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*TO: Stephanie Studebaker
265 NW Franklin, Ste. 101
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Dear Ms. Studebaker,

I researched an issue for you related to recording public and/or semi-public meetings. The facts as I understand them are as follows.

- 1. A public presentation with questions and answers was made to the creditors by Obsidian. No one was excluded from the meeting. A recording of the public meeting was made. Unsecured creditors were allowed to order a recording of the presentation without restrictions on content and/or distribution.*
- 2. Summit made a request to the Bankruptcy Court on approximately February 11, 2009 that Obsidian provide the same presentation to them. The Court thought this was advisable and suggested the trustee attend said meeting. Said presentation was made to Summit and members of the public on or about February 12, 2009.*
- 3. At the February 12, 2009 presentation, a very visible recording device was on, and its recording light and said recording device were directly in view(unconcealed) of Obsidian while they gave their presentation which included questions and answers.¹ Obsidian was aware that members of the public and non-principals were present. Obsidian did not move to exclude anyone from the otherwise public hearing.*

¹ Kevin Padrick wanted to prohibit people from taking handwritten notes (apparently inaccurate hearsay concerns); however, this is an infringement on the public's rights under Oregon Const. Art. 1 Section 8. Moreover, taking handwritten notes (and even later transcribing them), concealed or not, does not violate any Oregon Criminal Statute in face to face meetings. *State v. Knobel*, 97 Or. App. 559 (1987).

4. *The person(s) who recorded the meeting were members of the public.*
5. *All notes regarding said meeting were not privileged, and they could be provided to the Court and/or trustee by way of lawful declaration – as determined by Robert Opera.*
6. *Person(s) recording said meeting relied in good faith upon ORS 165.540(6)(a) in making and/or distributing said contents of communication as a public and/or semipublic meeting (such as a creditors/debtors meeting presentation without public exclusion). See ORS 165.671*

Legal Conclusion:

The Oregon rule prohibiting some recordings under ORS 165.540(1)(c) does not apply to the recording made on or about February 12, 2009 for the following reasons:

- a. *As discussed above, said meeting was public and/or semi-public.*
 - *Creditor's and debtor's meeting presentations did not exclude members of the public.*
 - *Same presentation to creditors was recorded and recordings of presentation were available to unsecured creditors without exclusion.*
 - *Information pertaining to presentations could lawfully be conveyed back to judge and/or trustee.*
 - *Meetings were held with court approval.*
 - *Person(s) recording meeting were members of public.*
 - *Obsidian was aware members of the public were present at said meeting.*
 - *In the past Obsidian has demonstrated the ability, with these particular members of the public, to exclude them when they held meetings they did not consider public and/or semipublic meetings.*
- b. *As discussed above, said recording device light was on; and, device and light were directly visible and unconcealed from view of those being recorded.*

c. *Person(s) recording said meeting were under the good faith belief that they were in compliance with ORS 165.540(6)(a). See ORS 165.671.*

Federal Law does not restrict face to face recordings where the recording party is at least one participant in the conversation and no third party is simultaneously secretly listening in.

If any of the facts I listed above are incorrect, my legal conclusion cannot be relied upon. In such case, you may want to update my understanding of the facts in this case.

Sincerely,

Marc Andersen, Attorney-at-Law