STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET
CIVIL ACTION
DOCKET NO. BCD-WB-CV-07-03

JAMES A. CLIFFORD, ET AL,

Plaintiffs

v.

DECISION AND ORDER

STEVEN L. CASE, ET AL,

Defendants

This matter was tried before the court without a jury on Counts I (Breach of Contract), II (Judicial Dissolution), III (Waste and Mismanagement), IV (Breach of Fiduciary Duty), VIII (Conversion) and X (Exemplary Damages) of Plaintiff's Complaint.[1] The facts, below, are based on evidence that this court finds credible.

FINDINGS OF FACT

A. The parties

An understanding of who the parties are and their relationships to one another is useful for understanding the material facts in this case. At times relevant to this litigation:

(1) Plaintiffs

Plaintiff James Clifford ("Clifford") is a licensed Maine attorney and the sole owner/member of Plaintiff *Pro Se* Holdings, LLC ("Pro Se"), a Maine limited liability company. Plaintiff Christos Orestis ("Orestis") is the sole owner/member of Plaintiff CO3, LLC ("CO3"), a Maine limited liability company.

[1] Count I (Legal Malpractice) of Defendants' Counterclaim against Plaintiff James Clifford was bifurcated from the jury-waived trial on Plaintiffs' Complaint. That jury trial will be scheduled following the entry of this Decision and Order.

(2) Defendants

Defendant Steven Case ("Case") is a principal shareholder in Defendant S.L. Case & Associates ("SLC"), a Maine corporation. SLC was created in 1994 to provide underwriting, auditing and consulting services for insurance companies.

Defendant Rowland Ricketts ("Ricketts") is the sole owner/member of Defendant Ricketts Group, LLC ("Ricketts Group"), a Missouri limited liability company.

Defendant Case Professional Resources, LLC ("CPR") is a Maine limited liability company whose owner/members included SLC, Ricketts Group and Defendant Kimberly Low ("Low"). SLC is the majority owner of CPR. CPR was established in 2001 and provided outsourced underwriting services to insurance companies.

Low was the operations manager of SLC until 2001. That year she became an employee and a 2% owner/member of CPR.

(3) Party-In-Interest

Global Insurance Resources, LLC (GIR) is a Maine limited liability company. Its owner/members, and their respective ownership interests, are Pro Se (20%), CO3 (22%) and CPR (58%). Among other things, GIR was created to provide outsourced underwriting services, including call-center and telemarketing services, to insurance companies.

B. Factual Background

In November 2004, Case sought to obtain call-center services to compliment his insurance underwriting business. He learned that Clifford and Orestis had experience in the call–center business and he eventually explored a business relationship with them.

By early 2005, discussions turned to the formation of GIR. On May 26, 2005, Articles of Organization establishing GIR as a limited liability company were filed with the State of Maine. Plaintiffs' Exh. 1. The Articles of Organization provided that the management of GIR was vested in its members. *Id.* An executive board comprised of Case, Clifford, Orestis, Ricketts and Low was established. In the Spring of 2005, the board authorized the purchase of advertising and marketing materials for GIR, established a business checking account, published articles in insurance trade publications, and acquired business credit cards for each of the members. Board members also began approaching prospective clients on behalf of the company.

In June 2005, Orestis began doing work for CPR without pay, but in time was paid a salary. Clifford began working for CPR in the summer of that year without pay. The following September CPR began paying him a salary.

In late September and October 2005, CPR prepared and thereafter issued press releases announcing its merger with GIR. In November 2005, GIR entered into a ten-year commercial lease with Castlebrook, LLC, for GIR's business premises. Plaintiffs' Exh. 7. The lease was to begin no later than January 15, 2006[2] and was personally guaranteed by Clifford, Orestis, Case and Ricketts. Plaintiffs' Exh. 11.

Over time, Clifford prepared drafts of a letter of intent between CPR on the one hand and Pro Se and CO3 on the other, which culminated in a final agreement captioned "Letter of Intent/Joint Venture" ("Agreement"), dated December 31, 2005.[3] Plaintiffs' Exh. 17. The

[2] The lease was amended on January 11, 2006 to extend the commencement date of the lease to "no later than March 1, 2006" for part of the leased premises and "no later than September 1, 2006" for the remainder of the leased premises. Plaintiffs' Exh. 8

[3] The Agreement was signed by Clifford for Pro Se, by Orestis for CO3, and by Case for CPR.

Agreement included a written summary of the parties' operating "agreement relating to division of equity, corporate governance, bonus, distributions, and the like." *Id.* at Exhibit A.[4] The parties "anticipated that the terms of the operating agreement [would] expire on or before December 31, 2006" and be replaced by a "superceding agreement." *Id.*[5]

Under the Agreement, management authority was changed from GIR's members to Case as its sole manager. The executive board then became responsible for advising the manager "with respect to all GIR operational and administrative functions."[6]

In particular, the parties agreed that, until December 31, 2005, they would conduct their business by and through CPR; that Clifford, Orestis, Case and Ricketts would be salaried employees of CPR; and that any "business originated by any of the members in 2005 [was to] be attributed to CPR." *Id.* It was also agreed that, on or about January 1, 2006, Clifford and Orestis would cease doing business individually, and that each of the corporate members of GIR (i.e, CPR, Pro Se and CO3) would "fold" their existing and future business into GIR.

Subject to carve out provisions specified in the Agreement, the equity, ownership and control of GIR was divided as follows: CPR (58%), CO3 (22%) and Pro Se Holdings (20%).[7] The parties also acknowledged that CPR made capital contributions to GIR in 2005 of approximately $150,000 and that, subject to GIR's financial condition, CPR was entitled to be

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[4] Exhibit A, entitled "Current Agreement Relating to Division of Equity, Corporate Structure, and Profit Distribution", also provided that "*[w]hen appropriate*, the parties will draft and execute a mutually acceptable GIR operating agreement setting forth detailed operational guidelines ...." *Id.* (emphasis added) There was no subsequent agreement.

[5] As noted, the parties never entered into a replacement agreement.

[6] The operational and administrative functions included, but were not limited to: "approving or rejecting GIR corporate actions, negotiations and executing contracts or other agreements, approving expenditures of GIR resources, managing human resources, maintaining GIR books and records, engaging agents or employees to act on behalf of GIR, *approving distributions to GIR members, and/or winding up and dissolving GIR.*" Id. (emphasis added)

[7] The "Carve Outs" provision exempted certain existing and ongoing businesses of SLC, The Ricketts Group and a consulting business (Blue Dog Consulting, LLC) owned by Clifford and Orestis.

reimbursed "for such capital contributions" out of GIR's profits on a priority or preferred basis. *Id.*[8]

Pursuant to the Agreement, all of GIR's and CPR's year-end profits for 2005 were distributed to CPR. In turn, CPR was authorized to variously distribute those profits, as follows: to its members (SLC, Ricketts Group and Low) as a "special distribution"; to pay CPR's tax obligations and "special employee bonuses"; to reimburse CPR for its capital contributions to GIR; and to make discretionary distributions of the remaining profits. Thereafter, until December 31, 2006, GIR's quarterly profits were to be distributed for the following purposes, if funds were available: to maintain a "prudent reserve" for GIR's operating capital and lease guarantees; to reimburse CPR up to $50,000 for its capital contributions; to distribute profits to GIR's members based on their respective equitable interests in GIR; for special purposes and/or bonuses for GIR's members and employees; and "to set aside any portion of quarterly profits as the Members [deem] advisable." *Id.*

The executive board members were each to receive guaranteed payments of $86,000 per year.[9] They also held the following employment positions in GIR: Case (CEO/Manager), Orestis (VP and Chief Marketing Officer), Low (VP Underwriting), Clifford (VP and General Counsel) and Ricketts (VP Operations).

After GIR was created, the executive board held regular weekly meetings at which they typically reviewed financial documents, and business operations and projections. Their reviews

[8] Case testified that the $150,000 was to be treated as a loan until the parties executed an operating agreement for GIR, and that an operating agreement was never executed. However, his characterization of this amount as a loan is not supported by the express terms of the Agreement. which includes GIR's initial operating agreement (Exhibit A) and specifically references the $150,000 payments by CPR as capital contributions.

[9] The meaning of the term "guaranteed payment" in the Agreement is the same as that term is defined by the Internal Revenue Service. "Guaranteed Payments are defined as payments to a partner without regard to partnership income." RIA Federal Tax Coordinator 2d, ¶B-2005; ¶7074.04.

included cash flow reports spanning periods of actual and projected income, expense reports and best-case/worst-case outcomes for earnings. The periods covered by these projections included the closing months of 2005, when business was conducted in CPR's name, and 2006 after the transition to GIR.

In 2006, Case became increasingly concerned that GIR was not achieving anticipated profits because of declining sales opportunities, together with increasing client expenses and salary expenses.[10] Although GIR's revenues through April 2006 were on track to exceed CPR's 2005 revenues, all of GIR's revenues were generated from CPR's prior contacts and contracts. GIR's sales through June 2005 continued to flow exclusively from CPR contacts.[11] Salaries paid by GIR, including those for Case, Clifford and Orestis, had been increased based upon an anticipated contract with Met Life that fell through and a contract with Sun Life that was cancelled. Initial projections for 2006 year-end profits were changing for the worse and at least one projection estimated a loss of more than $367,000. Case's concern was amplified by the fact that neither Clifford and Orestis, nor their respective LLCs (Pro Se and CO3) had ever contributed or loaned any assets or cash to GIR, while CPR had contributions of $150,000 at risk. In addition, Case believed that Orestis' demeanor was creating unrest among some of GIR's staff.

Case discussed his concerns with the board members. He suggested that their options might be limited to (i) asking members to increase their investments in GIR; (ii) drawing on GIR's unused $150,000 line of credit, (iii) suspending all guaranteed payments and salaries, or (iv) filing for bankruptcy. Clifford and Orestis did not want to eliminate or reduce their

[10] Salaries were calculated on the basis of earlier and more positive business growth projections.
[11] The accountant for CPR and GIR confirmed that GIR's revenues for the first half of 2006 exceeded CPR's revenues for all of 2005, but that all of GIR's customer base generating those revenues were CPR customers.

guaranteed payments and salaries. None of the members wanted to invest more money in GIR or use the line of credit.

In June 2006, Case determined that formerly positive revenue projections from some of GIR's significant clients were not going to be realized. He also concluded that several of the business models adopted by GIR were flawed. For example, its telemarketing model was not working because GIR was too small to effectively work with call-centers and pay their referral fees and because call-centers required a lot of local resources, including nurses and large leased space. Its "just in time" service model, which was developed to quickly market services for its clients, was ineffective. And, its underwriting model, which focused on high-end, rather than low-end policies, was also not successful.

GIR was losing money. As of June 2006, its liabilities exceeded its assets by more than $97,000 and Case concluded that the business would likely fail without the infusion of additional capital. Case felt that the defendants' business relationship with the plaintiffs was not working and that GIR's business should be shut down. It was his view that, for purposes of damage-control and to avoid litigation, GIR's business, including its contract obligations to its customers and its lease obligation, which was guaranteed by all of the individual and corporate parties, should be transferred to CPR.

Case consulted with Ricketts and Low about his decision to terminate GIR. They agreed that GIR was a losing business proposition and that they no longer wanted to be in a business relationship with Clifford and Orestis. Case told them that, in order to shut the business down, GIR would have to reduce or cancel all guaranteed payments and salary expenses and transfer its payroll to CPR. Case did not include Clifford and Orestis in these discussions because he already "knew what they would say." Instead, prior to a GIR board meeting scheduled for June

27, 2006, Case merely stressed to Clifford and Orestis the importance of attending the meeting. Also preparatory to that meeting, Case consulted with Attorney Timothy Keiter. Ricketts and Low were aware of this consultation.

On June 27, 2006, Clifford and Orestis arrived at GIR's offices expecting to participate in an executive board meeting with Case, Ricketts and Low. However, they were surprised to find that two off-duty police officers and Attorney Keiter were also present. Case read aloud from a prepared statement announcing the termination of Clifford and Orestis as employees of GIR and the termination of the defendants' business relationship with the plaintiffs. After presenting Clifford and Orestis with a proposed Separation and Release Agreement, which Clifford and Orestis declined to sign, Case directed them to leave without returning to their offices. Clifford and Orestis demanded the opportunity to retrieve their personal property, but they were told that it would be packed and delivered to them.[12] The police officers then escorted Clifford and Orestis from the premises.

Following that meeting, Case directed the termination of all guaranteed payments to all members of the executive board and authorized an annual salary for Low of $55,000 as an employee of CPR. Case also took steps to shut down GIR's business operations. He arranged for GIR's lease obligation to be assumed by CPR. He also terminated GIR's online business solicitations, stopped using its stationary and computer software operating systems, shut down its website, removed its signage and, effective the end of July 2006, cancelled company provided health insurance coverages for the executive board, including Orestis.[13]

On July 12, 2006, Attorney Keiter, acting as counsel for CPR and SLC, sent a letter styled "Notice of Dissolution of Joint Venture" to counsel for the plaintiffs (a) asserting that GIR

[12] The personal property was eventually returned to Clifford and Orestis.
[13] Beginning August 2006, Orestis obtained and paid for his own health insurance.

was a joint venture, not a limited liability company, (b) purporting to terminate the Agreement, and (c) giving notice of the dissolution and winding up of GIR as a joint venture.[14] That same day, GIR, acting through Case as its manager, executed an assignment to CPR of all contracts and agreements between GIR and seven identified insurance companies and "[a]ll other medical underwriting business and customers originated by CPR." Plaintiffs' Exh. 125.[15] Since then, CPR has been providing customer services in accordance with those contracts. In addition, all of GIR's debts and other contract obligations, including the lease, have been transferred to and assumed by CPR. Case did not obtain the consent, written or otherwise, of Pro Se or CO3 prior to making these assignments.

CPR has also entered into several new contracts to provide services to insurance companies who had not previously contracted with GIR. Although these new contracts were with companies that did not previously do business with GIR, six of them were companies with whom Orestis had some contact before June 27, 2006. However, the extent of those contacts and whether they were a causal factor in the eventual contracts with CPR cannot be determined from the evidence.

Since the transfer of GIR's business to CPR, Low continues to receive an annual salary of $55,000 for actual services provided to the business, as opposed to "guarantee payments" under the Agreement as a member of GIR's executive board. CPR does not employ the business models previously used by GIR. CPR's assumption of responsibility for GIR's long-term lease has relieved Clifford and Orestis from their underlying personal guarantees. In addition, Case, Ricketts and Low have collectively contributed approximately $100,000 in loans and capital to

[14] This court has previously concluded that GIR was and remains a limited liability company.
[15] The seven identified companies were: John Hancock Life Insurance Co.; Coventry First/AG; Sun Life Individual; Sun Life Group; UNUM; VPA; and ACA.

CPR to sustain its operations in 2006 and 2007. While CPR has not been profitable since it resumed business, the foregoing measures have enabled it to contain its losses for 2006 and 2007 to approximately $48,000.00.

Clifford and Orestis have never agreed to the action taken by the defendants on and after June 27, 2006, nor have they received any accounting for the purported dissolution and winding up of GIR.[16]

Case authorized CPR's accounting firm, which was also the former accounting firm for GIR, to prepare and file separate 2006 federal income tax returns for both LLCs. The return filed on behalf of GIR was marked "Final" and covered the first half of the year, beginning January 1, 2006 and ending on GIR's "termination."[17] It reflected gross sales of $1,252,066.00 and, after deducting contract costs, salaries, guaranteed payments and other operating expenses, a net loss for GIR of $98,182.00. For that same period, GIR's liabilities exceeded its assets by $97,297.00. The return filed on behalf of CPR for the second half of 2006 reflected gross sales of $982,296.00, plus pass through income from GIR of $101,020 and, after deducting contract costs, salaries, guaranteed payments and other operating expenses, a net loss for CPR of $48,447.00.

DISCUSSION

I. Legal Framework

This court has previously determined that GIR is a limited liability company, rather than a joint venture, and a creature of statute governed by Maine's Limited Liability Company Act. 31 M.R.S. § 601, et seq.

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[16] In August 2006, Orestis began providing consulting services to Parameds.com. From September 2006 to November 2007 he was paid a retainer of $10,000 per month and, thereafter, $1,000 per month.

[17] It is not clear whether the end date for GIR's tax return was the executive board meeting on June 27, 2006, or the letter of notice from Attorney Keiter to Attorney Zuckerman, dated July 12, 2006. (Plaintiffs' Exh. 99).

> A limited liability company is formed at the time of the filing of the initial articles of organization with the Secretary of State if there has been substantial compliance with the requirements of this section. *A limited liability company formed under this chapter is a separate legal entity whose existence as a separate legal entity continues until cancellation of the limited liability company's articles of incorporation.*

31 M.R.S. § 622(2) (emphasis added).

Cancellation of an LLC's articles of organization occurs "upon the dissolution and completion of the winding up of a limited liability company or at any other time that there are no members." 31 M.R.S. § 625(1). "Unless otherwise provided in the operating agreement or the articles of organization, the manager . . . may wind up the limited liability company's affairs." 31 M.R.S. § 703(1). However, a limited liability company may be wound up and liquidated only upon dissolution of the company. 31 M.R.S. § 703(2) ("*Upon dissolution* of a limited liability company and until the filing of a certificate of cancellation . . . the persons winding up a limited liability company's affairs . . . may . . . settle and close a limited liability company's business, dispose of and convey a limited liability company's property . . .") (emphasis added). In sum, the winding up and liquidation of an LLC and its dissolution are complementary and dependent functions. Neither may stand in isolation to the other.

In Maine, dissolution of an LLC is accomplished either administratively by the Secretary of State;[18] pursuant to the LLC's operating agreement; by the written consent of all members; by nonjudicial dissolution;[19] or by judicial dissolution.[20] GIR has not been dissolved pursuant to any of those methods and, other than Plaintiffs' claim for judicial dissolution in this case, there has been no attempt to dissolve the LLC.

[18] 31 M.R.S. § 608-A & 608-B.
[19] 31 M.R.S. § 701.
[20] 31 M.R.S. § 701.

II. Manager's Limits of Authority

In 2006, Case, acting as manager, purported to wind up GIR and assign its contracts and lease obligation to CPR as part of a liquidation process.[21] However, he was without authority to do that under the Maine Limited Liability Act or the Agreement.[22] Further, he did not act pursuant to a scheme of dissolution or have the written consent of all members of GIR.

As significant, Case's decision to assign GIR's contracts to CPR and to have CPR perform those contracts to the exclusion of CO3 and Pro Se was in direct contravention of the Agreement, which provided that (1) the parties would work exclusively with one another; (2) that CPR would conduct all of its business through GIR; and (3) that the parties would disclose business opportunities to one another. *See* Pls.' Exh. 17. According to the express language of the statute:

> [e]xcept as provided in the operating agreement or the certificate of organization, the affirmative vote, approval or consent of all members is required to: (A) amend an operating agreement; or (B) authorize a manager, member or other person to act on behalf of the limited liability company in a manner that contravenes an operating agreement.

31 M.R.S. § 653(2) (emphasis added).

Although the Agreement granted Case the authority to manage the business of GIR and only accorded an advisory role to the Board, the Agreement did not authorize Case to alter its provisions and assign all of GIR's assets and liabilities to CPR without the consent of all members, including CO3 and Pro Se.

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[21] At the time, Defendants treated GIR as a joint venture. In an earlier summary judgment order, this court found that GIR was and remains a limited liability company.

[22] The only reference to winding up and dissolution in the Agreement is the provision in Exhibit A regarding the Executive Board, which provides that "[t]he Executive Board shall be responsible for advising the Manager with respect to all GIR operational and administrative functions, including but not limited to . . . winding up and dissolving." Plaintiff's Exh. 17 at 4. Although this provision may imply that Case had authority to wind up and dissolve GIR, the Agreement does not describe any event that would trigger dissolution. More telling, Case and the other defendants have consistently opposed Plaintiffs' dissolution claim in this case.

Having laid out the applicable legal framework under which Defendants' actions must be evaluated and having determined the limits on Case's authority as manager of GIR, the court now addresses the merits of each of Plaintiffs' claims.

III. Plaintiffs' Claims

A. Breach of Contract (Count I)

(1) Liability

According to Plaintiffs, Case's decision to terminate GIR and to assign all of its contractual rights, title and interest to CPR to the exclusion of Plaintiffs was a breach of the Agreement. Plaintiffs further contend that the rights and obligations outlined in the Agreement remain in effect and, therefore, Defendants have remained in breach of the Agreement since June 27, 2006.

In response, Defendants contend that the parties' Agreement cannot be read to require compliance by Defendants if GIR were to fail. According to Defendants, because the Agreement does not prescribe what should happen if GIR fails, the court should supply a reasonable term that allows the manager to terminate the business and the parties' relationship in the event of a business failure.

Although the court has found that Case reasonably believed that GIR was failing, the Agreement clearly required CPR to work exclusively with CO3 and Pro Se and to conduct its future business through GIR. The fact that the Agreement does not address what should happen in the event of the LLC's failure does not, as Defendants contend, permit this court to supply a term that justifies Defendants' actions. The authorities cited by Defendants[23] do not compel a contrary result given that they relate to contracts implied in fact and do not stand for the

[23] Defendants cite *Stanton v. Univ. of Me. Sys.*, 2001 ME 96, ¶ 13, 773 A.2d 1045, 1050-51; and RESTATEMENT (SECOND) OF CONTRACTS § 33 (1981).

proposition that a court may read a material term into a contract absent evidence that the parties intended to agree to such a term. Moreover, while there are certainly equitable remedies that are available to a contracting party seeking relief from contractual obligations, Defendants neither sought, nor demonstrated an entitlement to such relief.

Accordingly, the court concludes that CPR breached the Agreement by failing to work exclusively with CO3 and Pro Se, by failing to conduct its business through GIR and by failing to disclose information relating to its insurance contracts.

(2) Damages

Although Plaintiffs contend that CPR's obligations under the Agreement extended beyond December 31, 2006 and continue to the present, the court disagrees. The parties "anticipated that the terms of the [Agreement] shall expire on or before December 31, 2006, at which time the parties will negotiate and execute a superseding agreement." All that remained after that date was an agreement to negotiate a new agreement.[24] The parties did not enter into a new contract and there was no enforceable operating agreement after that date. Therefore, any damages sustained by Plaintiffs for CPR's breach of the Agreement must be limited to those incurred between June 27, 2006 and December 31, 2006.

As the court has concluded, CPR breached its contract with Pro Se and CO3 when it ceased working exclusively with them and took over GIR's contracts. CPR's exclusivity obligations and, thus, its breach, ended on December 31, 2006.

In addition, CPR may not be held liable for the termination of guaranteed payments to Clifford and Orestis. First, those payments were the obligation of GIR, not CPR. And, second, there was no entitlement to such payments after June 27, 2006. Under the Agreement, the

[24] Agreements to agree are not enforceable under Maine law. *Forrest Assoc. v. Passamaquoddy Tribe*, 2000 ME 195, ¶ 10, 760 A.2d 1040, 1045.

guaranteed payments were made to the individual Plaintiffs and Defendants "in consideration for their efforts toward Executive Board duties". Pls.' Exh. 17, Exhibit A (Guaranteed Payments and Overhead). The Agreement did not specify a duration or term for membership on the Board and was terminable at will.[25] The court finds that the board membership of the individual Plaintiffs and Defendants ended on June 27, 2006.

Further, the evidence demonstrates that for the first half of 2006 GIR operated at a loss of $98,182.00 and its debts exceeded its assets by more than $97,000.00. For the second half of 2006 and 2007, the business continued to operate at loss, albeit a more contained loss as a result of the efforts of CPR and the infusion of loans by the individual Defendants.

In sum, the court concludes that Plaintiffs have failed to demonstrate that CPR's breach of the Agreement proximately caused any damages to CO3 and Pro Se. To the contrary, the corporate and individual Plaintiffs' exposure to significant losses was mitigated or eliminated by the actions of Defendants.

B. Judicial Dissolution (Count II)

Plaintiffs seek judicial dissolution of GIR under 31 M.R.S. § 702(1).[26] Although Maine courts have had little occasion to engage in a substantive analysis of judicial dissolution of

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[25] In relevant part, the Agreement provided that

> When appropriate, the parties will draft and execute a mutually acceptable GIR operating agreement setting forth detailed operational guidelines, including but not limited to: Executive Board rights and duties ...."

Pls.' Exh. 17, Exhibit A (GIR Corporate Structure).

[26] Specifically, Plaintiffs contend that GIR should be judicially dissolved for one or more of the following reasons:

> B. The members are so divided respecting the management of the business and affairs of the limited liability company that the limited liability company is suffering or will suffer irreparable injury, or the business and affairs of the limited liability company can no longer be conducted to the advantage of the members;

limited liability companies, the Law Court has explained the constraints of that remedy. "Absent the agreement of the parties and other interested persons, a court is without authority to dissolve or refuse to recognize an LLC except as provided in section 702 of the Limited Liability Company Act." *Ahern v. Ahern*, 2008 ME 1, ¶ 21, 938 A.2d 35, 41. Therefore, notwithstanding the substantial disagreement and lack of cooperation between the parties in this case, the court may only grant judicial dissolution if Plaintiffs have met their burden of proving the existence of one of the criteria for dissolution contained in section 702.

Defendants contend that none of these criteria have been established. According to Defendants, dissolution under section 702(1)(B) is not available because sole management authority of GIR is vested in Case, as its manager, and, therefore, there can be no disagreement "respecting the management of the business and affairs" of GIR that would so deadlock the LLC that judicial dissolution is warranted. 31 M.R.S. § 702(1)(B). The court does not agree.

As noted, the Agreement expired on December 31, 2006. However, GIR is not terminated. It remains an extant business entity in which CO3, Pro Se and CPR are members, and is governed by the default provisions of the Limited Liability Company Act. *See* 31 M.R.S. 622(2). Under the Act, management authority vests in the members absent a contrary designation in the articles of organization or an operating agreement. 31 M.R.S. § 651(1). GIR's Articles of Organization expressly designate it as a member-managed LLC.

. . .

D. The assets of the limited liability company are being misapplied or wasted; [or]

. . .

F. The limited liability company has abandoned its business and has failed, within a reasonable time, to take steps to dissolve and liquidate its affairs and distribute its assets.

31 M.R.S. § 702(1)(B), (D) & (F).

Given that the members are clearly at fundamental and impassable odds with one another about the continued operation of GIR, the court concludes that dissolution is appropriate under section 702(1)(B). Although CPR may control by virtue of its majority ownership interest, the fundamental disagreement of GIR's members and CPR's refusal, as majority member, to involve Pro Se and CO3 in any meetings, business activities or decision-making relating to GIR constitutes, in the court's view, an inability among the members to conduct the affairs of GIR to the advantage of *all* of its members. *See* 31 M.R.S. § 702(1)(B). *See also* 31 M.R.S. § 653(2).

Moreover, the court agrees with Plaintiffs that GIR has also "abandoned its business and failed, within a reasonable time, to take steps to dissolve and liquidate its affairs and distribute its assets" such that dissolution is warranted under section 701(1)(F). In reaching this conclusion, the court distinguishes those cases, cited by Defendants, that have held that the winding up or liquidation of a business precludes a claim of abandonment. *See e.g. Apple Computer, Inc. v. Exponential Technology, Inc.*, 1999 Del. Ch. LEXIS 9, **1, 31 (Del. Ch. 1999). In *Apple Computer, Inc.*, the company resisting dissolution was actively engaged in the process of winding up and liquidating its business such that the court concluded that the company was engaged in a legitimate business activity and had not abandoned its business. In contrast, in this case Case and CPR purported to wind up GIR's business in 2006 and, in so doing, rendered GIR a mere shell. It is undisputed that GIR has held no assets and has not pursued any business activity in its own name since late June 2006. Notwithstanding the purported "winding up" of GIR in 2006, CPR has not taken the steps necessary to formally dissolve GIR and, in fact, has refused to formally dissolve despite requests from Plaintiffs. Accordingly, the court concludes that GIR has abandoned its business and failed to take steps to dissolve, and that judicial dissolution under section 702(1)(F) is warranted.

As previously noted, the Agreement granted Case the authority to manage the business of GIR and only accorded an advisory role to the Board. However, Case was not authorized to alter the Agreement and assign all of GIR's business, including assets and liabilities, to CPR without the consent of all members, including CO3 and Pro Se.[27] Under the circumstances of this case, CPR is appropriately charged with notice of the other members' lack of consent. Accordingly, Case acted without necessary authority and the transfers to CPR are voidable.[28] *See* 31 M.R.S. §§ 641(3) & (4) (providing that an unauthorized act by a manager or a member "that is not apparently for carrying on in the usual way the business or affairs of a limited liability company [] does not bind [the LLC] to persons having knowledge of the restriction.").

In light of the transfer of GIR's assets and liabilities to CPR and the co-mingling of the assets and liabilities of the two LLCs that has likely occurred over time after June 27, 2006, the court concludes that an accounting and the appointment of a liquidating trustee are advisable. *See* 31 M.R.S. § 703(1). First, there must be a better understanding of the current status of the assets and liabilities of GIR, as well as any substitutions and replacements. To accomplish this, Case and CPR must fully account to GIR, with full disclosure to all of its members, for all of those assets and liabilities, and for any profits and benefits derived by CPR and its members from, and for any use by them of, GIR's property on and after June 27, 2006.[29] *See* 1 Am Jur 2d

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[27] 31 M.R.S. § 656 specifies that an LLC's operating agreement may specify penalties and consequences against a "manager who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement." However, the Agreement is this case does not specify any penalties or consequences.

[28] The court stresses that it has determined only that the transactions are voidable due to Case's lack of authority. Determinations as to whether any transfers or transactions are unenforceable and should be voided will be left to the liquidating process, hereafter discussed.

[29] Depending on the results of such an accounting, the use by CPR of GIR's property may include the expenditure of GIR's income and/or profits that would otherwise have inured to the benefit of GIR to pay for professionals (e.g., attorneys; accountants; etc.) hired by Defendants to defend and counterclaim in this litigation. Of course, the accounting may also include any contributions made by Defendants for the cost of such professionals.

Accounts and Accounting § 55 (2005); and Horton & McGehee, *Maine Civil Remedies* § 8-2 (4th ed. 2004) (explaining that an equitable accounting may be ordered where a fiduciary or trust relationship exists).

Second, as part of the winding up process, the court will establish a deadline by which the parties shall either (a) agree upon, and jointly recommend to the court, the name of a person to serve as liquidating trustee or, if they are unable to agree, (b) each submit the names of two individuals that they recommend to serve as trustee. The court will thereafter select and appoint a liquidating trustee, who shall undertake the liquidation process, which may include further accountings and determinations of GIR's assets, liabilities, profits and losses, if any.

The trustee shall be authorized to take and exercise all lawful measures the trustee deems appropriate to track, ascertain, examine, recover and marshal the assets and liabilities of GIR, including, but not limited to, those that were transferred to CPR on or about June 27, 2006, and any substitutions or replacements, that remain under the custody and control of CPR or any of its members. To this end, the trustee will be authorized to examine the books and records of CPR; to hire such accountants, attorneys and others as the trustee deems appropriate in order to fulfill the trustee's duties and complete the liquidation process; to make "reasonable provision to pay all [of GIR's] claims and obligations;" and to distribute the remaining assets of GIR, if any, in the priority prescribed by law, including 31 M.R.S. § 705. Finally, because GIR does not have a current operating agreement and because there is no provision in the articles of organization regarding the allocation of profits and losses, any allocations and distributions to the members must be made on a per capita basis. 31 M.R.S. § 663.

C. Waste and Mismanagement (Count III)

Plaintiffs allege that Defendants' termination of GIR and removal of Plaintiffs resulted in the waste and mismanagement of the LLC's assets. Plaintiffs also contend that they have suffered harm as a result of Defendants' actions "in a manner not suffered by the Defendants, for and by whom the actions were taken to benefit directly." Pls.' Trial Br. at 15.

Generally, "a claim for corporate waste and mismanagement is required to be brought as a derivative action because it is the corporation that has been harmed." *Moore v. Maine Industrial Servs.*, 645 A.2d 626, 629 (Me. 1994). However, as the Law Court has explained, a direct action for waste and mismanagement may be maintained by shareholders in a corporation if they demonstrate that they have suffered harm "separate and distinct from injury to the corporation." *Id.* Here, Plaintiffs argue that CPR, in its capacity as a member of GIR, continued to distribute guaranteed payments to CPR's members after guaranteed payments to Clifford and Orestes were terminated, and, "unjustly (mis)appropriated profits from the business to pay for the professionals hired to conduct and assist in the present litigation." Pls.' Br. at 16. The court finds Plaintiffs' arguments for the recovery of such payments and fees in their Waste and Mismanagement claim unavailing.

Turning first to the matter of guaranteed payments, as the court has already concluded, the individual parties' entitlement to such payments ended on June 27, 2006 and, in fact, neither the individual Defendants nor the individual Plaintiffs received any payments after that date.[30] Even if, as Clifford and Orestis argue, they had a continuing entitlement to the payments, the court does not agree that they may bring a direct action based on the loss of guaranteed payments under the Agreement. Unlike the shareholder at issue in *Moore*, they do not have any individual

[30] The evidence does show that Low received an annual salary from CPR after June 27, 2006. However, she was paid for legitimate employment services performed by her, not for any duties as a member of GIR's Executive Board.

ownership interests in GIR nor is their entitlement to the guaranteed payments related to the management of GIR's assets. Instead, under the Agreement, Clifford and Orestis were entitled to the guaranteed payments as compensation for their efforts on GIR's Executive Board irrespective of GIR's profits.[31] *See* Pls.' Exh. 17. Accordingly, any entitlement to guaranteed payments placed them in a position more akin to a creditor who has not been paid, rather than an owner whose interest is being squandered. As such, the court concludes that they lack standing to bring a direct action for waste and mismanagement in their capacity as members of the Executive Board.

The court concludes that a similar fate attends Plaintiffs' attempts to recover the amount of professional fees paid by Defendants in this litigation. Unlike the possibility that professional fees may be recovered pursuant to a judicial dissolution of GIR, the court finds Plaintiffs' arguments for the recovery of such fees in their Waste and Mismanagement claim unavailing. Even if it could be said that CPR used money to pay professional fees that would otherwise have inured to the benefit of GIR, the loss of that money is a loss to GIR, not CO3 and Pro Se. *See In re Dein Host, Inc.*, 835 F.2d 402, 406 (1st Cir. 1987) ("Actions to enforce corporate rights or redress injuries to the corporation cannot be maintained by a stockholder in his own name . . . even though the injury to the corporation may incidentally result in the depreciation or destruction of the value of the stock.") (internal citations and quotations omitted).[32]

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[31] Although the language of the Agreement could be more clear, the court does not agree with Defendants' assertion that the guaranteed payments provision is "subject to the financial condition of GIR." See Plaintiffs' Exh. 17, Exhibit A (Guaranteed Payments and Overhead). Instead, the court more narrowly construes the quoted language to modify the provision relating to the "initial travel and marketing budget" and not the language relating to guaranteed payments.

[32] Although the court recognizes that the Law Court, in *Moore*, held that Plaintiff's termination, as president, constituted sufficient individual harm to state a direct claim and withstand a motion to dismiss under M.R. Civ. P. 21(b)(6), in this case the court concludes that the ouster of Pro Se and CO3 does not constitute particularized harm sufficient to confer standing to bring a direct claim. Based on the evidence adduced at trial, the court concludes that Plaintiffs failed to demonstrate any causal relationship between

Moreover, even if a direct action by CO3 and Pro Se or by the individual Plaintiffs for waste and mismanagement was available, the court concludes that they have failed to meet their burden of proof. First, payment of fees for professional services actually rendered – whether those fees be attorneys' fees or Low's salary – does not constitute waste. *See Sokol v. Ventures Educ. Sys. Corp.*, 2005 NY Slip Op 51963U (NY Sup. Ct. June 27, 2005) ("[W]aste entails an exchange of corporate assets for consideration so disproportionately small as to lie beyond the range at which any reasonable person might be willing to trade. Most often the claim is associated with a transfer of corporate assets that serves no corporate purpose; or for which no consideration at all is received") (quoting *Lewis v. Vogelstein*, 699 A.2d 327, 336 (Del. Ch. 1997)). In this case, there is no claim that the attorneys' fees or Low's salary were not earned.

Finally, Case's decision, as manager, to terminate the guaranteed payments and assign GIR's contracts and lease obligations substantially diminished GIR's liabilities and – with the obvious exception of Clifford and Orestis's claims – reduced the potential for liability on the part of GIR. The court is not persuaded that any of the defendants' actions in this regard constituted waste or mismanagement causing injury to Plaintiffs directly and therefore finds in favor of Defendants on this claim.

D. Breach of Fiduciary Duty (Count IV)

(1) Breach of Statutory Duties.

The duties owed by members and managers of limited liability companies in Maine are outlined in section 652 of the Maine Limited Liability Company Act. 31 M.R.S. § 652(1).[33]

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the alleged individual harm upon which standing would be based and the alleged corporate waste and mismanagement.

[33] Section 652(1) provides:

> Duties of managers and members
>
> 1. GOOD FAITH; BEST INTERESTS; REASONABLE BELIEF. The managers and members of a limited liability company shall exercise their powers and discharge their duties

Managers and members of Maine limited liability companies owe a fiduciary duty both to the company and to each other. *See id.*; and *Bell v. Walton*, 2004 ME 146, ¶ 6 n.1, 861 A.2d 687, 688. In this case, Plaintiffs contend that the actions of Defendant Case, as manager, and CPR, as member, in "forcibly remov[ing] Plaintiffs, 'terminating' GIR as a 'joint venture,' crash[ing] the GIR brand, and transfer[ring] and assign[ing] the totality of the business to themselves as manager and members CPR," constituted a breach of fiduciary duty under section 652(1). Pls.' Post-Trial Br. at 3. According to Plaintiffs, in order for Case and CPR to avoid liability for these alleged actions, the court must conclude that their actions were in the best interests not only of GIR but in the best interests of CO3 and/or Pro Se as well. Plaintiffs continue by arguing that the evidence presented at trial demonstrates that, rather than being a necessary business decision made in the face of certain financial failure, the decision to terminate GIR was made in order to freeze Plaintiffs out of a company "Defendants believed . . . had significant value . . .." Pls.' Post-Trial Br. at 7.. As discussed below, the court agrees with Plaintiff, in part.

Under the language of section 652(1), members and managers of an LLC shall not be held personally liable unless it is determined that they acted dishonestly or in a manner contrary

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> in good faith with a view to the interests of the limited liability company and of the members and with that degree of diligence, care and skill that ordinarily prudent persons would exercise under similar circumstances in like positions.
>
> In discharging their duties, managers and members may in all cases, if acting reasonably and in good faith, rely upon financial statements of the limited liability company that were either certified in writing by an independent or certified public accountant or firm of such accountants fairly to reflect the limited liability company's financial condition, or reported to such manager or member to be correct by the manager or member having charge of the books of accounts of the limited liability company.
>
> A manager or member may not be held personally liable for monetary damages for failure to discharge any duty as a manager or member unless the manager or member is found not to have acted honestly or in the reasonable belief that the action was in or not opposed to the best interests of the limited liability company or its members.

31 M.R.S. § 652(1) (emphasis added).

to the best interests of the LLC or its members. *Id.* In this case, it cannot be disputed that Case, as the manager, and CPR, as a member, owed a fiduciary duty to GIR. However, Plaintiffs have not asserted a derivative action for the breach of a fiduciary duty owed to GIR. Therefore, Defendants may not be found liable based on an alleged breach of a duty owed to GIR. Further, even if a claim based upon the duty owed to GIR were properly before the court, the evidence presented at trial demonstrated that Case reasonably relied on business projections showing a substantial loss to GIR. Case believed that the business relationship with CO3, Pro Se, and the individual Plaintiffs was not working. Although Plaintiffs urge otherwise, the court concludes that Case did in fact have an honest and reasonable belief that terminating GIR, and transferring its assets and liabilities to CPR, was in the best interests of GIR.

However, the court cannot conclude that the decision to terminate GIR, transfer all of its contracts to CPR and essentially "freeze out" CO3 and Pro Se, who had a legitimate and enforceable ownership interest in GIR, was reasonably calculated to be in the best interests of CO3 and Pro Se. 31 M.R.S. § 684 ("A membership interest in a limited liability company is personal property.") While it is true that avoiding business failure may have been in the members' economic best interests, economic interests and profit are not the sole benefit to which members of the LLC are entitled. Here, CO3 and Pro Se, as members of GIR, have an interest and some modicum of a voice in how that company is run. To say that it was reasonable to believe that a decision to wholly terminate GIR's business, refuse to involve CO3 and Pro Se in that decision, and transfer all of GIR's business to the majority member to the exclusion of the minority members, cannot reasonably be said to have been in the best interests of CO3 and Pro Se. Accordingly, the court concludes that Case breached his duty under section 652(1) to CO3 and Pro Se when he assigned all of GIR's contracts to CPR and purported to wind up GIR

without notifying CO3 and Pro Se or seeking their written consent. The Court further concludes that CPR, as a member, breached its duty to CO3 and Pro Se when it received all of GIR's contracts and failed to notify CO3 and Pro Se of the assignments and decision to "wind up" GIR.

(2) Breach of Common Law Duties.

In addition to the duties imposed by section 652 on managers and members of limited liability companies, Plaintiffs also contend that the individual Defendants owed a common law fiduciary duty to the individual Plaintiffs, Clifford and Orestis. *See* Pls.' Br. at 4 (citing 31 M.R.S. §645(3); and *Advanced Constr. Corp. v. Pilecki*, 2006 ME 84, 901 A.2d 189 (explaining that "[c]orporate officers who participate in wrongful acts can be held liable for their individual acts, and such liability is distinct from piercing the corporate veil. The individual liability stems from participation in a wrongful act, and not from facts that must be found in order to pierce the corporate veil".) (citations omitted)).

According to Plaintiffs, under the common law the individual Defendants, as members of the GIR Executive Board, owed and breached the following duties to the individual Plaintiffs:

> (3) To disclose and not withhold from one another relevant information affecting the status and affairs of the relationship;
>
> (4) To not use their position, influence or knowledge respecting the affairs and organization that are subject to the relationship to gain any special privilege or advantage over the other person or persons involved in the relationship.

Pls.' Br. at 4 (citing *Rosenthal v. Rosenthal*, 543 A.2d 348 (Me. 1988)).

Defendants counter that any decisions or action taken by the individual Defendants with respect to GIR, the "winding up" of that business, and the termination of Clifford and Orestis, were made for solid business reasons and in good faith and are therefore protected by the business judgment rule. Under the business judgment rule as it has long been articulated in

Maine, the business decisions of corporate directors in close corporations or partners in a partnership are not subject to judicial review unless they are the result of fraud or bad faith. *Rosenthal*, 543 A.2d at 353. Therefore, "the business judgment rule will insulate from a finding of liability the informed business decisions made by [corporate officers] unless . . . [Plaintiffs are] able to show that their allegedly harmful conduct was primarily motivated by fraud or bad faith." *Id.* The Law Court has further explained that "'bad faith' imports a dishonest purpose and implies wrongdoing or some motive of self-interest," and "means dishonesty of belief or purpose." *Seacoast Hangar Condo. II Ass'n v. Martel*, 2001 ME 112, ¶ 21, 775 A.2d 1166, 1171-72 (citations and internal quotations omitted).

Although the court is not entirely convinced[34] that the fiduciary duties enumerated in *Rosenthal* in the context of close corporations and partnerships apply to individual board members (as distinct from members/owners) of a manager-managed LLC,[35] the court need not decide that issue because it concludes that Plaintiffs have failed to adequately demonstrate a breach by the individual Defendants.

While self-interest on the part of Ricketts and Low, as officers of GIR and owners of CPR, can certainly be inferred, the fact that a decision is informed by self-interest does not necessarily remove it from the protections of the business judgment rule. As the Law Court explained in *Rosenthal*, "by the very nature of corporate life a director has a certain amount of self-interest in everything he does." *Rosenthal*, 543 A.2d at 354 (quoting *Johnson v. Trueblood*, 629 F.2d 287, 292 (3d Cir. 1980)). Therefore, "[b]ecause the rule presumes that business judgment was exercised, the plaintiff must make a showing from which a factfinder might infer

[34] Neither party presented any substantive argument or authority on the issue.
[35] *See Thompson's Point v. Safe Harbor Dev. Corp.*, 862 F. Supp. 594, 599 n. 2 (explaining that the First Circuit has interpreted the duties outlined in *Rosenthal* to apply only to directors and shareholders of close corporations).

that *impermissible motives predominated* in the making of the decision in question." *Id.* (also quoting *Johnson*) (emphasis in the original).

In this case, the court is persuaded that the primary motivating factor behind any decision by Ricketts and Low to "terminate" GIR, transfer its contracts and liabilities to CPR and terminate the guaranteed payments was the business projections demonstrating a substantial financial loss by GIR rather than a desire to oust Clifford and Orestis. Although the court finds regrettable the lack of transparency of Defendants' decision and the manner in which it was ultimately communicated to Plaintiffs, Plaintiffs have not proven that fraud or bad faith, as distinct from poor judgment, was present.

(3) Damages

The compensatory harm to which Plaintiffs point in support of their breach of fiduciary duty claim is essentially the same as alleged in support of their breach of contract claim, namely that their ouster from GIR and the assignment of GIR's assets to CPR resulted in lost income and business opportunities to GIR that would have inured to the benefit of Pro Se and CO3. However, just as Plaintiffs failed to adequately demonstrate any economic harm as a result of CPR's breach of contract, they have similarly failed to show any economic damage as a result of CPR's and Case's breach of fiduciary duty. There is no evidence demonstrating that CPR earned any profits after June 27, 2006 related to or by virtue of the transfer of GIR's business and assets that otherwise would have inured to the benefit of GIR or Plaintiffs. Instead, like GIR, the evidence is that CPR operated at a loss. Accordingly, the court cannot award Plaintiffs damages related to the contracts assigned to CPR.

Further, although Plaintiffs contend that their attorney's fees constitute a measure of damages, the court disagrees. It is well established that Maine follows the so-called "American

Rule," when it comes to the award of attorney's fees. Under the American Rule, as it has been applied in Maine, "[a]n award of attorney fees must be based on: (1) a contractual agreement between the parties; (2) a specific statutory authorization; or (3) the court's inherent authority to sanction serious misconduct in a judicial proceeding." *Truman v. Browne*, 2001 ME 182, ¶ 13, 788 A.2d 168, 171(citing *Baker v. Manter*, 2001 ME 26, P12, 765 A.2d 583, 585). While the Law Court has previously held that attorney's fees may be awarded to a victorious plaintiff in a breach of fiduciary duty case, that award of fees is discretionary. Moreover, attorney's fees are not a component of compensatory damages. *See id.* (reducing a trial court's award of compensatory damages by the amount of claimed attorney's fees). Accordingly, because Plaintiffs have failed to prove damages resulting from Case and CPR's breach of fiduciary duty, Plaintiffs' claim fails on the merits and attorney's fees are not available.

Finally, Plaintiffs also seek an accounting by Case and CPR relating to and arising out of the transfer of GIR's business and assets to CPR. As noted above, the court has granted an equitable accounting in connection with the judicial dissolution of GIR based upon Case and CPR's fiduciary duty to GIR, Pro Se and CO3.

(4) Exemplary Damages (Count X)

Although Plaintiffs seek punitive damages, the court declines to make such an award. In this case, the court cannot conclude that the actions of Case and CPR were based on malice or intended to harm Plaintiffs. Accordingly, exemplary damages are not warranted in this case.

E. Conversion (Count VIII)

Plaintiffs' final claim is for conversion. Count VIII originally alleged conversion by Defendants of a number of tangible assets, namely personal belongings maintained by Plaintiffs in GIR's office space. However, in their trial brief, Plaintiffs clarify that most of that property

has since been returned. Pls.' Trial Brief at 16. Therefore, Plaintiffs' conversion claim now appears limited to their claim that Defendants wrongfully converted intangible assets in the form of trademarks for which GIR's tax return reflects a value of $3,475.00. *Id.* at 17. The credible evidence does not support a claim of conversion in this case.

Even if there was such evidence, Plaintiffs still cannot recover for this claim. First, the intangible assets, to the extent they have been converted and have any value, are the property of GIR. Plaintiffs have not presented this as a derivative claim and they do not have standing, individually, to bring it. Second, there is insufficient evidence of the value of the trademarks. In particular, GIR's tax return does not constitute credible evidence of value. And, third, if there is any value, it must first be applied to GIR's debts.

DECISION

Based upon the foregoing, and pursuant to M.R. Civ. P. 79(a), the Clerk is directed to enter this Decision and Order on the Civil Docket by a notation incorporating it by reference, and the entry is

A. Judgment for Defendants on Counts I, III, IV, VIII and X of the Complaint;

B. Judgment for Plaintiffs Pro Se and CO3 on Count II of the Complaint, and it is ORDERED and DECREED that Global Insurance Resources, LLC ("GIR") shall be dissolved and liquidated, and its affairs wound up, as follows:

(1) In or within 40 days from the date of entry of this Decision and Order, Case and CPR shall file a full accounting with the court, with simultaneous full disclosure to GIR, to the liquidating trustee appointed by the court and to all of GIR's members, of

(a) All of the assets and liabilities of GIR that were transferred to CPR on or about June 27, 2006, including any substitutions or replacements of those assets that occurred at any time on and after June 27, 2006;
(b) The current status and values of those assets, and of any substitutions or replacements, that remain under the custody and control of CPR or any of its members;
(c) All profits and benefits derived by CPR or any of its members from those assets, and from any substitutions or replacements, on and after June 27, 2006; and

(d) Any use, and the value of such use, of GIR's property by CPR or any of its members on and after June 27, 2006.

(2) Thereafter, CPR shall file a full accounting of its doings at such times and intervals as determined by the trustee, but not less frequently than every 90 days, and shall file a final accounting upon completion of the liquidation or other disposition of the assets of GIR, and the distribution of such assets in accordance with Maine law and this order.

(3) The trustee and/or any party or party in interest may file an objection to any such accounting, provided that such objection is filed within 21 days of the filing of such accounting, and the court shall schedule a hearing on any timely objection and enter any appropriate order.

(4) In or within 30 days from the date of entry of this Decision and Order, the members of GIR shall either:

(a) Agree upon, and jointly recommend to the court, the name of a qualified person to serve as the liquidating trustee; or
(b) If they are unable to agree, Plaintiffs Pro Se and CO3, on the one hand, and Defendant CPR, on the other, shall each submit the names of two qualified individuals that they recommend to the court for appointment as trustee.

(5) The court may appoint the agreed-upon person recommended by the parties pursuant to the preceding subsection B(4)(a) as the liquidating trustee; or, if there is no agreement, may select the trustee from among the parties' submissions pursuant to subsection B(4)(b); or the court may appoint any other person as trustee that the court deems appropriate.

(6) The liquidating trustee shall be authorized

(a) To undertake the liquidation process, including requiring such further and periodic accountings and determinations of GIR's assets and liabilities, if any, by whomever held, as the trustee shall, in the trustee's sole discretion, determine;
(b) To take and exercise all lawful measures the trustee deems appropriate to track, ascertain, examine, recover and marshal the assets and liabilities of GIR, including, but not limited to, those that were transferred to CPR on or about June 27, 2006, and any substitutions or replacements of those assets that remain under the custody and control of CPR or any of its members and, to this end, to examine the books and records of CPR;
(c) To hire such accountants, attorneys and persons as the trustee deems appropriate in order to fulfill the trustee's duties and complete the liquidation process;
(d) To make reasonable provision to pay all of GIR's claims and obligations; and
(e) To distribute the remaining assets of GIR, if any, in the priority prescribed by law, including 31 M.R.S. § 705 and, to the extent there is any distribution to the members, it shall be made on a per capita basis.

(7)The fees and costs of the liquidating trustee and the liquidation process shall take priority over all other creditor claims and shall be borne by GIR.

(8) The Trustee and any party in this action may at any time, on proper notice to all parties who have appeared in this action, apply to the court for further instructions and for further power necessary to enable the Trustee to properly fulfill all duties as trustee.

(9) The Trustee shall report back to this court when the Trustee has concluded the duties and acts prescribed in this order , or at an earlier date on further instructions from the court.

(10)Plaintiffs CO3 and Pro Se shall file a certified copy of this Order with the Maine Secretary of State within 30 days from the date of entry of this Decision and Order.

(11)Plaintiffs CO3 and Pro Se shall file a Certificate of Cancellation with the Secretary of State upon the completion of the dissolution and winding up of GIR pursuant to 31 M.R.S. §625.

C. Plaintiffs Pro Se and CO3 are awarded so much of their costs of this action as relate to their claim for judicial dissolution.

Dated: May 20, 2009

Chief Justice, Superior Court