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8 Advising Bankruptcy Attorneys for *Amicus curiae*  
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10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 BROBECK, PHLEGER & HARRISON LLP,  
14 Debtor,

Case No. 03-32715-DM7

Chapter Number: 7

15 **DECLARATION OF ROBERT W.  
16 GORDON IN SUPPORT OF TRUSTEE'S  
17 MOTION REGARDING TURNOVER  
18 AND ABANDONMENT OF DIGITAL  
19 RECORDS**

20 Date: July 18, 2006  
21 Dept: Courtroom 22  
22 Place: 235 Pine Street  
23 San Francisco, California  
24 Judge: Hon. Dennis Montali

25 I, ROBERT W. GORDON, declare as follows:

26 Except as otherwise noted, I make this declaration based upon my own personal  
27 knowledge. If called as a witness, I could and would competently testify hereto.

28 1. I received my J.D. from Harvard Law School in 1971, and have since focused my  
career on research and teaching. I hold an appointment as the Chancellor Kent Professor of Law  
and Legal History and also as Professor of History at Yale University.

2. My research focuses on both American legal history, and on the history of the  
American legal profession. I have also taught and researched in the areas of professional

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ABANDON

1 responsibility, the legal history of American corporations, and the pressures on traditional notions  
2 of professionalism faced by lawyers as well as other professionals in today's world.

3 3. I have written specifically on the history of the law as a public profession and on  
4 the uses of history in legal argument. I have published a book on the ideology and practices of the  
5 New York City corporate bar from 1880 to 1920, as well as edited The Legacy of Oliver Wendell  
6 Holmes, Jr. (Stanford University Press, 1992). I recently completed a brief history of the  
7 American legal profession in the 20<sup>th</sup> century. I have also conducted research on lawyers' roles in  
8 contract negotiation and drafting in Silicon Valley with Lawrence M. Friedman at Stanford  
9 University, published in "The Growth of Large Law Firms and Its Effect on the Legal Profession  
10 and Legal Education: Law, Lawyers, and Legal Practice in Silicon Valley: A Preliminary Report"  
11 (64 Ind. L.J. 555). Research of this type would be particularly aided by the type of statistical  
12 access to the Brobeck records that the Methodology provides for.

13 4. I have served on a Task Force on Ethics of the American Bar Association  
14 Litigation Section, and am currently a member of the Task Force on the Future of the Profession  
15 of the Connecticut Bar Association. 5. I am involved in the Library of Congress' National Digital  
16 Information Infrastructure Preservation Program ("NDIIPP") as a member of the Advisory  
17 Council to Professor David Kirsch of the University of Maryland ("Dr. Kirsch"). We are  
18 primarily advising Dr. Kirsch on the construction of an archive to preserve the digital records of  
19 the former law firm Brobeck, Phleger & Harrison LLP ("Brobeck Digital Records").

20 5. I am only advising Dr. Kirsch in my personal capacity, and have not entered into  
21 an attorney-client relationship with Dr. Kirsch or any other party mentioned in this declaration.

22 6. The digital Client Files contain information and data about Brobeck's failed Dot-  
23 Com clients that are unavailable from other sources. Many of these former clients conducted  
24 businesses through purely digital means, and their digital records were destroyed or lost when the  
25 former clients shut down. In these cases, only the Brobeck Client Files contain the material  
26 evidence future scholars will need to reconstruct this critical era in the history of technology  
27 entrepreneurship. Brobeck's digital Partnership Records are also an invaluable historical  
28 resource, providing a window into the inner workings of a giant in California legal practice.

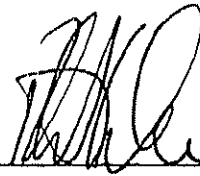
Ropers Majeski Kohn & Bentley  
A Professional Corporation  
New York City

1 Altogether, the Brobeck Digital Records comprise a unique historical record of both Dot-Com-era  
2 startups and also one of the two largest law firms representing them during the height of the  
3 historic Internet boom.

4 7. I have had the opportunity to make use of similar confidential legal records in the  
5 course of my academic research. In particular, I have had the opportunity to conduct research in  
6 the files of Cadwalader, Wickersham & Taft, a firm that is currently in the process of transferring  
7 their papers to the Yale archives. Others have also undertaken similar research, such as Kenneth  
8 J. Lipartito and Joseph A. Pratt in their book Baker & Botts in the Development of Modern  
9 Houston (University of Texas Press, 1991), which made extensive use of that law firm's  
10 partnership and client records and won the T. H. Fehrenbach Award in Texas History. To  
11 research his excellent book on the history of the Vinson & Elkins firm of Houston, published as  
12 Craftsmanship and Character: A History of the Vinson & Elkins firm of Houston, 1917-1997, the  
13 legal historian Harold M. Hyman was given access virtually without limit to the firm's records. I  
14 have worked with many collections of lawyers' papers that former law firm partners have  
15 deposited, along with personal papers and records, in libraries and archives such as the Library of  
16 Congress, state historical societies, and university archives. Such papers are invaluable resources  
17 for the study of the history of law and the legal profession and the changing roles of lawyers in  
18 their communities, in the economic development of the nation, and in society and public life.

19 I declare under penalty of perjury under the laws of the United States of America and the  
20 State of California that the foregoing is true and correct to the best of my knowledge and belief.

21 Executed this 28<sup>th</sup> day of June, 2006 at New Haven, Connecticut.



Robert W. Gordon

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