was no meeting, no notice of a meeting, and the documents did not reflect all of the signatures required by law. As was the case with most decisions for DMH and DMT, Kazeminy made a decision and then found the requisite individuals to execute that decision—despite the fact that the DMH Oversight Agreement did not grant to NJK or Kazeminy the right to do anything related to DMT. The DMH Oversight Agreement only covers matters related to DMH, and the OSA executed for DMT was terminated as a result of the DMH Oversight Agreement. Thus, even if the OSA and DMH Oversight Agreement were valid, which

they are not, whoever prepared the DMH Oversight Agreement did not prepare it in such a way that gave NJK any powers or authority with regard to DMT.

When a board member or senior management voiced concern or dissent they were quickly shut out, threatened, and/or terminated. Kazeminy recognized as much in his July 30, 2008 memorandum to the DMT employees when he wrote, as the "controlling shareholder," that Otto Candies, Jr., the Board and he, had decided to make some changes. These included promoting Wade Abadie to Executive Vice President and bringing in Otto Candies, III to assist in reviewing the company's financial structure. On that day, after months of challenging and fighting with Kazeminy and Candies over all of their wrongful activities, Mr. McKim was ostensibly promoted to Chairman of the Board of Directors—and attempts were made to remove Mr. McKim as Chief Executive Officer. Later that same day, Mr. McKim was asked to leave the business that he started and to never return.

### **CAUSES OF ACTION**

#### ***a. Breach of Fiduciary Duties***

The Defendants, by way of their positions as officers, directors, or controlling shareholders, owed DMT and DMH and shareholders the fiduciary obligations of good faith, loyalty, and due care and were required to control and manage DMT and DMH in a fair, just, honest, and equitable manner. Defendants were required to act in the best interests of the company and its shareholders and not in their own personal interest. The Board Member Defendants owed DMH, DMT and their shareholders a duty to exercise a high degree of due care, loyalty, and honest diligence in the management and administration of the affairs of DMH and DMT, as well as in the use, preservation and fulfillment of its property, assets, and legal obligations. The Board Defendants knowingly violated their obligations as directors of DMH

and DMT and exhibited an absence of good faith and a disregard for the legality of their actions and duties to DMH and DMT. The individual Defendants were aware or should have been aware of the ongoing and potential damage to DMH and DMT.

The Board Defendants and officers were required to exercise reasonable and prudent supervision over the management, policies, practices, controls, and financial affairs of DMH and DMT. The individual Defendants, by way of their ability to control DMH's and DMT's corporate and business affairs, owed DMH, DMT and shareholders the obligations of candor, fidelity, trust, honesty, and loyalty, and were required to act in a fair, just and equitable manner in the best interests of DMH, DMT and their shareholders.

The individual Defendants participated in the wrongdoing in order to improperly benefit themselves. Such participation included the creating, proposing, authorizing, approving or acquiescing in the wrongful conduct of Kazeminy, Otto and the Board members and/or other officers, most of whom are Defendants in this lawsuit.

The Defendants, either intentionally, or through gross negligence, allowed Kazeminy and Otto Candies to control DMH and DMT and use the corporate coffers for their own economic benefit. Specifically, Defendants breached their fiduciary duties by:

1. directing improper payments to Hays for the benefit Senator Norm Coleman and his spouse for no legitimate business purpose;
2. making improper monetary gifts to Mr. Kazeminy's relatives;
3. approving wasteful and self-dealing transactions with Otto Candies, LLC;
4. failing to operate in a diligent, honest and prudent manner in compliance with corporate formalities;
5. directing senior management to commit fraud in negotiating the sale of assets;

6. accepting and fraudulently accounting for monetary advances;
7. terminating and attempting to terminate senior management who challenged these actions in violation of law.

The Defendants' foregoing misconduct was not, and could not have been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit Defendants at the expense of DMH and DMT.

As a result of Defendants' misconduct, DMH and DMT have been damaged financially and are entitled to a recovery of monetary and non-monetary relief as a result thereof.

*b. Knowingly Participating in a Breach of Fiduciary Duty*

All of the Defendants knew that the officers, board members, and controlling shareholders have fiduciary duties to DMT and DMH. Defendants knowingly participated in the breach of fiduciary duties by the others when they engaged, employed or implored them to:

1. direct improper payments to Hays for the benefit Senator Norm Coleman and his spouse for no legitimate business purpose;
2. make improper monetary gifts to Mr. Kazeminy's relatives;
3. approve wasteful and self-dealing transactions with Otto Candies, LLC;
4. fail to operate in a diligent, honest and prudent manner in compliance with corporate formalities;
5. direct senior management to commit fraud in negotiating the sale of assets;
6. accept and fraudulently account for monetary advances;
7. terminate and attempt to terminate senior management who challenged these actions in violation of law.

On numerous occasions the officers, board members, and controlling shareholders of DMH and DMT breached their duties and all Defendants knowingly participated in these acts.

The Defendants' conduct was not, and could not have been, an exercise of good faith business judgment. Rather, it was intended to, and did unduly benefit the personal interests of Defendants at the expense of DMT and DMH.

As a result of the knowing participation in the breaches of fiduciary duties, DMT and DMH and shareholders have sustained damages, including, but not limited to, the loss of funds as a result of waste and self-dealing.

*c. Conspiracy and/or Aiding and Abetting*

The Defendants agreed to and did participate with and/or aided and abetted one another in a deliberate course of action designed to deliver corporate assets to themselves and/or others. The Defendants also agreed to and did participate with and/or aided and abetted one another in a deliberate course of action designed to commit fraud on third-parties.

The Defendants' conduct was not, and could not have been, an exercise of good faith business judgment. Rather, it was intended to, and did unduly benefit the personal interests of Defendants at the expense of DMH and DMT.

As a result of the conspiracy and/or aiding and abetting in the breaches of fiduciary duties, DMH, DMT and their shareholders have sustained damages, including, but not limited to, the loss of funds as a result of waste and self-dealing.

*d. Unjust Enrichment*

Defendants Otto Candies, Jr. and Otto Candies, LLC were unjustly enriched by their receipt of overpayments and undue proceeds that were wrongly paid by DMH and/or DMT. It would be unconscionable to allow them to retain the benefits of these proceeds at the detriment of DMH and/or DMT.

As a result of this unjust enrichment, DMH, DMT and shareholders have sustained damages, including, but not limited to, the loss of funds as a result of waste and self-dealing.

*e. Appointment of Receiver to Operate DMH Pending Derivative Action*

Plaintiff asserts that the acts of the Defendants and others in control of DMH and DMT are and have been illegal, oppressive or fraudulent, and that the corporate assets of DMH and DMT have been and continue to be misapplied or wasted. Accordingly, pursuant to Article 7.05 of the Texas Business Corporation Act and Delaware Chancery Court Rule 149, Plaintiff seeks the appointment of a Receiver for DMH and DMT pending the outcome of the Claims and this action. Appointment of a Receiver is the most appropriate non-monetary relief under the circumstances, and will help the court insure that further wrongdoings are not committed.

**DERIVATIVE DEMAND AND WAITING PERIOD EXCUSED**

Plaintiff brings this action, in part, derivatively in the right and for the benefit of DMH and DMT to redress the Defendants' wrongful actions.

Plaintiff is an owner of DMH shares and was an owner at all times relevant to this matter. Plaintiff was also an owner of DMT shares and was an owner at all times prior to the DMT restructuring.

Plaintiff will adequately and fairly represent the interests of DMH and DMT and their shareholders in enforcing and prosecuting their rights.

Plaintiff has not made any demand on the DMH or DMT Board of Directors prior to instituting this action against the Defendants. Such demand would be futile because the Boards of Directors of DMH and DMT are incapable of making an independent and disinterested decision to institute and vigorously prosecute.

At the time of the October 13, 2008 meeting of the Board, Mr. McKim was unaware of who was on the Board. As previously noted, Candies, III expressed surprise when finding out that he was on the Board. At the October 13, 2008 Board meeting, a total of seven people were purportedly on the Board (McKim, Gilman, Lenig, Erickson, DePalma, Abadie and Candies, III). Shortly after hearing the Claims at the October 13, 2008 meeting, Defendants DePalma, Abadie, Erickson and Candies, III "abandoned ship" by resigning from the Board of DMH and DMT.

At the time this action was commenced, the Board consisted of three directors: Gilman, Lening, and McKim. However, consistent with Mr. McKim's objection at the October 13, 2008 meeting, Gilman and Lening are incapable of independently and disinterestedly defending the Claims. Gilman and Lening are not independent or disinterested in considering the Claims or in determining whether a demand to commence and vigorously prosecute this action in defense of the Claims for the following reasons:

1. Gilman and Lening are both named Defendants in this matter and participated in or consented to the wrongdoings. As named Defendants they also have a vested interest in the outcome of this matter;
2. Gilman and Lening both have financial interests in DMH in that they both have equity options;
3. Gilman and Lening were invited to join the Board of Directors by Kazeminy via NJK and, therefore, are beholden to Kazeminy and NJK and, at worst, not even validly elected members of the Board of Directors;
4. Gilman and Lening continue to sanction the ongoing, wrongful exclusion of McKim from DMH and DMT affairs, including most recently approving the appointment of four new board members (all of who have subsequently resigned) without any notification or consultation with McKim even though he still sits as Chairman of the Board and CEO;
5. Lening and his employer the ComVest Group have extensive financial ties to Nasser Kazeminy and DCC Ventures;
6. Gilman declared to those persons in attendance at the October 13, 2008 meeting that he only agreed to serve in the roles he was then serving

because he "had a gun to my head" at the time of his appointment, evidencing a troubling level of coercion or duress that had occurred in the process of his appointment;

7. Lenig failed to disclose the entire extent of his financial and business ties to Kazeminy, and declared that he had been through situations like this many times to those persons in attendance at the October 13, 2008 meeting, after which he nominated himself and Gilman to serve as the members of the special litigation committee ("the SLC"); and
8. Lenig, after failing to disclose the entire extent of his financial and business ties to Greenberg Traurig ("Greenberg"), nominated that law firm to serve as special counsel to the SLC.

In addition to the above, Gilman and Lenig have vested interests in continuing the status quo at DMH and DMT, and appeasing Kazeminy. Moreover, Greenberg has, simultaneously with its putative service as special counsel to the SLC, been engaged in negotiations with certain shareholders of DMH for the potential buy-out of their interests, all in contradiction to Greenberg's putative and stated role as a non-advocate, truth-finder and fact-finder. The law firm Winthrop Weinstein even entered the process by threatening counsel to the shareholders making the Claims, and then later re-directing all matters related to the potential buy-out of those same shareholders to Greenberg. There are so many other business and financial ties to Kazeminy that it is next to impossible to comprehend the magnitude of the conflicts of interests and full extent to which Lenig and Gilman and others are incapable of independently and disinterestedly defending the Claims or considering a demand to commence and vigorously prosecute this action. For that reason, Exhibit A to this Petition illustrates the complexity of the business and financial ties to Kazeminy. Mr. McKim, as the only member of the Board of Directors who is not beholden to Kazeminy in some form or fashion, has been constructively removed from having any day-to-day involvement with the operations of DMT and the workings

of DMH. Therefore, unless a Receiver and truly independent and disinterested SLC is formed, a continuation of the status quo will be ineffectual and allow the wrongful acts to continue.

In addition to the lack of independence and disinterest of the Board Member Defendants, demand is excused because the misconduct complained of could not have been the exercise of good faith business judgment. The allegations against Defendants are extensive and involve not only questionable deals and corporate sloppiness, but also direct pillaging of the corporate coffers and possible criminal activities. The practice of paying individuals for no services or goods, accepting improper customer advances, entering into unprofitable transactions with shareholders, failing to maintain any corporate formalities, and summarily dismissing anyone who questions these actions cannot be a valid business judgment. It not only costs DMH and DMT millions of dollars in revenues, it also exposes DMH and DMT to potential liability.

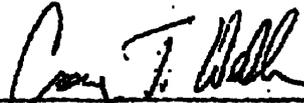
#### **PRAYER**

McKim asks that this Court enter judgment in favor of DMH, DMT and Mr. McKim:

- A. that Defendants breached their fiduciary duties;
- B. that Defendants knowingly participated in a breach of fiduciary duties;
- C. that Defendants conspired to and/or aided and abetted a breach fiduciary duties;
- D. that Defendants were unjustly enriched at the expense of DMH and DMT;
- E. ordering that a Receiver be appointed to oversee DMH and DMT during the course of this action;
- F. appointing persons to a special litigation committee for DMH and DMT who are not Defendants in this action and who are capable of independently and disinterestedly defending the Claims, or granting such authority to the Receiver;
- G. ordering Kazeminy and Candies to not take any actions that would be detrimental to DMT or DMH, including, but not limiting to changing the make-up of the Board of Directors;

- H. for reasonable attorneys' fees, court costs and related expenses;
- I. for pre-judgment and post-judgment interest as permitted by law; and
- J. for such other relief the Court deems just and equitable under the circumstances.

Respectfully submitted,



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**ATTORNEYS FOR PAUL MCKIM**



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05/08/2009 11:35 AM

To <arothstein@fec.gov>  
cc "McGinley, William" <WMcGinley@PattonBoggs.com>, <jselinkoff@fec.gov>  
bcc

Subject Advisory Opinion Request

Dear Ms. Rothstein:

This email memorializes our May 1, 2009 telephone conversation in which we discussed several issues you wished clarified in our Advisory Opinion Request ("AOR") on behalf of Senator Norm Coleman and his principal campaign committee, Coleman for Senate ("Committee").

First, as we discussed, previous Commission Advisory Opinions such as AO 2006-35 (Kolbe), 2008-07 (Vitter), and others permit a Senator's campaign committee to pay legal fees and expenses arising from Senate Ethics Committee proceedings. Moreover, we also confirmed that the July 1, 2008 complaint filed with the Senate Ethics Committee by Citizens for Responsibility and Ethics in Washington regarding unfounded allegations relating to lodging issues is unrelated to the Texas and Delaware lawsuits. The remaining Ethics complaints, however, are related to the lawsuits.

Second, we confirmed that none of the fees referenced in the advisory opinion are for any potential legal fees or expenses of Laurie Coleman, Senator Coleman's wife.

Finally, as stated on page 6 of our advisory opinion request and by this email we are seeking confirmation that the Committee may pay legal fees and expenses arising from the November 12, 2008 letter from Alliance for a Better Minnesota to the Federal Bureau of Investigation relating to the allegations that Mr. Kazeminy intended to make improper gifts to Senator Coleman and that Senator Coleman had accepted undisclosed gifts, and any other inquiries or proceedings that may arise out of the same operative facts.

We trust this email and our May 1, 2009 telephone conversation answers your questions. Please contact us if you have any additional inquiries.

Regards,

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