

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(EASTERN DIVISION)**

_____	)	
In re:	)	
DAVID K. DRUMM,	)	
	)	Chapter 7
Debtor.	)	Case No. 10-21198-FJB
	)	
_____	)	
IRISH BANK RESOLUTION	)	
CORPORATION LIMITED (IN SPECIAL	)	
LIQUIDATION), and	)	
KATHLEEN P. DWYER, CHAPTER 7	)	Adversary Proceeding
TRUSTEE,	)	Case No. 11-01267-FJB
	)	11-01268-FJB
Plaintiffs,	)	
v.	)	Consolidated
	)	
DAVID K. DRUMM,	)	
	)	
Defendant.	)	
_____	)	

**JOINT PRETRIAL MEMORANDUM**

Pursuant to this Court’s Pretrial Order dated November 16, 2011 [Adv. Pro. No. 11-01267, Docket No. 16], Plaintiff Irish Bank Resolution Corporation Limited (in Special Liquidation)<sup>1</sup> (“IBRC”), the chapter 7 trustee in this case, Kathleen P. Dwyer (“Trustee”, together with IBRC, the “Plaintiffs”),<sup>2</sup> and Defendant David K. Drumm (“Defendant” or “Drumm,” and together with Plaintiffs, the “Parties”) hereby submit this joint pretrial memorandum.

<sup>1</sup> The Irish Bank Resolution Corporation Limited has entered into “Special Liquidation” under Irish law and is now referred to as “Irish Bank Resolution Corporation Limited (in Special Liquidation).”

<sup>2</sup> The above-captioned adversary proceedings (the “Section 727 Adversary Proceedings”) against Drumm are consolidated for pre-trial and trial purposes [Adv. Pro. No. 11-01267, Docket No. 35].

**(A) The name, address and telephone number of each witness, separately identifying those whom the party may call if the need arises, together with any objection to the calling of the witness, see (E) below.**

(1) Plaintiffs

(a) Plaintiffs intend to call the following witnesses:

- (i) Peter-Paul Covo  
The Wellesley Office Park  
65 William Street  
Wellesley Hills, MA 02481  
(781) 431-1009
- (ii) David K. Drumm  
73 Old Colony Road  
Wellesley, MA 02481
- (iii) Kathleen P. Dwyer  
MacLean Holloway Doherty Ardoff & Morse P.C.  
8 Essex Center Drive  
Peabody, MA 01960  
(978) 774-7123
- (iv) Stewart F. Grossman  
Looney & Grossman LLP  
101 Arch Street  
Boston, MA 02110  
(617) 951-2800

(b) If the need arises, Plaintiffs may call the following witnesses:

- (i) Lorraine Drumm  
73 Old Colony Road  
Wellesley, MA 02481
- (ii) Craig R. Jalbert  
Verdolino & Lowey, P.C.  
124 Washington Street  
Suite 101  
Foxboro, MA 02035  
(508) 543-1720
- (iii) Donald M. Swanson, Jr.  
Verdolino & Lowey, P.C.  
124 Washington Street  
Suite 101

Foxboro, MA 02035  
(508) 543-1720

(iv) Heather Zelevinsky  
18 Fales Road  
Sharon, MA 02067

(c) Plaintiffs reserve the right to supplement this list seasonably prior to trial, to call witnesses listed by Defendant, and to call rebuttal witnesses at trial.

(2) Defendant

(a) Defendant intends to call the following witnesses:

(i) Peter-Paul Covo  
The Wellesley Office Park  
65 William Street  
Wellesley Hills, MA 02481  
(781) 431-1009

(ii) David K. Drumm  
73 Old Colony Road  
Wellesley, MA 02481

(iii) Lorraine Drumm  
73 Old Colony Road  
Wellesley, MA 02481

(iv) Kathleen P. Dwyer  
MacLean Holloway Doherty Ardoff & Morse P.C.  
8 Essex Center Drive  
Peabody, MA 01960  
(978) 774-7123

(v) Stewart F. Grossman  
Looney & Grossman LLP  
101 Arch Street  
Boston, MA 02110  
(617) 951-2800

(vi) Craig R. Jalbert  
Verdolino & Lowey, P.C.  
124 Washington Street  
Suite 101  
Foxboro, MA 02035  
(508) 543-1720

(vii) Donald M. Swanson, Jr.  
Verdolino & Lowey, P.C.  
124 Washington Street  
Suite 101  
Foxboro, MA 02035  
(508) 543-1720

(viii) Heather Zelevinsky  
18 Fales Road  
Sharon, MA 02067

(ix) Shari Levitan, Esq.<sup>3</sup>  
Holland & Knight  
10 St. James Avenue  
11<sup>th</sup> Floor  
Boston, MA 02116  
(617) 854-1405

- (b) Defendant reserves the right to supplement this list seasonably prior to trial, to call witnesses listed by the Plaintiffs, and to call rebuttal witnesses at trial.

**(B) A list of witnesses whose testimony is expected to be presented by means of a deposition and, if taken stenographically, a transcript of the pertinent portions of the deposition testimony, together with objection to such testimony, see (E) below.**

The deposition admissions of David Drumm are attached hereto as Exhibit A, pursuant to Fed. R. Civ. P. 32(a)(3), applicable to this proceeding pursuant to Fed. R. Bankr. P. 7032, and all or some of those admissions may be introduced after Mr. Drumm's live testimony. No other witnesses are unavailable within the meaning of Fed. R. Civ. P. 32(a)(4), but Plaintiffs reserve the right to make additional designations if witnesses become unavailable.

Pertinent portions of Plaintiffs' designated deposition or Section 341 Creditors' Meeting transcripts of David Drumm, with designations highlighted in yellow, are attached hereto as Exhibit B. To the extent Defendant has counter designations to Plaintiffs' designated deposition or Section 341 Creditors' Meeting transcripts of David Drumm, Defendant's counter designations are reflected in blue highlighting in Exhibit B.

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<sup>3</sup> Defendant lists Ms. Levitan as a rebuttal witness only, and expects to call her as a witness only in the event the Plaintiffs submit into evidence (over Defendant's objection) testimony and/or documents concerning a transfer of certain property in Ireland known as the Malahide property. Defendant does not believe such transfer is relevant to any of the claims brought in this action, but has reason to believe that Plaintiffs will nonetheless attempt to introduce such evidence, and therefore discloses Ms. Levitan as a rebuttal witness. Plaintiffs object to the ability of this witness to testify at trial because, among other things, this witness was not listed in Defendant's initial disclosures and was not otherwise revealed to the Plaintiffs.

- (C) **A list of witnesses intended to be called as experts, together with any objection to the calling of such expert, see (E) below.**

The Parties do not intend to call expert witnesses.

- (D) **An appropriate identification (pre-numeration) of each document or other exhibit, other than those to be used for impeachment, in the sequence in which they will be offered, including summaries of other evidence, separately identifying those exhibits which the party expects to offer and those which the party may offer if the need arises.**

The Parties' joint list of exhibits is attached hereto as Exhibit C.

Plaintiffs' list of exhibits is attached hereto as Exhibit D. In addition, for ease of reference at trial and the record and subject to the Court's instructions at the Pretrial Conference, Plaintiffs will prepare a separate list that aggregates Mr. Drumm's written admissions in response to Plaintiffs' requests for admission and a separate list that aggregates the Parties' stipulated facts in a format directed by the Court at the Pretrial Conference for admission into evidence.

Defendant's list of exhibits is attached hereto as Exhibit E.

The Parties stipulate to the authenticity of all the exhibits listed in Exhibits C, D and E.

- (E) **A specific statement of any objection, together with the grounds therefor, reserved as to the admissibility of deposition testimony designated by another party and/or to the admissibility of documents or exhibits. Objections not so disclosed, other than objection under Rules 402 and 403 of the Federal Rules of Evidence, shall be deemed waived unless excused by the Court for good cause shown.**

Defendant's objections to Plaintiffs' designated deposition testimony and Plaintiffs' objections to Defendant's counter-designated deposition testimony are reflected on Exhibits A and B, attached hereto. The Parties' objections to the admissibility of exhibits are reflected on Exhibits D and E, attached hereto.

- (F) **A statement confirming that the parties have exchanged copies (either electronic or paper copy) of the exhibits.**

The Parties confirm that they have exchanged copies of the exhibits.

- (G) **Facts to which the parties have stipulated.**

The parties agree that facts which are susceptible of judicial notice are admitted and require no proof. In addition, the following facts are admitted and require no proof:

**(1) Parties and Background**

- (a) Plaintiff Irish Bank Resolution Corporation Limited (in Special Liquidation) (“IBRC”) has its registered office at 1 Stokes Place, St. Stephen’s Green, Dublin 2, Ireland.
- (b) IBRC is the successor to Anglo Irish Bank Corporation Limited (“AIBC”), f/k/a Anglo Irish Bank Corporation plc (“Anglo Irish Bank”), an Irish financial institution that had been nationalized on January 21, 2009 under the Anglo Irish Bank Corporation Act 2009. The Anglo Irish Bank Corporation Act 2009 provided that all Anglo Irish Bank shares were vested in Ireland’s Minister for Finance and the bank was re-registered as a private limited company and its name was changed to Anglo Irish Bank Corporation Limited.
- (c) Defendant David K. Drumm (“Defendant” or “Drumm”) is the chapter 7 debtor in this bankruptcy case and is an individual who resides at 73 Old Colony Rd., Wellesley, Massachusetts 02481 (the “Wellesley Property”) as his principal residence.
- (d) Plaintiff Kathleen P. Dwyer is the duly appointed Trustee, with a principal place of business at MacLean, Holloway, Doherty, Ardiffe & Morse, P.C., 8 Essex Center Drive, Peabody, Massachusetts. She was appointed interim trustee on October 15, 2010 and continues to serve as Trustee.
- (e) Defendant’s wife, Lorraine M. Drumm (“Lorraine Drumm” or “Mrs. Drumm”), is an individual who resides at the Wellesley Property as her principal residence.
- (f) Lorraine Drumm and the Defendant have been married since 1991.
- (g) Drumm was appointed Group CEO designate of Anglo Irish Bank and joined the board of directors as an executive director on or about September 22, 2004.
- (h) Drumm served as Group CEO and as an executive director on the board of directors from 2005 until his resignation on December 19, 2008.
- (i) Drumm is an experienced businessman who has held senior executive positions in a global financial institution.
- (j) Drumm was employed as an executive in the banking industry for approximately sixteen years and has other experience through which he gained an understanding in real estate finance and purchase and sale transactions.
- (k) Drumm is or was a Chartered Accountant in Ireland and has been trained as an accountant.

- (l) Drumm is an experienced banker with knowledge of loans, lending practices, and loan documentation as well as collateral, security interests, liens, and guaranties relating to indebtedness.
- (m) Drumm knows how to read and interpret balance sheets, income statements, cash flow statements, and financial reports.
- (n) Drumm has conducted business in the United States by consulting on real estate finance transactions, mergers and acquisitions, and other commercial transactions.

**(2) Cash Transfers to Lorraine Drumm**

- (a) Prior to 2008, all of the Drumms' money was either in Drumm's accounts held in his sole name or in joint accounts of Drumm and Lorraine Drumm.
- (b) On September 19, 2008, Lorraine Drumm opened her first bank account in her sole name since her marriage to the Defendant, an account at AIBC (ending in 539/01).
- (c) On September 24, 2008, Drumm transferred €150,000 from his personal AIBC account (ending in 668) in his sole name to an AIBC account (ending in 539/01) solely in Lorraine Drumm's name.
- (d) On or about November 3, 2008, a transfer of €80,000 was made from a joint account of Drumm and Lorraine Drumm at Allied Irish Bank ("Allied") (ending in 010), to Lorraine Drumm's Allied Fixed Term account (ending in 080). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs (as defined below).
- (e) On or about November 3, 2008, a transfer of €50,000 was made from Drumm's AIBC account (ending in 668) to Lorraine Drumm's AIBC account (ending in 539/01). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.
- (f) On December 12, 2008, Lorraine Drumm opened a bank account in her sole name at Allied (ending in 247).
- (g) On or about 1999, Drumm and Lorraine Drumm jointly purchased the Skerries Rock Property (defined below).
- (h) In December 2008, Drumm and Lorraine Drumm granted a mortgage to KBC Homeloans on their jointly owned residential property located at 11 The Way, Skerries Rock, Co. Dublin, Ireland (the "Skerries Rock Property") in the amount of €250,000.
- (i) On or about December 12, 2008, a transfer of €180,000 was made from a joint account of Drumm and Lorraine Drumm at Allied (ending in 010) to

Lorraine Drumm's Allied Fixed Term account (ending in 247). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.

- (j) On or about December 15, 2008, a transfer of €372,561 was made from a joint account of Drumm and Lorraine Drumm at Allied (ending in 010) to Lorraine Drumm's Allied Fixed Term account (ending in 247). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.
- (k) On or about June 15, 2009, a transfer of \$99,991.05 was made from a joint account of Drumm and Lorraine Drumm at Cape Cod 5 (ending in 8424) to Lorraine Drumm's Allied U.S. Dollar hold account (ending in 500). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.
- (l) On or about September 12, 2009, a transfer of \$1,500.00 was made from Drumm's Cape Cod 5 account (ending in 9109) to a joint Cape Cod 5 account of Drumm and Lorraine Drumm (ending in 7073). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.
- (m) On or about September 18, 2009, Drumm transferred \$1,000.00 from the Harbor Light/Cape Cod 5 account (ending in 9737) to a joint Drumm and Lorraine Drumm Cape Cod 5 account (ending in 7073). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.
- (n) On or about September 19, 2009, a transfer of \$1,000.00 was made from Drumm's Cape Cod 5 account (ending in 9109) to a joint Cape Cod 5 account of Drumm and Lorraine Drumm (ending in 7073). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.
- (o) On or about September 28, 2009, a transfer of \$3,000.00 was made from Drumm's Cape Cod 5 account (ending in 9109) to a joint Cape Cod 5 account of Drumm and Lorraine Drumm (ending in 7073). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.

**(3) 173 Cross St. Property**

- (a) In late 2007, Drumm entered into a joint venture with Michael Barnett to develop residential real estate property located at 173 Cross St., Chatham, Massachusetts 02633 (the "173 Cross St. Property").
- (b) On September 30, 2008, Drumm obtained a 100% interest in the 173 Cross St. Property from his business partner, Michael Barnett, subject to an existing mortgage.



- (c) On October 20, 2008, Drumm transferred 50% of his interest in the 173 Cross St. Property to Lorraine Drumm. This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.
- (d) In September 2009, the Drumms sold the 173 Cross St. Property to the Porch Light Trust for the sum of \$2,365,000, generating net proceeds of \$412,000. One half of the net sale proceeds were deposited into Lorraine Drumm's Cape Cod 5 account (ending in 869). This transfer was not listed in response to Question 10 on the Original Schedules/SOFAs.

**(4) Harborlight/Delta Working Capital Loan**

- (a) To qualify for the E-2 Treaty Investor Visa, Drumm had to invest in a business in the United States, which he called Harborlight Capital Partners LLC, later renamed Delta Corporate Finance LLC ("Harborlight/Delta").
- (b) On February 2, 2009, Lorraine Drumm withdrew €198,208.20 (\$250,000) from her Allied Fixed Term account (ending in 247). These funds were wired to the Harborlight/Delta Cape Cod account.
- (c) Lorraine Drumm did not receive a security interest in Harborlight/Delta's assets in exchange for the alleged working capital loan.
- (d) Drumm and his family moved to the United States in June 2009.
- (e) Harborlight/Delta purchased a new Range Rover SUV for \$69,000 in cash in 2009. That vehicle was sold a year later at a \$19,000 loss.
- (f) Drumm was the only employee on the payroll of Harborlight/Delta at any time.

**(5) Automobile Transactions**

- (a) On or about May 5, 2009, Drumm sold his 100% interest in a Range Rover SUV for €36,000. The sale proceeds were deposited into Lorraine Drumm's Allied Fixed Term account (ending in 247).
- (b) On or about September 7, 2009, Drumm sold his 100% interest in a BMW vehicle to his sister for approximately €20,000. The sale proceeds were deposited into an Allied account jointly owned by Drumm and Lorraine Drumm (ending in 054).

**(6) Chatham Property**

- (a) In March 2008, the Drumms jointly purchased a property located at 262 Stage Neck Rd., Chatham, Massachusetts 02633 (the "Chatham Property").

- (b) Drumm's homeowner's insurance policy included coverage for \$300,000 of "Unscheduled Personal Property" at the Chatham Property.

**(7) Wellesley Property**

- (a) In August 2009, the Drumms rented 30 Alba Road, Wellesley, Massachusetts 02481 so the family could reside in Wellesley while their children attended a local private school.
- (b) As a condition to lending to the Drumms, Boston Private required the Drumms to pay approximately \$800,000 in equity in connection with the purchase of the Wellesley Property.
- (c) Boston Private required Drumm be a signatory on the \$1.23 million mortgage note before making the loan.
- (d) The purchase and sale contract for the Wellesley Property, was executed on or about November 24, 2009 and a deposit of \$100,000 was paid to William Raveis, a real estate brokerage (the "Deposit").
- (e) The Deposit was paid from Lorraine Drumm's Boston Private account (ending in 0263).
- (f) The purchase of the Wellesley Property closed on January 6, 2010 for a purchase price of \$2,042,891.
- (g) The purchase was financed by a combination of (1) \$1,230,000 in mortgage money from Boston Private and (2) \$831,106.01 in purchase money from (A) Lorraine Drumm's Boston Private account (ending in 0263) and (B) the Deposit (the "Purchase Money").
- (h) The Wellesley Property was purchased by Drumm and Lorraine Drumm through a nominee trust called the "Epiphany Nominee Trust."
- (i) The public property records do not reveal the Drumms' interest in the Epiphany Nominee Trust or Drumm's obligation on the Boston Private mortgage note.
- (j) The mortgage note was signed by Drumm, Lorraine Drumm, and the Trustee of the Epiphany Nominee Trust.
- (k) Drumm and Lorraine Drumm are each 50% beneficiaries of the Epiphany Nominee Trust.
- (l) AnneMarie Greenberg, the trustee of the Epiphany Nominee Trust, is a friend of Lorraine Drumm.

- (m) Drumm and Lorraine Drumm entered into an agreement on January 6, 2010 entitled “Separate Property Agreement”.

**(8) Petition; Original Schedules/SOFAs**

- (a) Defendant filed a petition for chapter 7 relief on October 14, 2010 (the “Petition Date”).
- (b) Drumm signed his petition under penalty of perjury and attested that the information in his petition was true and correct.
- (c) Drumm signed his October 29, 2010 schedules and statement of financial affairs (the “Original Schedules/SOFAs”) under penalty of perjury, and attested under oath that he had read the schedules and statement of financial affairs, and that they were true and correct to the best of his knowledge, information, and belief.
- (d) Drumm read his Original Schedules/SOFAs before it was filed.
- (e) Drumm understood that he was responsible for the accuracy of the Original Schedules/SOFAs.
- (f) It was explained to Drumm by one or more of his advisors before the Petition Date that the bankruptcy process would involve a look back at transfers to Lorraine Drumm.
- (g) Drumm listed the value of his interest in the Epiphany Nominee Trust as \$0.00 in the Original Schedules/SOFAs.

**(9) Amended Schedules/SOFAs**

- (a) Drumm amended his schedules and statement of financial affairs on or about May 17, 2011 (the “Amended Schedules/SOFAs”).
- (b) In response to Question 10 on the Amended Schedules/SOFAs, Drumm listed fourteen transactions in the aggregate amount of \$765,429.87.

**(10) Furniture/Furnishings**

- (a) Drumm listed the value of the furniture and fittings at the Wellesley Property and the Chatham Property at \$10,000 in Schedule B of his Original Schedules/SOFAs.
- (b) In a first draft of the Original Schedules/SOFAs, Drumm listed the value of the furniture jointly owned with Lorraine Drumm as \$100,000.
- (c) The Drumms spent over \$300,000 on the furniture, window treatments, and carpets at the Chatham Property in 2008.

- (d) Drumm's homeowner's insurance policy for the Wellesley Property included coverage in the amount of \$200,000 for contents.
- (e) Drumm's Amended Schedules/SOFAs gave a value of "unknown" for his furniture and fittings, which were listed as being located "at Chatham and Wellesley and in storage."

Plaintiffs believe other facts – in the form of Defendant's admissions to the pleadings and Defendant's written admissions in response to Plaintiffs' requests for admission – have been established conclusively. Those admissions will be put into evidence at trial.

**(H) The issues of fact which remain to be litigated (evidence at trial shall be limited to these issues).**

The facts which remain to be litigated are as follows:

**According to Plaintiffs:**

- (1) Whether, in transferring to his wife or concealing money or property within one year before the Petition Date, Drumm acted with the intent to hinder, delay, or defraud any of his creditors.
- (2) Whether, when he executed the Wellesley Property transactions, Drumm, with the intent to hinder, delay, or defraud any of his creditors or the Trustee, transferred, removed or concealed an interest in property within one year of the Petition Date.
- (3) Whether Drumm's actions with respect to the Wellesley Property transactions evidence reckless disregard for his obligations to any of his creditors and is probative of fraudulent intent.
- (4) Whether by filing false Original Schedules/SOFAs that omitted many cash and property transfers to his wife and others within two years of the Petition Date, Drumm, with intent to hinder, delay or defraud a creditor or the Trustee, transferred, removed, or concealed property of the Estate after the Petition Date.
- (5) Whether Drumm knew, or recklessly disregarded, the truth and swore to what was false when he filed his Original Schedules/SOFAs.
- (6) Whether, when he valued his interest in the Wellesley Property at \$0.00 and failed to disclose the transfers to Mrs. Drumm in connection with the Wellesley Property in both his Original and Amended Schedules/SOFAs, Drumm, with the intent to hinder, delay, or defraud any of his creditors or the Trustee, transferred, removed, or concealed property of the estate after the Petition Date.
- (7) Whether Drumm knew, or recklessly disregarded, the truth and swore to what was false when he valued his interest in the Wellesley Property at \$0.00 on his Original and Amended Schedules/SOFAs.

- (8) Whether the Mrs. Drumm Loan set forth on Schedule F of the Original and Amended Schedules/SOFAs is a genuine loan.
- (9) Whether by scheduling the Mrs. Drumm Loan and alleged loan repayments to Mrs. Drumm in his Original and Amended Schedules/SOFAs, Drumm with the intent to hinder, delay or defraud a creditor or the Trustee, transferred, removed, or concealed property of the estate after the Petition Date.
- (10) Whether by implementing the Mrs. Drumm Loan and the loan repayments, the Debtor, with the intent to hinder, delay, or defraud a creditor or the Trustee, transferred, removed, or concealed an interest in property within one year of the Petition Date.
- (11) Whether Drumm knew, or recklessly disregarded, the truth and swore to what was false when he scheduled a “loan” from Mrs. Drumm.
- (12) Whether Drumm knew, or recklessly disregarded, the truth and swore to what was false when he testified as to the origin and execution of the Separate Property Agreement at his deposition.
- (13) Whether, when he valued his furniture and furnishings in his Original and Amended Schedules/SOFAs, Drumm, with the intent to hinder, delay or defraud a creditor or the Trustee, concealed property of the estate after the Petition Date.
- (14) Whether Drumm knew, or recklessly disregarded, the truth and swore to what was false when he valued his furniture and furnishings in his Original and Amended Schedules/SOFAs.
- (15) Whether Drumm’s transfers and selective disclosures in so many contexts establish a pattern of conduct that creates an inference or presumption of fraudulent intent.
- (16) Whether Drumm, knowingly and fraudulently, or in reckless disregard of the truth, gave a false oath or account by omitting the following on his Original Schedules/SOFAs: (i) cash transfers to his wife within two years of the Petition Date, (ii) the grant of the mortgage on the jointly owned Skerries Property and the payment of the mortgage proceeds solely to his wife within two years of the Petition Date; (iii) the transfer of a 50% interest in 173 Cross Street to his wife, the sale of 173 Cross Street and the distribution of 50% of the net proceeds to his wife, all within two years of the Petition Date; (iv) the sale of the Range Rover owned by the Debtor and distribution of the sale proceeds to his wife within two years of the Petition Date; (v) the sale of the BMW owned by the Debtor and distribution of the sale proceeds into a joint account within two years of the Petition Date; and by understating on his Original Schedules/SOFAs the value of his household furnishings.

**According to Defendant:**

Defendant disagrees with Plaintiffs' statement of the factual issues to be tried. Plaintiffs mischaracterize many of the factual disputes by, among other things, presuming the foundation of certain facts, when in reality that foundational fact itself is in dispute. Additionally, Plaintiffs include certain facts that, in addition to being disputed, are wholly immaterial to any of the claims at issue in this litigation. In other words, even if Plaintiffs were to establish the facts represented to be issues for trial such facts do not bear on any cognizable claim in this adversary proceeding.

- (1) Whether Mr. Drumm made any transfer of property to his wife (or any other person) within one year prior to the petition date with the intention of hindering, delaying or defrauding creditors.
- (2) Mr. and Mrs. Drumm's intent in establishing a nominee trust to hold title to the Wellesley Property.
- (3) Whether Mr. Drumm, in operating Harbor Light Capital Partners, LLC ("Harbor Light"), transferred any of his property within one year prior to the bankruptcy petition, Assuming arguendo that any transfers of property by Harbor Light constitutes a transfer of Mr. Drumm's property within one year of the petition, whether Mr. Drumm made any such transfer for the purpose of hindering, delaying or defrauding creditors.
- (4) Mr. Drumm's state of mind in working with Looney & Grossman and Verdolino & Lowey to prepare his bankruptcy filings.
- (5) The circumstances that led to certain information being omitted from, or misstated in, the Original Schedules and Statement of Financial Affairs ("SOFAs"), including specifically whether any omissions or purported misstatements were intentional.
- (6) Insofar as the Original Schedules and SOFAs reflected or incorporated the opinion, judgment and interpretation of Mr. Drumm's professional advisors, was Mr. Drumm's reliance on such opinion, judgment and/or interpretation reasonable.
- (7) To the extent any testimony provided by Mr. Drumm during the bankruptcy proceedings was false, did Mr. Drumm knowingly and wilfully provide false oaths or accounts.
- (8) Did Mr. Drumm reasonably rely on his bankruptcy counsel with respect to the disclosure and production of documents and information subsequent to filing of the Original Schedules and SOFAs.
- (9) Did Mr. Drumm intentionally transfer, remove or conceal property of the estate subsequent to seeking bankruptcy relief.

**(I) The issues of law to be determined.**

The issues of law to be determined are as follows:

- (1) Whether Drumm is entitled to a discharge under 11 U.S.C. § 727.
- (2) Whether Drumm, with intent to hinder, delay, or defraud a creditor or an officer of the estate, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed, his property, within one year before the date of the filing of the petition under 11 U.S.C. § 727(a)(2)(A).
- (3) Whether Drumm, with intent to hinder, delay, or defraud a creditor or an officer of the estate, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed, property of the estate, after the date of the filing of the petition under 11 U.S.C. § 727(a)(2)(B).
- (4) Whether Drumm, knowingly and fraudulently, in or in connection with the case, made a false oath or account under 11 U.S.C. § 727(a)(4)(A).
- (5) Whether Drumm, knowingly and fraudulently, in or in connection with the case, presented or used a false claim under 11 U.S.C. § 727(a)(4)(B).

**(J) A brief statement summarizing the Plaintiffs' case.**

This is the case of a dishonest debtor who is not entitled to a discharge. The evidence will show that, with the intent to hinder, delay, or defraud both a creditor (IBRC) and the Trustee, both before and after the filing of the Petition, Drumm transferred, removed, and concealed property that would have otherwise been available to pay his debts. The evidence will also show that, in connection with this Chapter 7 case, Drumm knowingly and fraudulently made false oaths or accounts by filing Schedules/SOFAs that contained false information and material omissions regarding Drumm's assets and pre-petition financial affairs. The evidence will also show that, in connection with this Chapter 7 case, Drumm presented or used a false claim by listing on his Schedules a purported loan from his wife, Lorraine Drumm. Drumm's intent in engaging in each of these actions was to hide, protect, or shield for himself or his wife as much property as possible from his creditors, primarily IBRC to which he owes approximately \$12 million, to say nothing of his manifest intention to mislead and outright lie to the Trustee and this Court.

Drumm, when Anglo Irish Bank's Group Chief Executive ("CEO"), incurred substantial indebtedness to the bank (the "IBRC Loans"). In late 2007, at the start of the financial crisis, Drumm entered into a loan from Anglo Irish Bank in the amount of €4,396,600 and, in aggregate amount including his prior loan facilities from the bank, in maximum amount of €7,650,000, repayable on demand on or before December 31, 2008, unless extended by agreement. The

IBRC Loans were collateralized by 886,000 shares in Anglo Irish Bank and represented the single largest obligation ever incurred by Drumm in his life.

By September 2008, IBRC was in extreme financial distress, struggling with a liquidity crisis. Its share price had fallen to new lows and its future was in doubt. Drumm's loans were now under water as the value of his Anglo Irish Bank shares no longer covered his indebtedness.

At the height of IBRC's financial crisis, with the Bank almost certainly facing financial ruin, Drumm, still CEO, began to make substantial cash transfers to his wife. In the roughly ten-week period beginning on September 22, 2008 (when Drumm signed the letter memorializing his IBRC Loan obligation), he made transfers to his wife totaling approximately €641,281 (\$833,665) which he failed to disclose on the Original Schedules/SOFAs. This marked a sea change in Drumm's handling of his personal and financial affairs. Mrs. Drumm had never held bank accounts in her sole name during the Drumms' marriage until this time, and all cash and property owned by Drumm was held either in his sole name or jointly with his wife. Yet, at this critical juncture for IBRC and Drumm personally, Drumm began actively seeking to shield assets from creditors (namely, IBRC) by shifting them to his wife. Lorraine Drumm began opening bank accounts in her own name—fifteen in total in the two years before the Petition Date—which received these massive cash transfers from Drumm's accounts or joint accounts.

Drumm's transfers to his wife included not just cash but real estate, too. For instance, on September 30, 2008, Drumm obtained a 100% interest in residential real estate located at 173 Cross St., Chatham, Massachusetts 02633 (the "173 Cross St. Property") from his business partner, Michael Barnett. In late 2007, Drumm had entered into a joint venture with Michael Barnett to develop the 173 Cross St. Property. On October 20, 2008, Drumm transferred 50% of his interest in the 173 Cross St. Property to his wife for nominal consideration. Later, in March 2009, the contractor for the 173 Cross St. Property, Minglewood Homes, Inc., sued Michael Barnett and Drumm and ultimately added an allegation that Drumm's transfer of title in the 173 Cross St. Property to himself and his wife was a fraudulent transfer. In September 2009, the Drumms sold the 173 Cross St. Property for the sum of \$2,365,000, generating net proceeds of \$412,000. One half of the net sale proceeds were deposited into Mrs. Drumm's Cape Cod 5 account (ending in 869). Neither the transfer of Drumm's interest to Mrs. Drumm nor the later sale of the 173 Cross Street property was disclosed on the Original Schedules/SOFAs.

Drumm resigned as CEO of the Bank on December 19, 2008. Just a week earlier, Drumm's wife opened yet another bank account solely in her name, at a different bank, Allied Irish Bank ("Allied"), and Drumm transferred approximately €52,561 (\$738,632) into that AIB account from a joint account. These transfers were not disclosed on the Original Schedules/SOFAs.

Also in December 2008, the Drumms took out a home equity mortgage on an unencumbered investment property jointly owned by them, and located at 11 The Way, Skerries Rock, County Dublin, Ireland (the "Skerries Rock Property"). All of the mortgage proceeds, in the amount of €250,000 (\$332,000), were deposited into Mrs. Drumm's Allied Fixed Term account (ending in 247) (the "Skerries Rock Proceeds"). The fact that the entirety of the mortgage proceeds for a joint asset were deposited in an account in Mrs. Drumm's sole name was not disclosed on the Original Schedules/SOFAs.



The Skerries Rock Proceeds were then used by the Drumms to facilitate their residency in the United States and to create the fictitious loan from Mrs. Drumm to Mr. Drumm. Drumm entered this country in June 2009 pursuant to an E-2 Treaty Investor Visa, which allows certain foreign nationals to be admitted to the United States if they invest a substantial amount of capital in a U.S. business. In order to establish a business that enabled Drumm to qualify for E-2 status, he created an entity called Harborlight Capital Partners LLC, later renamed Delta Corporate Finance LLC (“Harborlight/Delta”). Harborlight/Delta was purportedly a one-man consulting business run by Drumm and was capitalized in February 2009 with an initial \$250,000 make-believe “loan” from Drumm’s wife to Drumm (the “Mrs. Drumm Loan”). In reality, the money Drumm’s wife allegedly loaned him had originally come from Drumm himself, mainly from the Skerries Rock Proceeds and the money transferred in 2008 from joint accounts or David Drumm’s own accounts to Mrs. Drumm’s sole name. This “working capital” in Harborlight/Delta was then used to pay certain personal expenses of the Drumms, including rent for the family’s housing, their children’s school fees, Drumm’s personal legal fees, car payments, and a post-petition loan to his brother that Drumm testified under oath at the Section 341 meeting held on December 7, 2010 he had never made. The intricate nature of this transaction was revealed only through the post-petition examination efforts of the Trustee and IBRC. Moreover, it is admitted that the alleged Mrs. Drumm Loan is not memorialized in any note (or indeed any other writing), bears no interest, has no due date, and is not secured. The reason why none of these hallmarks of indebtedness exists, of course, is because there is no loan from Drumm’s wife. Yet, Drumm listed the purported Mrs. Drumm Loan as an undisputed, fully liquidated and non-contingent debt on Schedule F of his Original Schedules/SOFAs and continued to do it in the Amended Schedules/SOFAs.

After moving to the United States, the Drumms resided at their jointly owned multi-million dollar Cape Cod luxury vacation property located at 262 Stage Neck Rd., Chatham, Massachusetts 02633 (the “Chatham Property”), which was purchased by Drumm and Lorraine Drumm in March 2008. The Drumms paid hundreds of thousands of dollars to complete construction and decorate the Chatham Property, for a total tax basis in the property of \$5.5 million, paid in part with monies Drumm earned through his employment with AIBC. They spent more than \$300,000 on the furniture, window treatments, and carpets at the Chatham Property; indeed, Drumm’s homeowner’s insurance policy included coverage for \$300,000 of “Unscheduled Personal Property” at the Chatham Property. Despite these documented values in just one of Drumm’s luxury homes, he falsely attributed a nominal \$10,000 value to furniture and fittings on his Original Schedules/SOFAs, and later amended that value to “unknown” in his Amended Schedules/SOFAs.

In late January 2009, Drumm and IBRC renewed his loan, then due and owing, for one more year, and provided that the loan was still repayable on demand, but not later than December 31, 2009, unless IBRC exercised its discretion to extend that date. IBRC demanded repayment of the IBRC Loan in September 2009 and commenced litigation in November 2009 against him seeking to recover this IBRC Loan debt and others that Drumm owed IBRC.

In April 2009, prior to moving to the United States, Drumm also purported to transfer his 50% interest in the family home in Ireland (the “Malahide Property”) to his wife and executed a “Declaration of Solvency” in connection with this transfer. Shortly thereafter, the Malahide Property was put up for sale. A mere month after signing the Declaration of Solvency, Drumm

wrote to IBRC to say that the cash he had been using to service an outstanding \$400,000 loan from IBRC was exhausted. In response, IBRC raised concerns regarding the transfer of the Malahide Property to Mrs. Drumm's sole name combined with the efforts to then liquidate the property. Drumm stonewalled and claimed that the Malahide Property was his wife's property. He also omitted the Malahide Property from a personal financial statement submitted to IBRC in November 2009. As a result, IBRC sued the Drumms in Ireland in November 2009, bringing claims for fraudulent transfer in an effort to undo the Malahide Property transfer (together with IBRC's contemporaneous suit against Drumm to recover on his loans, the "Irish Litigation"). After some initial litigation, Mrs. Drumm ultimately agreed to consent to set aside the transfer, though not until October 2010, and an order recording her consent to the transfer being voided ab initio was entered by the High Court in Dublin, Ireland in December 2010.

The Malahide transfer was just one in a series of efforts by Drumm to shield assets from IBRC and transfer his substantial assets to his wife. In May 2009, Drumm sold his 100% interest in a Range Rover luxury SUV (the "Range Rover") for €36,000, and the sale proceeds were deposited into Mrs. Drumm's Allied Fixed Term account (ending in 247). And in September 2009, Drumm sold his 100% interest in a BMW luxury SUV (the "BMW") to his sister, generating sale proceeds of approximately €20,000, which were deposited into a joint Allied account (ending in 054). Further, now under the cloud of IBRC's demand for repayment of his loans and filing of two Irish lawsuits, (1) to enter a judgment in excess of €8 million against Drumm and (2) to enjoin the sale of the Malahide Property and to avoid the fraudulent transfer of Drumm's 50% interest in his most valuable Irish asset, Drumm executed another duplicitous real estate transaction to shield even more assets from his creditors, this time in the United States.

Beginning in Fall 2009, Drumm arranged for the purchase of a \$2 million mansion in Wellesley, Massachusetts (the "Wellesley Property") through a nominee trust called the Epiphany Nominee Trust (the "Nominee Trust"). Drumm and his wife are each 50% beneficiaries of the Nominee Trust. The Drumms contributed \$831,106.01 to the purchase of the Wellesley Property (the "Purchase Money") and borrowed the rest from Boston Private Bank & Trust Company. In connection with the Boston Private loan, Drumm lied on his mortgage loan application by denying the existence of any litigation pending against the Drumms. Drumm also made material misrepresentations on the mortgage application by failing to disclose the \$12 million in loans that he owed to IBRC, thereby substantially misstating his net worth.

At around the time that they acquired the Wellesley Property, the Drumms also entered into an agreement (the "Separate Property Agreement") in an attempt to ensure that Mrs. Drumm received 100% of the Purchase Money before Drumm (and his creditors, IBRC in particular) would receive a penny. The Separate Property Agreement falsely states that Drumm "had no past, present or future right or interest in" the Purchase Money for the Wellesley Property, all of which is said to have come from cash that "belonged to and was owned exclusively by Wife ...." This statement was nonsense, and Drumm admits it is not true but that he did not read the form. Rather, the funds used to purchase the Wellesley Property originated from (a) Drumm's earnings; (b) income on real property owned solely by Drumm or jointly by the Drumms; and (c) the sale of assets owned solely by Drumm or jointly by the Drumms. It is not disputed that Drumm's wife had no source of independent income and that all of her monies originated with Drumm's earnings and assets or jointly held property. The evidence will show that the Drumms entered into the Separate Property Agreement with the intent to hinder, defraud, and delay

creditors, and, in particular, IBRC, which at that point had already sued Drumm and Mrs. Drumm. To further his scheme, in the Original Schedules/SOFAs, Drumm scheduled his interest in the Nominee Trust as “\$0.00”, based on the purported enforceability of the Separate Property Agreement. However, in an October 2010 memorandum prepared by Looney & Grossman LLP that was emailed to Drumm by Stewart Grossman (the “Wellesley Memorandum”), Drumm was advised that his interest in the Nominee Trust that owns the Wellesley Property “should be disclosed in category 19, on Schedule B – Personal Property” and “should be described as a ‘50% beneficial, non-equity interest in the Epiphany Nominee Trust, which owns the House.’” The Wellesley Memorandum noted that Drumm’s attorneys “have yet to receive documents showing that the purchase money was truly Lorraine’s sole property (e.g., came from her account, cannot be traced to jointly owned marital assets, etc.)” Of course, no such documents exist because the Wellesley Property Purchase Money was not “truly Lorraine’s sole property” and is, in fact, traceable to “jointly owned marital assets, etc.” Tellingly, in sending the Wellesley Memorandum to Drumm, Stewart Grossman wrote: “Don’t freak out when you read this.”

Drumm’s financial chicanery did not stop with transactions with his wife. In connection with his efforts to settle the Irish Litigation, Drumm prepared a statement of his finances (the “2010 Personal Financial Statement” or “PFS”) to present to IBRC by noon EST on October 1, 2010, with trial scheduled to begin on October 26, 2010. Drumm engaged Verdolino & Lowey PC (“Verdolino”), a Massachusetts-based accounting firm, to assist him in preparing the PFS. Verdolino struggled to obtain documentation to enable them to complete the PFS, but ultimately sent a draft to Drumm at 8:30 a.m. on October 1, which reflected a net worth of negative \$6,173,122. After a conference call, a revised draft was circulated at 11:38 a.m. reflecting a net worth of negative \$4,285,386, with yet another draft circulated less than 30 minutes later, at 12:06 p.m., still reflecting a negative net worth of \$2,953,986. The primary reason for the various changes in Drumm’s net worth was due to the efforts of Verdolino to determine the value of the Wellesley Property and the amount of the alleged debt from Mr. Drumm to Mrs. Drumm.

The “final” version of the PFS prepared by Verdolino at approximately 1:00 p.m. on October 1 showed a negative net worth of \$3,213,986. Drumm then sent along that version to his counsel in Ireland for further transmission to IBRC. He included with that version an affidavit attesting to the accuracy of the PFS and a letter from Verdolino.

Shortly after Drumm forwarded this version to Irish counsel, he reported that Irish counsel had advised that showing a negative net worth could have permitted IBRC to petition to have Drumm declared a bankrupt in Ireland. Drumm called this prospect “a disaster.” Drumm and his advisors then scrambled to revise the PFS in an effort to show Drumm with a positive net worth.

Within hours, a draft was circulated reflecting a positive net worth of \$340,203, largely thanks to the transformation of Drumm’s employment-related counterclaims against IBRC from completely reserved to entirely unimpaired. Incredibly, Drumm has denied that the 2010 Personal Financial Statement was intentionally revised to show a positive net worth, notwithstanding his contemporaneous depiction of this sleight of hand as a “problem solved.” A scant two weeks after sending IBRC a personal financial statement showing a positive net worth, Drumm filed for bankruptcy.

On October 14, 2010 (the “Petition Date”), Drumm filed his voluntary petition for relief under chapter 7 of title 11 of the United States Code. Drumm’s efforts to hide assets from his creditors did not stop at the courthouse door. Drumm intentionally did not disclose in his original schedules and statements of financial affairs (the “Original Schedules/SOFAs”) the string of transfers to his wife, including transfers of cash, mortgage proceeds, and real estate interests that totaled more than \$1.2 million in the aggregate. Those cash transfers that were disclosed appeared in the form of “loan payments” on the fictitious Mrs. Drumm Loan in response to SOFA question 3c. But the earlier, much larger transfers that enabled Mrs. Drumm to make the “loan” in the first place were nowhere to be found. Drumm omitted the Skerries Rock Property mortgage and transfer of Skerries Rock Property mortgage proceeds to Mrs. Drumm from his Original Schedules/SOFAs. With respect to the 173 Cross Street Property, Drumm omitted the transfer to Mrs. Drumm, the sale of the 173 Cross Street Property, and the distribution of the proceeds to his wife from his Original Schedules/SOFAs. And, incredibly, despite his 50% interest in the Nominee Trust which owned the Wellesley Property, Drumm attributed a zero-dollar value to his Nominee Trust interest in his Original Schedules/SOFAs. Even more incredibly, that zero-dollar value is the *only* disclosure related to the Wellesley Property whatsoever in the Original Schedules/SOFAs. The proceeds from the Range Rover (which went to Mrs. Drumm), and the BMW (which went to a joint account with Mrs. Drumm) were not disclosed at all on the Original Schedules/SOFAs. The Original Schedules/SOFAs were also intentionally false with respect to the value of household goods and furnishings on Schedule B. He attributed \$10,000 in value to such items, despite concrete documentation to the contrary, not to mention common sense to the contrary, given the sheer size of the furnished 4,000+ sq. ft. luxury homes—plural—that Drumm owned and failed entirely to disclose that Drumm had additional furniture in storage.

Despite all of these material inaccuracies in the Original Schedules/SOFAs, (inaccuracies which were noted by the Trustee and IBRC during the 341 meetings, and thereafter corrected by Drumm in his belated amendments), Drumm testified repeatedly at his 341 examinations in this case that his Original Schedules/SOFAs were true and complete. To be sure, Drumm’s deliberate efforts not to include assets on his Original Schedules/SOFAs and then testify that those Original Schedules/SOFAs were true and complete was no mistake. The evidence will show that Drumm was well aware of all of these transactions at the time that the Original Schedules/SOFAs were filed, understood all of the line items on those documents, and deliberately timed the filing of his Chapter 7 petition to try to get a trustee that would not aggressively investigate his financial affairs. In fact, it was Drumm who assembled the first draft of his Original Schedules/SOFAs and Drumm who maintained control of the process throughout, dictating what was and wasn’t disclosed.

Moreover, contemporaneous emails sent by Drumm establish that he was always concerned about his “stance” with the Trustee regarding the transfers to Mrs. Drumm and the Wellesley transaction, and wanted to discuss with his advisors his “strategy as regards each of the assets” before disclosing any documents. Drumm took this obstructive approach—months after having filed his entirely inadequate disclosures—despite the fact that his advisors repeatedly told him that full and complete disclosure is essential in bankruptcy, and that transfers to his wife would be subject to potential fraudulent transfer challenge. Indeed, Drumm knew the transfers would be subject to clawback by his creditors. He also knew, thanks to the Wellesley Memorandum, that the transactions regarding the Wellesley Property would be especially

vulnerable to challenge if—as Drumm knew to be the case—the purchase money could be traced to joint marital assets.

Following the Section 341 creditor meetings it was clear that Drumm’s tactics were coming to light, leading him belatedly to amend his schedules and statements of financial affairs on May 17, 2011, long after he had promised to do so (the “Amended Schedules/SOFAs”). The Amended Schedules/SOFAs, however, remain false. For example, they continue to purport to list “loans” from Drumm’s wife (a false claim or oath), the \$0.00 value attributed to his 50% interest in the Nominee Trust which owned the Wellesley Property, and the furniture and household fittings are now attributed an “unknown” value, despite documentation showing their value to be hundreds of thousands of dollars.

Drumm’s pre-petition and post-petition actions plainly disqualify him from entitlement to a discharge. Drumm has no meritorious defense. At bottom, Drumm’s only defense is that he lacked the requisite ill intent under Section 727(a) to deny his discharge, based in part on his assertion that he relied on the advice of counsel (which cannot save Drumm here because, in short, he was not advised to exclude anything, and, as a sophisticated banker, he understood the questions). *All* of the badges of fraud—*quite literally each and every one*—that courts look to in determining whether a debtor had the requisite intent to hinder, delay, or defraud sufficient to deny a discharge under Section 727(a) are present here: (1) there is an insider relationship between the parties—Drumm’s transfers were to his wife; (2) Drumm retained the possession, benefit, or use of the property—he resides at the Wellesley Property and has used the cash transfers for personal and household purposes that, under his theory, his wife so generously loaned to him; (3) the lack or inadequacy of consideration for the transfer—a transfer for love and affection is not sufficient; (4) Drumm’s financial condition both before and after the transaction was bleak and continued to deteriorate—by his own hand, Drumm was insolvent beginning in October 2008; (5) the existence or cumulative effect of the pattern or series of transactions or course of conduct after the debt is incurred, onset of financial difficulties, or pendency or threat of suits by creditors were all extant; (6) the general chronology of the events and transactions under inquiry strongly point toward an ill intent; and (7) an attempt by the debtor to keep the transfer a secret is plainly evidenced by the manner of the transfers, the use of the Nominee Trust to purchase the Wellesley Property, Drumm’s failure to disclose the transfers to his wife in his Original Schedules/SOFAs, Drumm’s efforts to continue to obfuscate the truth in his Amended Schedules/SOFAs, and other exhibits screaming out as fraudulent intent that will be presented at trial.

Moreover, Drumm knowingly and fraudulently failed to disclose numerous fraudulent transfers to his wife and attested to the accuracy of his Original and Amended Schedules/SOFAs despite the fact that he knew they were inaccurate. Indeed, even after being pressed by the Trustee to revisit his Original Schedules/SOFAs, Drumm still filed false Amended Schedules/SOFAs that continued to reference a fictitious Mrs. Drumm Loan and placed an “unknown” value on his furnishings.

Each one of Drumm’s nefarious transfers, false claims or oaths, and failures to disclose that which was required to be disclosed on its own suffices to disqualify Drumm from the benefits of a bankruptcy discharge. Together, they prove a pattern of self-serving conduct and Drumm’s fraudulent intent. Drumm has played fast and loose with his creditors, the Trustee, and

this bankruptcy case. The correct result is unmistakable: Drumm is not entitled to the benefits of a discharge.

**(K) A brief statement summarizing the Defendant's case.**

Overview. This is not an ordinary Chapter 7 case. Prior to the commencement of his Chapter 7 case, the debtor, David Drumm, was the Group Chief Executive of Anglo Irish Bank ("Anglo" or the "Bank"). He was highly compensated and had accumulated substantial assets both in Ireland and in the United States. In the two years prior to seeking bankruptcy relief, Mr. Drumm left his position at the Bank, started a consulting business and immigrated to the United States with his family. His financial affairs during this period were complex and involved numerous transfers and transactions. Consequently, when Mr. Drumm was forced to seek bankruptcy relief in the fall of 2010, he hired prominent bankruptcy professionals, with extensive experience guiding individuals through the Chapter 7 process. The evidence will show that Mr. Drumm and his professionals collectively spent hundreds of hours examining his financial affairs in an effort to ensure that the information contained in his bankruptcy filings were complete, accurate, and reliable. Despite the best efforts of Mr. Drumm and his professionals, however, a number of pre-bankruptcy transactions were omitted from Mr. Drumm's schedules. The evidence will show that these omissions were the result of honest mistakes by Mr. Drumm and his professionals rather than a scheme to conceal assets and defraud creditors. A summary of the evidence concerning the transactions at issue in this litigation is set forth below.

Mr. Drumm's Pre-Bankruptcy Transfers of Cash to His Wife. In the fall of 2008, Mr. Drumm's marriage was seriously strained. Mr. Drumm's wife, Lorraine Drumm, had never worked outside the home during her marriage and she and her children were entirely dependent on Mr. Drumm's income and jointly held assets for their support. In the fall of 2008, Mrs. Drumm was concerned about the state of her marriage, her husband's health (he was working very long hours) and how she would be able to support herself and two young children without a husband. Her response to these grave concerns was to insist on "money of her own." To preserve his marriage and give his wife peace of mind, Mr. Drumm, for his part, acceded to his wife's request for money of her own.

The evidence will show that between September and December 2008 – well before Mr. Drumm's Chapter 7 case – Lorraine and David Drumm transferred the majority of the couple's cash assets from their joint accounts and accounts in Mr. Drumm's name into bank accounts solely in the name of Lorraine Drumm. The evidence will further show that since she had been married, Mrs. Drumm had not opened a bank account in her own name. Upon the transfer of these funds, Mrs. Drumm was the only person with signing authority on her accounts and she was the only person with authority to make disbursements from her accounts. Critically, both Mr. and Mrs. Drumm understood that the funds transferred to Lorraine was Lorraine's money to be used as she saw fit and that her husband did not retain an interest in (or the power to control) the funds transferred to his wife. The timing of the transfers is also critical—the bulk of the transfers took place long before the one year period prior to the petition and therefore are not relevant to the fraudulent transfer claim (some occurred more than two years prior to the petition). Lastly, the evidence will also show that the largest transfers occurred about a year before the Bank even made demand on its loans to Mr. Drumm, and while Mr. Drumm was

earning a large salary and held substantial real estate assets (valued at a multiple of the total cash transferred).

Formation and Capitalization of Mr. Drumm's Consulting Business. Mr. Drumm resigned from Anglo on December 19, 2008. In or about January or February 2009, Mr. and Mrs. Drumm decided they would move the family to the United States, where Mr. Drumm believed he had very good prospects for employment. They retained Mintz Levin to advise them about immigration and Holland and Knight to advise them about taxation and estate planning implications of their anticipated move to the United States. Through that process, Mr. Drumm learned about a treaty under which he could obtain a work visa by investing \$250,000 in a business in the US. Mr. Drumm planned to open a consulting business, using his contacts in the Boston and New York areas, as well as to raise a fund to invest in distressed real estate. He prepared a business plan, under which he would earn consulting fees from his many contacts who were former Anglo clients in addition to management fees related to the investment fund he hoped to raise. He discussed the plan with Mrs. Drumm and, based on the advice he received from Mintz Levin, informed her that he needed to have money at risk and it had to be at least \$250,000. Because at the time Mr. Drumm did not have sufficient cash assets, he needed to borrow the money from his wife. After discussing his planned business with him, Mrs. Drumm agreed to transfer \$250,000 to him, but told him she wanted her money back. Being spouses, they did not memorialize the loan with a promissory note or written loan agreement. Both Mr. and Mrs. Drumm, however, will testify that the funds Mrs. Drumm advanced to Mr. Drumm to capitalize Harborlight were intended to be a loan, not a gift to Mr. Drumm.

Mr. Drumm, working with Mintz Levin, formed Harborlight Capital Partners LLC (later renamed Delta Corporate Finance LLC) in February 2009, and registered it as an LLC in Massachusetts. Mr. Drumm was the sole owner of Harborlight. Mrs. Drumm was not a member of the company or affiliated with the company in any way. Mr. Drumm opened bank accounts in the name of the company. He rented office space at HQ, which was just a drop box and an answering service, and provided him with meeting space downtown when he needed it.

On February 2, 2009, Mrs. Drumm transferred money from her Allied Irish Bank money market savings account, in her sole name, to the Harborlight account at Cape Cod Five Savings Bank. The loan was from Mrs. Drumm to Mr. Drumm, and he, in turn, used the loan proceeds to capitalize the business. Mr. Drumm began operating the business shortly after the company was formed, meeting with people in Boston and New York, in an effort to raise additional capital. He incurred meals, travel and hotel expenses, and paid these business expenses through the firm. Subsequently, when money was needed to pay household or personal expenses, Mr. Drumm took a draw from the firm and transferred money out of the Harborlight account to a personal or household account. Funds from such personal or household accounts were then used to pay personal and household expenses. Mr. Drumm properly recorded the withdrawal of these funds as a reduction in capital on the company's books and in his tax returns he did not treat them as business expenses of the company or as being deductible for tax purposes. Plaintiffs have asserted that the business was a sham and designed as a scheme to hide money from creditors. This allegation will have no evidentiary support.

Acquisition of the Wellesley Property. The family moved to the United States in June 2009. They owned property in Chatham, where they had spent family vacations from Ireland

since 2005, and resided there for the summer. The Drumms enrolled their two daughters at Newton Country Day School, and moved to Wellesley in August 2009, renting a home on Alba Street. Soon after they moved in, the owner of the home sold the property, which required the Drumms to move again for the third time in less than a year. Under the circumstances, Mrs. Drumm insisted the family needed to buy a home instead of rent another one. Consequently, Mrs. Drumm made an offer on 73 Old Colony Road in Wellesley (the “Wellesley Property”) and signed a purchase and sale agreement for the property in November 2009. Around this time, Mr. Drumm had been subjected to significant adverse media attention in Ireland, and media members routinely showed up at the family’s home in the U.S. When the Drumms decided to buy a house, therefore, they wanted to do their best to maintain their privacy and avoid press intrusion into their family life. Mrs. Drumm, therefore, used her maiden name in signing the purchase and sale agreement, and intended to take sole title using her maiden name.

Boston Private Bank (“BPB”), the financial institution who was funding the purchase of the Wellesley Property, was unwilling to provide a loan to Mrs. Drumm – who was not working at the time and lacked an independent income necessary to service a mortgage – without credit support from her husband. Specifically, BPB required that Mr. Drumm be a co-obligor on the mortgage securing the financing and consequently that he also have an ownership interest in the Wellesley Property. The Drumms recognized that if Mr. Drumm were on the deed to the Wellesley Property, his ownership interest would be a public record, and more easily detected by the media. As a result, with the assistance of an attorney recommended by BPB (Peter Covo), the Drumms formed the Epiphany Nominee Trust as the entity to hold title to the Wellesley Property. And in accordance with BPB’s requirements, Mr. and Mrs. Drumm each owned a 50% beneficial interest in the Trust.

Mrs. Drumm, however, was unwilling to grant Mr. Drumm a joint interest in the significant down payment (approximately \$831,000) she was making from her own funds to purchase the Wellesley Property. Accordingly, around the time of the closing, Mr. and Mrs. Drumm asked Mr. Covo to prepare a document that reflected their understanding and agreement as husband and wife that the money used to purchase the house belonged to Mrs. Drumm alone, and that she should receive the first \$831,000 in net sale proceeds when and if the property were sold. They met briefly with Mr. Covo and asked him to prepare a document that reflected this understanding. Mr. Covo drafted a document entitled Separate Property Agreement (SPA) in response to this request, which was made available to the Drumms for the first time on the day of the closing, January 6, 2010. The Drumms signed it without any further discussion. Mr. Drumm expects Mr. Covo, who drafted the document, to confirm that the purpose of the SPA was to memorialize the understanding and agreement between the Drumms as husband and wife concerning the ownership of the funds used for the down payment on the Wellesley Property, and had nothing to do with creditors.

Engagement of Looney & Grossman and Mr. Drumm’s Efforts to Work Out his Obligations with the Bank. In late November 2009, Anglo commenced suit against Mr. Drumm in Ireland, demanding payment on loans the Bank had made to Mr. Drumm. In the summer of 2010, Mr. Drumm was in the process of trying to work out a settlement of the litigation in Ireland. Around that time, he met Stewart Grossman, Esq., a partner at Looney & Grossman LLP (“L&G”), through a mutual client. The two discussed the Irish litigation, and the potential option of a bankruptcy filing in the United States if the litigation were not resolved.



In August 2010, Mr. Drumm retained L&G to advise him about bankruptcy options in the event settlement discussions with the Bank were unsuccessful. In conjunction with the settlement discussions, Mr. Drumm was asked by the Bank to prepare a personal financial statement (PFS). Mr. Drumm hired L&G because of Mr. Grossman's extensive experience in bankruptcy matters. In September 2010, L&G recommended to Mr. Drumm that he authorize L&G to retain Verdolino & Lowey ("V&L"), an accounting and consulting firm specializing in insolvency and bankruptcy matters, and which had worked extensively with L&G and in the Massachusetts bankruptcy courts. Mr. Drumm accepted L&G's recommendation and L&G retained V&L to assist in the preparation of the PFS, and, if a settlement with the Bank could not be reached, to assist with the preparation of the bankruptcy schedules and financial disclosures.

In mid-September 2010, Mr. Drumm prepared a first draft of the PFS and supplied it to L&G and V&L, along with a package of financial information containing detailed supporting schedules for each of the individual line items in the PFS. Over the next several weeks, V&L and L&G worked together with Mr. Drumm (and his counsel in Ireland) to produce the PFS. V&L thoroughly examined Mr. Drumm's draft, asked detailed questions about Mr. Drumm's assets, liabilities and financial affairs and requested additional back-up documentation to confirm the numbers and events presented by Mr. Drumm in his draft. Additionally, V&L independently investigated certain transactions, such as real estate acquisitions and transfers (for example by searching Registry of Deeds and reviewing deeds and other transactional documents for Mr. Drumm's real property). V&L, working closely with L&G, also examined closely all transfers of funds between Mr. Drumm and Mrs. Drumm from 2008 forward (the entire period in which Mrs. Drumm owned an individual account.) Mr. Drumm worked closely with the two firms and promptly, accurately and completely responded to their questions and requests for additional documents.

Commencement of Mr. Drumm's Chapter 7 Case and Preparation of his Schedules and Statement of Financial Affairs. Ultimately, on October 1, 2010, V&L supplied the PFS to Mr. Drumm's counsel in Ireland, for presentation to the Bank. Mr. Drumm and the Bank were unable to agree to settlement terms. Accordingly, on October 14, 2010 Mr. Drumm, with L&G's assistance, filed a bankruptcy petition in this Court. Subsequently, on October 29, 2010, Mr. Drumm, with L&G's and V&L's assistance, filed his bankruptcy schedules ("Schedules") and statement of financial affairs ("SOFA"). Prior to their filing with the Court, L&G generated drafts of these documents for review by V&L and Mr. Drumm. The drafts were reviewed, revised and finalized between October 25 and 29. Mr. Drumm worked closely with both V&L and L&G, reviewing the various drafts and responding to detailed questions from both firms.

Mr. Drumm expects the evidence to show that he supplied to V&L and L&G with all of the information necessary to fully and accurately complete the schedules and SOFA. Mr. Drumm supplied most of the information in September in conjunction with the preparation of the PFS, and provided additional information and documents in October. He supplied documents in a timely, very organized fashion, which highlighted significant transactions. He did not simply supply his advisors with piles of bank statements and depend on them to sift through them to identify the pertinent transactions. He did indeed provide all of the documents concerning his financial affairs. But he also accompanied the underlying documents with detailed, organized summaries of his cash transactions with his wife for the two years prior to the petition date, which summaries flagged the transfers to Mrs. Drumm in 2008. Mr. Drumm relied on L&G and

V&L, both of whom have substantial experience with Chapter 7 disclosures, to prepare his Schedules and SOFA in a manner consistent with the rules and procedures of this Court. He did not rely on them blindly. To the contrary, he thoroughly and carefully reviewed their drafts and promptly and accurately responded to their questions and requests for additional information.

Mr. Drumm, when he signed his Schedules and SOFA and swore to their truth, believed them to be true, accurate and complete. He does not recall being confused about them and did not believe in any respect that information that needed to be disclosed had not been disclosed, or that any information had been misrepresented. To the contrary, based on his consultations with his professionals in connection with the preparation of the PFS and during preparation of the schedules – during which he had supplied an enormous amount of information and supporting documentation to his professionals – he believed that everything that needed to be disclosed had been disclosed in his Schedules and SOFA. Mr. Drumm also understood from his professionals that as part of the Chapter 7 process, he would be required to provide copies of supporting documentation to the trustee (and creditors) – tax returns, bank statements, real estate deeds and other transactional documents – evidencing all of the representations made in his Schedules. Further, the nature of his dealings with his former employer in the Irish Litigation had led him to believe that the Bank would stop at nothing to damage him. Accordingly, he gave express instructions to his professional advisors to make sure everything was done absolutely correctly in his Chapter 7 case.

Through the lengthy 341 meetings in this case, however, Mr. Drumm learned to his dismay that the original Schedules and SOFA did not contain all the required information, and that they needed to be amended and supplemented. His counsel reassured him that amendments were fairly common and standard in Chapter 7 cases and Mr. Drumm relied on his counsel to prepare the necessary amendments and relied on their advice as to when it was appropriate to amend.

During the 341 process, Mr. Drumm supplied documents concerning his financial affairs to his counsel for transmittal to the Trustee. At *his* request, he also met with the Trustee and her counsel in January 2011 to answer any questions they had about his financial affairs, including in particular the inter-spousal cash transfers. At that meeting, Mr. Drumm presented the Trustee and her counsel with a spreadsheet reflecting his family's use of his earnings from the Bank between 2004 and 2009. At the meeting, he also committed to provide the Trustee with details of all transfers between himself and his wife. One week after the meeting with the Trustee, he sent the Trustee a detailed spreadsheet showing – to the penny – every transfer between himself and Mrs. Drumm. This meeting occurred months before he had reason to believe that a substantial number of these transfers should have been disclosed in his original SOFA. On May 17, 2011, Mr. Drumm, through his counsel, submitted amended schedules and SOFAs. The amendments supplied information that had been inadvertently omitted and corrected certain information that was inaccurate when disclosed in October 2010.

The Bank will suggest that Mr. Drumm intentionally omitted information, and intentionally misrepresented the value of certain assets. Mr. Drumm is confident that the record will persuasively demonstrate the exact opposite. To the extent information was omitted – and Mr. Drumm understands now that information was missing – it was the result of honest mistakes by him and his professionals. His professionals will so testify. The Bank will argue to the

contrary, but there will be no documentary or testimonial evidence to support that assertion.

Unable to demonstrate that Mr. Drumm made a false oath in this case, the Bank will also undoubtedly argue that the above record supports a finding that Mr. Drumm, within one year of the bankruptcy petition, transferred assets in order to hinder, delay or defraud creditors, under §727(a)(2)(A). The focus of this claim, as Mr. Drumm understands it, is the Wellesley Property. Mr. Drumm did not transfer the Wellesley Property within one year of the petition. He (and Mrs. Drumm) *acquired* that property within one year prior to bankruptcy. In short, the Wellesley Property transaction did not involve a transfer by Mr. Drumm, let alone a transfer within the one year period for the purpose of hindering, delaying or defrauding creditors.

The only transfers that occurred within the one year pre-petition period were transfers of funds from Mr. Drumm's consulting business or his individual accounts to accounts owned by Mrs. Drumm (jointly or individually). The record will show, however, that those funds were transferred not for the purpose of evading creditors, but to *pay* creditors. The record will also show that when Mr. Drumm took draws from his consulting firm, he was working full time at the firm. Moreover, all disbursements to him from the firm were properly accounted for as a reduction of his owner's capital account at Harborlight. Perhaps these payments to creditors from bank accounts in Mrs. Drumm's name (jointly and individually) could be challenged as preferences (such a challenge was made by the Trustee, and the claims against Mrs. Drumm were settled). They are not, however, fraudulent transfers within the meaning of §727(a)(2)(A).

**(L) Any revisions of the estimated length of trial since the filing of the written report required under #3 above [which refers to the estimated length of trial in the Rule 26(f) report].**

Plaintiffs do not believe the length of trial requires revision at this time. Defendant believes that the trial can be conducted in considerably less than five days (closer to three days) if evidence cumulative of stipulations and agreed upon exhibits is kept to a minimum.

**(M) Disclosures as required under Fed. R. Bankr. P. 7026(2) relating to expert witnesses shall be made seven (7) business days prior to the date fixed for the filing of the Joint Pretrial Memorandum, unless another time or sequence is set by the Court.**

The Parties do not intend to call expert witnesses.

Dated: Boston, Massachusetts  
May 2, 2014

KATHLEEN P. DWYER  
CHAPTER 7 TRUSTEE

By her attorneys,

/s/ Andrew G. Lizotte (by permission)

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By his attorneys,

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**Certificate of Service**

I, Kenneth S. Leonetti, hereby certify that on this 2nd day of May 2014, I caused copies of the foregoing document to be served on the parties set forth below pursuant to the Court's ECF system.

/s/ Kenneth S. Leonetti \_\_\_\_\_