

SKRIPSI

**KEDUDUKAN HUKUM KREDITOR PREFEREN
DALAM RESTRUKTURISASI UTANG**



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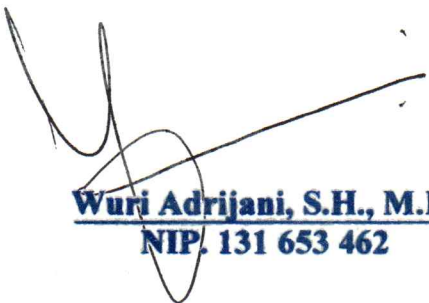
**FAKULTAS HUKUM
UNIVERSITAS AIRLANGGA
SURABAYA
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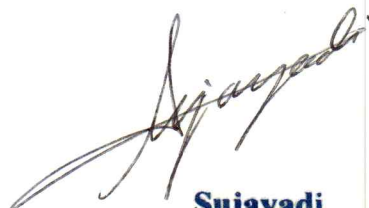
**DIAJUKAN UNTUK MELENGKAPI TUGAS DAN
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SURABAYA
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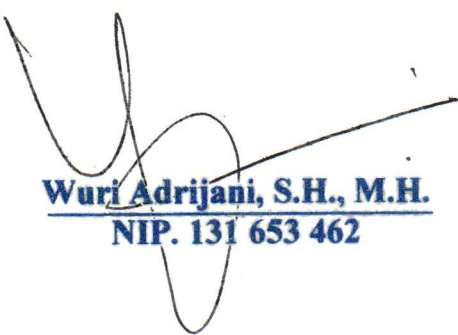
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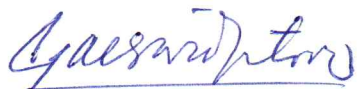


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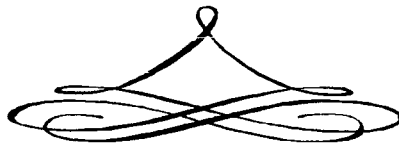
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*Penulis Persembahkan Tulisan ini Kepada:
Ibu Penulis yang tersayang; serta
Para Sarjana, Ksatria, Wicaksana yang terpelajar, berani, dan
bijaksana dalam membela kebenaran dan keadilan..*

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Pembahasan masalah restrukturisasi utang dalam forum pengadilan pada skripsi ini telah merujuk pada UU No. 37 tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang yang baru saja disahkan oleh DPR sebagai pengganti dari Peraturan Kepailitan (Faillissementsverordening) jo. Perpu. No. 1 Tahun 1998 tentang Perubahan atas Peraturan Kepailitan jo. UU No. 4 Tahun 1998 tentang Penetapan Perpu. No. 1 Tahun 1998 tentang Perubahan atas Peraturan Kepailitan Menjadi Undang-undang. Dalam undang-undang yang baru tersebut terdapat beberapa perbedaan dengan undang-undang yang lama.

Berkaitan dengan skripsi ini undang-undang yang baru berbeda terutama mengenai peranan kreditor preferen dalam PKPU, namun secara garis besar prinsip-prinsip umum mengenai kreditor preferen adalah tetap.

Perlu diketahui pula karena mengingat pembahasan skripsi ini menyangkut mengenai kreditor preferen maka banyak juga menyinggung masalah hukum jaminan. Sedangkan restrukturisasi di luar forum pengadilan syarat bersinggungan dengan hukum perjanjian. Tulisan ini membatasi diri pula untuk tidak membahas hal-hal yang teknis prosedural mengenai restrukturisasi utang utamanya dalam forum pengadilan terutama berkaitan dengan hukum acaranya. Penulis menyadari bahwa skripsi ini jauh dari kesempurnaan, kiranya tegur sapa dari para pembaca yang berupa kritikan dan saran demi perbaikan tulisan ini maupun tulisan-tulisan selanjutnya sangat penulis harapkan dan hargai.

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**BAB I:
PENDAHULUAN**

BAB I

PENDAHULUAN

1.1 Latar Belakang dan Rumusan Masalah

Krisis ekonomi yang melanda Asia pada pertengahan tahun 1997 silam telah membawa akibat yang demikian parah bagi perekonomian sebagian besar negara-negara di kawasan ini, termasuk di antaranya Indonesia. Kondisi demikian ini membawa dampak negatif bagi dunia usaha dalam melangsungkan kegiatannya yang akan berdampak secara langsung bagi perekonomian makro negara tersebut.

Semenjak krisis tersebut terjadi, mata uang rupiah terus menerus mengalami devaluasi. Banyak perusahaan yang dalam kegiatannya menggunakan mata uang asing mengalami kerugian nilai tukar, sementara daya beli masyarakat atas produk-produk perusahaan tersebut menurun sehingga mereka kehilangan pasar secara signifikan. Akibatnya perusahaan-perusahaan tersebut tidak mampu lagi membayar utang-utangnya, dampak lebih lanjut adalah angka kredit bermasalah (*non performing loan/ NPL*) yang cukup tinggi dihadapi oleh bank-bank yang memberi kucuran kredit pada perusahaan-perusahaan tersebut. Hal ini berakibat menurunnya kondisi kesehatan bank yang membahayakan perekonomian nasional.

Penyelesaian piutang yang bermasalah oleh kreditor pada umumnya dilakukan dengan gugatan perdata atas dasar wanprestasi kepada Pengadilan Negeri atau jika memenuhi persyaratan UU Kepailitan dapat pula diajukan

permohonan pailit pada Pengadilan Niaga. Pada gugatan perdata atas dasar wanprestasi seringkali disertai dengan permohonan sita jaminan terhadap sebagian atau seluruh harta kekayaan debitor dengan disertai pula permohonan putusan yang dapat dijalankan lebih dahulu (*uitvoerbaar bij voorraad*). Pada permohonan pailit, apabila permohonan tersebut dikabulkan maka harta debitor akan dinyatakan sebagai boedel pailit yang berakibat debitor kehilangan haknya untuk melakukan pengurusan harta tersebut, yang kemudian diikuti dengan likuidasi aset/ penjualan lelang atas boedel pailit untuk kemudian hasil pelelangan tersebut dibagikan sebagai pembayaran utang kepada para kreditor. Kedua cara ini hampir dapat dipastikan akan membawa kehancuran bagi usaha debitor, karena aset-aset produktif bagi debitor sangat mungkin habis terlelang untuk memenuhi kewajibannya kepada (para) kreditor. Dapat dibayangkan apabila debitor tersebut adalah suatu perusahaan yang berskala besar dan strategis, hal ini tentu saja berdampak pada pemutusan hubungan kerja (PHK) terhadap sekian jumlah karyawannya, potensi pajak yang hilang, dan kegiatan perekonomian lain yang bersangkutan dengan eksistensi perusahaan tersebut terancam pula keberadaannya, sehingga hal ini membawa dampak sosial negatif yang demikian panjang.

Eksekusi jaminan oleh kreditor baik yang diperoleh karena kedudukannya yang preferen maupun karena diperoleh melalui permohonan sita jaminan lewat pengadilan sering kali dirasa kurang memuaskan. Kondisi tersebut dikarenakan harga yang diperoleh dalam pelelangan terkadang jauh di bawah nilai piutangnya, belum lagi biaya-biaya yang dikeluarkan untuk pelaksanaan lelang tersebut juga

cukup besar. Oleh karena itu tindakan restrukturisasi utang sebagai salah satu upaya penyelesaian merupakan solusi alternatif bagi pemulihan usaha dan perekonomian secara keseluruhan.

Restrukturisasi utang (*debt restructuring*) merupakan bagian dari restrukturisasi perusahaan (*corporate restructuring*), umumnya restrukturisasi perusahaan dapat dibagi menjadi dua macam. Pertama, restrukturisasi fundamental perusahaan yang memfokuskan kepada peningkatan kinerja dan strategi perusahaan. Kedua, restrukturisasi keuangan perusahaan yang lebih terfokus kepada likuiditas dan restrukturisasi utang untuk meningkatkan keuntungan dan memperkuat keuangan perusahaan dalam menghadapi kondisi yang berubah-ubah.¹

Restrukturisasi utang adalah suatu proses dimana sebuah perusahaan dan para kreditornya menegosiasikan kembali atau menjadwalkan ulang utang-utangnya dan atau kewajiban-kewajiban kontraktual lainnya dengan tujuan memastikan keberlangsungan kegiatan usaha perusahaan tersebut. Proses ini juga memungkinkan bagi perusahaan untuk melakukan reorganisasi kegiatan usaha dan memfokuskan manajemen untuk memastikan perkembangan perusahaan.²

Restrukturisasi utang dapat terjadi di luar pengadilan yang merupakan bentuk kesepakatan dari para pihak (restrukturisasi utang informal), ataupun terjadi di dalam forum pengadilan (restrukturisasi utang formal). Restrukturisasi

¹ Yu Ip-wing, Eva Law and Laurance Fung dalam Corporate Restructuring in Hong Kong in The Aftermath of The Asian Financial Crisis, sebagaimana dikutip dari artikel yang ditulis oleh Ira Dompas & Aris A. Kartasmita pada Bisnis.com dengan judul Identifikasi Sumber Masalah Hukum Dalam Restrukturisasi Utang, Kamis 27/ 03/ 2003

² PriceWaterHouseCoopers, Debt Restructuring, sebagaimana dikutip dari situs www.pwc.com/th

utang di dalam forum pengadilan dapat berupa Penundaan Kewajiban Pembayaran Utang (PKPU) ataupun Perdamaian dalam Kepailitan (Perdamaian/ *accoord*) dalam konteks UU Kepailitan. Kedua macam restrukturisasi — informal dan formal — ini memiliki perbedaan terutama pada daya mengikat dari hasil kesepakatan restrukturisasi tersebut, restrukturisasi utang informal hanyalah mengikat pihak-pihak yang terlibat dalam perjanjian restrukturisasi utang itu saja, lain halnya dengan restrukturisasi utang formal yang mengikat semua pihak termasuk pihak ketiga yang tidak melibatkan diri dalam proses tersebut.

Restrukturisasi utang dilakukan dalam berbagai skema yang merupakan pilihan strategi bagi para pihak. Apapun pilihan strategi yang akan dipakai dalam restrukturisasi utang tersebut akan selalu membawa konsekuensi hukum kepada para pihak. Karena hasil dari negosiasi para pihak tersebut dituangkan dalam perjanjian definitif yang mengikat para pihak maka di sini terdapat aspek-aspek hukum di dalamnya. Sepanjang restrukturisasi utang itu terjadi di luar forum pengadilan maka ia hanya dapat terjadi atas kehendak debitor dan kreditor itu sendiri. Isi dari perjanjian restrukturisasi utang itu sepenuhnya diserahkan pula kepada debitor dan kreditor tersebut asal memenuhi syarat sahnya perjanjian dan tidak melanggar azas ketertiban umum (Pasal 1320 jo. Pasal 1337 BW). Restrukturisasi utang yang terjadi atas kehendak debitor dan kreditor itu sendiri memiliki dasar hukum Pasal 1338 ayat (1) BW sebagai bentuk kebebasan berkontrak.³

³ Elijana, Dasar Hukum Restrukturisasi Hutang Swasta, Makalah, Jakarta, 5 Juli 2000

Sebelum mencapai tahapan perjanjian restrukturisasi utang yang definitif, pihak debitor dan kreditor pada umumnya melakukan negosiasi untuk menentukan skema restrukturisasi utang apa yang akan dilakukan. Apabila negosiasi ini berhasil biasanya dituangkan dalam MOU (*Memorandum of Understanding/ Nota Kesepahaman*) yang seringkali berbentuk *Term-Sheet* antara debitor dan kreditor. MOU ini bukan merupakan dokumen yang mengikat secara hukum, tetapi hanya berisikan kesepakatan aturan dan kondisi komersial atas skema restrukturisasi utang yang akan dilakukan. Tujuan menuangkan kesepakatan awal para pihak ke dalam MOU adalah untuk memberikan kemungkinan dilakukannya revisi atau bahkan membatalkannya sama sekali ke tahap selanjutnya karena berbagai alasan.⁴

Tahapan berikutnya adalah pengikatan secara hukum yang dituangkan dalam suatu dokumen yang umumnya berbentuk perjanjian kredit. Dokumen ini berjenis akta notariil sehingga memiliki kekuatan hukum pembuktian yang kuat. Dalam beberapa kasus restrukturisasi utang, dimungkinkan para pihak untuk langsung melanjutkan tahap negosiasi dengan pengikatan secara hukum tanpa melalui penyusunan MOU.⁵

Tahapan terakhir adalah implementasi yang merupakan penyelesaian/ pelaksanaan kewajiban baik oleh debitor dan kreditor seperti yang diharuskan dalam dokumen restrukturisasi utang yang disepakati, bentuk implementasi ini

⁴ Djauhari Sitorus, Mengenal Restrukturisasi Utang Perusahaan, Jakarta Initiative Task Force (JITF), www.jitf.or.id, Jakarta, Juni 2002

⁵ Ibid.

tentu saja bergantung pada skema restrukturisasi utang yang telah dituangkan dalam dokumen perjanjian restrukturisasi utang.⁶

Terdapat beberapa skema restrukturisasi utang yang biasanya ditempuh oleh debitor dan kreditornya, pilihan skema restrukturisasi utang yang disepakati bersama biasanya disesuaikan dengan kehendak serta asumsi-asumsi ekonomi para pihak. Adapun skema restrukturisasi utang yang biasanya menjadi pilihan antara lain:⁷

1. penjadwalan kembali utang (*debt rescheduling*);
2. pertukaran utang dengan obligasi konversi (*debt to convertible bonds swap*);
3. pertukaran utang dengan saham (*debt to equity swap*);
4. penghapusan utang (*haircut/ write off*);
5. pertukaran utang dengan aktiva (*debt to asset swap*);
6. pembelian utang oleh kreditor (*debt buy-back*).

Restrukturisasi utang di dalam forum pengadilan (restrukturisasi utang formal) sepenuhnya tunduk pada ketentuan dalam UU No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (yang selanjutnya disebut UU Kepailitan). Dalam ketentuan tersebut telah ditentukan proses (hukum acara) maupun akibat-akibat hukum adanya PKPU maupun Perdamaian dalam Kepailitan yang merupakan upaya untuk menghindari proses kepailitan dan lebih menjamin kelangsungan usaha debitor dengan memberikan kesempatan bagi debitor untuk mereorganisasi perusahaannya kembali.⁸ Upaya restrukturisasi utang formal lebih memberikan kepastian hukum, karena ia mengikat semua pihak

⁶ Ibid.

⁷ Ibid.

⁸ Bandingkan, PriceWaterHouseCooper, op. cit., h.3, yang menyatakan: “*The Planner process is a formal restructuring process under the new Bankruptcy Act. It is the process whereby a company or its creditors including banks and suppliers, decide to file a petition to rehabilitate the company. The court will then appoint the Planner to be responsible for the following*”

dan dengan ketentuan mengenai jangka waktu proses perdamaian yang cukup ketat. Dalam hal upaya restrukturisasi utang formal ini mengalami kegagalan, maka debitor akan segera dinyatakan pailit oleh pengadilan pada hari berikutnya.

Keberhasilan tercapainya restrukturisasi utang tergantung pula pada kehendak para kreditor untuk mendukung restrukturisasi utang yang diajukan oleh debitor. Secara umum kreditor dibedakan atas kreditor preferen, yang memegang hak jaminan kebendaan atas perikatannya atau memegang hak istimewa yang telah ditentukan undang-undang, dan kreditor konkuren yang tidak memegang hak jaminan kebendaan atas perikatannya itu (meskipun pada dasarnya seluruh harta kekayaan debitor menjadi jaminan perikatannya dengan kreditor).

Keterlibatan seluruh kreditor dalam restrukturisasi utang merupakan hal yang sangat signifikan bagi keberhasilan suatu restrukturisasi utang. Kreditor preferen dalam hal ini memiliki hak-hak khusus sebagai kreditor yang secara prinsip dapat saja mengabaikan adanya restrukturisasi utang yang diajukan debitor — dalam artian menolak untuk terlibat dalam restrukturisasi utang — dan mengeksekusi objek jaminan yang ada di tangannya secara *parate executie* ataupun menuntut dipenuhinya hak-hak istimewa yang ia miliki karena telah ditentukan oleh undang-undang. Tentu saja dengan mengeksekusi jaminan ini maka secara ekonomis mengancam eksistensi usaha dari debitor sehingga apa yang menjadi tujuan dari restrukturisasi utang menjadi semakin jauh dan sia-sia.

Mengacu pada apa yang telah dikemukakan di atas dan terutama sekali bagian akhir dari bagian latar belakang ini yang menyentuh permasalahan mengenai kreditor preferen kiranya dapatlah ditarik dua permasalahan pokok yang

hendak dibahas dalam bab-bab berikutnya. Adapun rumusan masalah yang penulis ajukan di sini adalah:

- (1) Apa akibat hukum adanya restrukturisasi utang di luar pengadilan (*out of court debt restructuring*) terhadap kedudukan hukum kreditor preferen?
- (2) Apa akibat hukum adanya restrukturisasi utang dalam forum pengadilan (Penundaan Kewajiban Pembayaran Utang dan Perdamaian dalam Kepailitan) terhadap kedudukan hukum kreditor preferen?

1.2 Penjelasan Judul

Untuk memahami isi dari suatu tulisan sepatutnyalah kita memahami terlebih dahulu judul dari tulisan tersebut, karena setidaknya-tidaknya dari judul itu tercermin keseluruhan isi dari tulisan tersebut. Skripsi ini mengambil judul: “KEDUDUKAN HUKUM KREDITOR PREFEREN DALAM RESTRUKTURISASI UTANG,” dapatlah diurai-artikan sebagai penjelasan dari judul ini adalah sebagai berikut:

Kedudukan hukum (*legal standing*), untuk istilah ini penulis tidak menemukan definisi yang secara langsung dari frase tersebut. Untuk itu penulis mencoba mendefinisikan dari kata per kata yang membentuk frase tersebut. *Legal* dalam Black’s Law Dictionary diartikan sebagai berikut:⁹

1. Conforming to the law; according to law; required or permitted by law; not forbidden or discountenanced by law; good and effectual in law; of or pertaining to the law; lawful. *Freeman v. Fowler Packing Co.*, 135 Kan. 378, 11 P.2d 276, 277.

⁹ Henry Campbell Black, *Black’s Law Dictionary*, 6th Edition, West Publishing Co., St. Paul Minnesota, 1999, h. 892

2. Proper or sufficient to be recognized by the law; cognizable in the courts; competent or adequate to fulfill the requirements of the law.
3. Cognizable in courts of law, as distinguished from courts of equity; construed or governed by the rules of equity. With the merger in most states of law and equity courts, this distinction generally no longer exists.
4. Posited by the courts as the inference or imputation of the law, as a matter of construction, rather than established by actual proof, *e.g.* legal malice.
5. Created by law.

Dari berbagai uraian mengenai pengertian *legal*, pada pokoknya adalah memiliki arti “berdasarkan hukum yang berlaku”. Adapun pengertian *standing* adalah sebagai berikut: *One's place in the community in the estimation of others; his relative position in social, commercial, or moral relation; his repute, grade, or rank. See Reputation; Standing to sue doctrine; Status.*¹⁰ Untuk lebih tepatnya dalam kaitan memperjelas istilah *standing* penulis mengutip pula dalam hal ini istilah *status* yang memiliki definisi sebagai berikut:¹¹

Standing; state or condition; social position. The legal relation of individual for rest of the community. The rights, duties, capacities, and incapacities which determine person to a given class. A legal personal relationship, not temporary in its nature nor terminable at the mere will of the parties, with which third persons and the state are concerned. *Holzer v. Deutsche Reichsbahn Gesselschaft*, 159 Misc. 830, 290 N.Y.S. 181, 191. While term implies relation is not mere relation.

Dari definisi-definisi tersebut di atas dapatlah ditarik suatu definisi dari kedudukan hukum yaitu: Kondisi/ keadaan dari hak-hak, kewajiban-kewajiban, wenang atau tidak wenang dari seseorang berdasarkan hukum yang berlaku.

¹⁰ Ibid, h. 1405

¹¹ Ibid h. 1410

Kreditor preferen, mengenai istilah ini beberapa sarjana hukum memiliki pendapat sendiri-sendiri dalam literatur yang mereka tulis,¹² sedangkan UU Kepailitan tidak memberikan definisi atas istilah ini. Ada baiknya di sini saya sampaikan definisi dari preferen (*preference*) itu sendiri:¹³

in bankruptcy, the payment of a debt to one creditor rather than dividing the assets equally among all those to whom he/she/it owes money, often by making a payment to a favored creditor just before filing a petition to be declared bankrupt. Such a preference is prohibited by law, and the favored creditor must pay the money to the bankruptcy trustee. However, the bankruptcy court may give secured creditors (with a judgment, lien, deed of trust, mortgage or collateralized loan) a legal preference over 'general' creditors in distributing available funds or assets.

Inti dari definisi di atas adalah adanya sifat untuk didahulukannya kreditor tertentu dalam kepailitan. Untuk memperjelasnya penulis perlu untuk kembali pada ketentuan BW mengenai kreditor yang didahulukan yang diatur oleh Pasal 1133 yang menyatakan bahwa hal untuk didahulukan di antara orang-orang berpiutang terbit dari hak istimewa, dari gadai dan dari hipotik. Dengan demikian kreditor preferen adalah kreditor yang memiliki hak untuk didahulukan pembayarannya

¹² Lihat: Kartini Muljadi & Gunawan Widjaja, Pedoman Menangani Perkara Kepailitan, Cetakan Kedua, PT. RajaGrafindo Persada, Jakarta, 2004, h. 202, yang menyatakan "..... kreditor preferens adalah kreditor pemegang hak istimewa yang disebut dalam ketentuan Pasal 1139 dan Pasal 1149 Kitab Undang-Undang Hukum Perdata"; kemudian Sutan Remy Sjahdeini, Hukum Kepailitan: Memahami Faillissementsverordening Juncto Undang-Undang No. 4 Tahun 1998, Cetakan Pertama, PT. Pustaka Utama Grafiti, Jakarta, 2002, h. 280 yang menyatakan "..... Kreditor yang didahulukan dari Kreditor-Kreditor lainnya untuk memperoleh pelunasan tagihannya dari hasil penjualan harta kekayaan Debitor asalkan benda tersebut telah dibebani dengan Hak Jaminan tertentu bagi kepentingan Kreditor tersebut. Kreditor yang demikian itu disebut *KreditorPreferen*. Istilah hukum yang dipakai dalam bahasa Inggris untuk Kreditor yang demikian itu ialah *Secured Creditor*."

¹³ Duhaime's Canadian Law Dictionary, <http://www.duhaime.org/dictionary/dict-p.aspx>

daripada kreditor yang lain, yang mana hak didahulukannya tersebut lahir karena hak istimewa atau hak jaminan kebendaan.¹⁴

Untuk restrukturisasi utang saya kemukakan di sini pengertian yang diajukan oleh Elijana dimana arti harfiah dari restrukturisasi utang adalah penyusunan kembali, sehingga secara harfiah restrukturisasi utang adalah penyusunan kembali utang debitor.¹⁵ Untuk skripsi ini, penulis akan membahas restrukturisasi utang baik di luar forum pengadilan maupun yang dilakukan dalam forum pengadilan.

Jadi penjelasan dari judul skripsi ini adalah suatu pembahasan mengenai akibat-akibat hukum sebagai konsekuensi yang terjadi pada kreditor preferen yang memiliki hak-hak untuk didahulukan pembayarannya yang ia peroleh karena piutangnya dijamin dengan jaminan kebendaan tertentu dari debitor ataupun karena suatu hak istimewa yang telah ditentukan undang-undang, dalam hal terjadi restrukturisasi utang yang merupakan penyusunan kembali utang debitor atas kreditor yang bersangkutan baik di luar pengadilan maupun dalam forum pengadilan.

¹⁴ Bandingkan J. Satrio, Hukum Jaminan: Hak-Hak Jaminan Kebendaan, Cetakan Pertama, PT. Citra Aditya Bakti, Bandung, 1991. h. 28 (Selanjutnya disebut "J. Satrio, Hukum Jaminan") yang menyatakan demikian "Undang-undang menyebutkan ada tiga macam hak untuk didahulukan yaitu privilege, gadai dan hipotik (pasal 1133 KUH Perdata). Ketiga-tiganya disebut hak yang didahulukan (hak-hak preferent). Di sini kita menjumpai hak untuk didahulukan dalam arti luas. Untuk menghindarkan kekacauan dalam penggunaan istilah, maka kita membedakannya dari hak untuk didahulukan dalam arti sempit. Hak untuk didahulukan dalam arti sempit adalah hak tagihan yang oleh undang-undang digolongkan dalam hak istimewa (privilege). Tagihannya disebut tagihan yang didahulukan atau tagihan preferent (*bevoorechte schulden*), sedang krediturnya disebut kreditor yang didahulukan (*bevoorrechte schuldeiser*), kreditor preferent."

¹⁵ Elijana, op.cit.

1.3 Alasan Pemilihan Judul

Penulis memilih judul “KEDUDUKAN HUKUM KREDITOR PREFEREN DALAM RESTRUKTURISASI UTANG,” karena kreditor preferen memiliki hak untuk didahulukan pembayarannya menurut hukum. Namun hak ini tidak selamanya dapat dipertahankan, beberapa perbuatan hukum tertentu di antaranya adalah restrukturisasi utang dapat mengubah kedudukannya tersebut menjadi kreditor konkuren. Dalam kaitannya tersebut maka dirasa perlu untuk dilakukan penelitian berkaitan dengan kedudukan hukum kreditor preferen dalam restrukturisasi utang.

Mungkin juga menjadi pertanyaan berkaitan dengan alasan pemilihan judul ini, mengapa kreditor preferen dan tidak kreditor konkuren kalau dilihat dari segi keadilan bagi perlindungan hukum mereka. Kreditor konkuren telah demikian jelas kedudukannya, mereka ini tidak mendapatkan perlakuan khusus menurut hukum dan untuk pembagian hasil likuidasi aset debitor mereka ini saling bersaing untuk berbagi menurut perimbangan, hal tersebut tidak lain karena memang demikian konsekuensi hukumnya telah menentukan.

1.4 Tujuan Penulisan

Tujuan utama penulisan skripsi ini adalah sebagai upaya untuk memenuhi persyaratan akademik penulis dalam rangka meraih gelar Sarjana Hukum pada Fakultas Hukum Universitas Airlangga.

Selain itu setidaknya dengan dilakukannya penulisan skripsi ini penulis juga berharap antara lain:

- (1) Mengetahui kedudukan hukum dari kreditor preferen dalam restrukturisasi utang di luar pengadilan (informal) menurut hukum positif di Indonesia;
- (2) Mengetahui kedudukan hukum dari kreditor preferen dalam restrukturisasi utang dalam forum pengadilan (formal), yaitu PKPU dan Perdamaian menurut hukum positif di Indonesia;
- (3) Menambah perbendaharaan kepustakaan khususnya mengenai restrukturisasi utang ditinjau dari segi hukumnya;
- (4) Memberikan kontribusi — meskipun toh mungkin kecil — untuk dilakukannya penelitian hukum lebih lanjut mengenai restrukturisasi utang.

1.5 Metodologi Penulisan

Perlulah dikemukakan di sini mengenai metodologi penulisan yang penulis pakai untuk menyusun skripsi ini. Dengan demikian dapatlah diketahui pendekatan masalah yang dipergunakan, sumber-sumber hukum apa saja yang dipakai, bagaimana prosedur pengumpulan bahannya, dan juga bagaimana analisa bahannya, sehingga secara keseluruhan isi dari skripsi ini dapat dipertanggungjawabkan segi keilmiahannya. Berikut ini penulis uraikan metodologi penulisan yang dipakai dalam skripsi ini.

1.5.1 Pendekatan Masalah

Pendekatan masalah yang digunakan adalah pendekatan yuridis normatif dengan mendasarkan penelitian pada peraturan perundang-undangan yang berlaku. Penelitian dilakukan dengan menguraikan permasalahan yang menjadi

topik bahasan yang kemudian ditinjau secara yuridis melalui peraturan perundang-undangan yang terkait dengan masalah tersebut sehingga dapatlah ditarik suatu kesimpulan secara umum.

1.5.2 Sumber Bahan Hukum

Bahan hukum yang digunakan dalam penulisan ini terdiri atas bahan hukum primer dan bahan hukum sekunder. Bahan hukum primer antara lain meliputi peraturan perundang-undangan yang berlaku yang merupakan alat utama untuk melakukan analisis atas permasalahan yang menjadi topik bahasan.

Bahan hukum sekunder yang penulis pakai dalam menyusun skripsi ini antara lain literatur-literatur berupa buku-buku yang ditulis oleh para sarjana di bidang hukum, makalah-makalah, serta artikel-artikel yang relevan yang penulis peroleh terutama dari situs-situs di internet.

1.5.3 Prosedur Pengumpulan Bahan Hukum

Bahan hukum primer yang berupa peraturan perundang-undangan diperoleh dengan jalan menyeleksi dan menginventarisasinya terutama yang berkaitan dengan permasalahan yang akan dibahas. Peraturan perundang-undangan yang dipakai dalam analisis permasalahan dalam skripsi ini antara lain terutama peraturan perundang-undangan di bidang hukum jaminan, hukum perikatan, dan hukum kepailitan.

Sedangkan sumber hukum sekunder yang merupakan pelengkap diperoleh melalui studi kepustakaan dan pencarian artikel-artikel yang memiliki relevansi dengan permasalahan yang dibahas dalam skripsi ini.

1.5.4 Analisa Bahan Hukum

Bahan hukum yang telah terkumpul penulis penggunaan sebagai alat untuk menganalisis permasalahan yang akan penulis bahas dalam skripsi ini. Tinjauan utama tentunya menggunakan bahan hukum primer yaitu peraturan perundang-undangan, sehingga analisis permasalahan dalam skripsi ini didasarkan pada peraturan perundang-undangan yang berlaku.

Atas bahan hukum sekunder yang bersifat sebagai pelengkap saja, penulis penggunaan sebagai rujukan atau sekedar berfungsi untuk memperjelas bagaimana permasalahan tersebut ditinjau dari peraturan perundang-undangan ataupun asas-asas hukum yang ada.

1.6 Pertanggungjawaban Sistematika

Skripsi ini disusun ke dalam empat bab. Bab I sebagai bab pendahuluan dan merupakan pengantar sebelum melangkah lebih lanjut pada bab-bab berikutnya yang merupakan bab pembahasan dan juga bab kesimpulan. Pada bab I ini diuraikan mengenai latar belakang penulisan skripsi ini yang menguraikan pentingnya permasalahan ini untuk dikaji dan rumusan masalah yang akan menjadi pokok bahasan dari skripsi ini, disampaikan pula dalam bab ini mengenai

judul dan alasan mengapa judul ini dipergunakan, selanjutnya tujuan penulisan dari skripsi ini serta metodologi yang dipakai penulis dalam menyusun skripsi ini.

Bab II merupakan uraian yang menjawab rumusan masalah pertama mengenai kedudukan hukum dari kreditor preferen dalam restrukturisasi utang di luar pengadilan, pada bab ini dibicarakan bagaimana kedudukan hukum kreditor preferen menurut asasnya, apakah kreditor preferen itu wajib untuk terlibat dalam restrukturisasi utang yang diajukan debitor, dan apa yang menjadi konsekuensi hukum apabila kreditor preferen terlibat dalam restrukturisasi utang di luar pengadilan.

Bab III merupakan pembahasan mengenai kedudukan hukum kreditor preferen dalam hal terjadi restrukturisasi dalam forum pengadilan, yaitu PKPU dan perdamaian. Pembahasan diawali dengan sub bab mengenai mengapa PKPU dan Perdamaian itu termasuk sebagai bentuk restrukturisasi utang, sub bab berikutnya mengenai kedudukan kreditor preferen dalam PKPU kemudian dilanjutkan dengan kedudukan kreditor preferen dalam perdamaian.

Pada Bab IV akan ditarik kesimpulan atas apa yang telah dibahas pada dua bab sebelumnya. Pula disampaikan saran-saran yang diupayakan bagi perbaikan hukum yang lebih menjamin kepastian hukum, keadilan, dan manfaat bagi para pihak dalam restrukturisasi utang baik di luar maupun di dalam pengadilan.

BAB II
AKIBAT HUKUM RESTRUKTURISASI UTANG DI LUAR
PENGADILAN
TERHADAP KEDUDUKAN KREDITOR PREFEREN

Pada bab ini hendak dibicarakan mengenai kedudukan hukum dari kreditor preferen dalam restrukturisasi utang di luar pengadilan (informal). Sebagaimana disampaikan dalam bagian latar belakang skripsi ini, bahwa restrukturisasi utang informal itu tunduk pada hukum perjanjian dan hukum jaminan pada umumnya. Pembahasan pada bab ini akan diawali dengan uraian mengenai kedudukan kreditor pada umumnya, dilanjutkan dengan uraian mengenai bagaimana hak didahulukan dari kreditor preferen itu lahir, kemudian dibahas uraian bagaimana kedudukan hukum kreditor preferen dalam hal terjadi restrukturisasi utang terutama berkaitan dengan eksistensi dari hak untuk didahulukannya tersebut, dan pada akhir dari pembahasan bab ini akan diuraikan mengenai kemungkinan terjadinya kedudukan *pari passu* di antara para kreditor preferen yang terlibat dalam restrukturisasi utang.

2.1 Kreditor dan Jaminan Secara Umum

Jika kita hendak membicarakan kedudukan hukum dari kreditor preferen sepatutnya terlebih dahulu kita ketahui bagaimana kedudukan hukum kreditor itu secara umum, untuk itu kita akan bersentuhan dengan hukum jaminan. Pasal 1131 BW meletakkan asas umum hak seorang kreditor atas debitor yang menyatakan

bahwa Segala kebendaan debitor, baik yang bergerak maupun yang tak bergerak, baik yang sudah ada maupun yang baru akan ada di kemudian hari, menjadi tanggungan untuk segala perikatan perseorangan. Jelaslah di sini bahwa seluruh harta kekayaan debitor menjadi jaminan umum pelunasan utangnya kepada kreditor. Dengan kata lain Pasal 1131 BW telah menentukan bahwa demi hukum seluruh harta kekayaan debitor menjadi jaminan pembayaran utangnya kepada kreditor.¹⁶

Dalam praktek seringkali seorang debitor berutang kepada lebih dari seorang kreditor pada waktu yang bersamaan. Jika Pasal 1131 BW meletakkan jaminan secara umum atas seluruh harta kekayaan debitor, maka dalam Pasal 1132 BW diatur bagaimana pembagian aset debitor itu kepada para kreditornya apabila aset tersebut dijual lelang karena debitor tidak membayar utang-utangnya kepada para kreditornya. Dapatlah dibayangkan jika tidak dilakukan pengaturan tentang bagaimana pembagian harta debitor bilamana ia tak mampu lagi membayar utang-utangnya, tentunya para kreditor akan dahulu-mendahului untuk mengeksekusi harta kekayaan debitor yang bersangkutan. Undang-undang mengaturnya sebagaimana Pasal 1132 BW menentukan demikian:

Kebendaan tersebut menjadi jaminan bersama-sama bagi semua orang yang mengutangkan padanya; pendapatan penjualan benda-benda itu dibagi-bagi menurut keseimbangan, yaitu menurut besar-kecilnya piutang masing-masing, kecuali apabila di antara para berpiutang itu ada alasan-alasan yang sah untuk didahulukan.

Telah ditentukan dengan demikian oleh undang-undang bahwa cara pembagiannya di antara para kreditor adalah berdasarkan perimbangan menurut

¹⁶ Sutan Remy Sjahdeini, op.cit, h. 7

besar kecilnya piutang masing-masing (*pond's-pond's gewijs*). Pada bagian akhir dari redaksional Pasal 1132 BW dinyatakan “..... kecuali apabila di antara berpiutang itu ada alasan-alasan yang sah untuk didahulukan”, dari bagian kalimat inilah kita akan berangkat untuk membahas mengenai bagaimana kedudukan kreditor preferen itu lahir.

2.2 Kedudukan Hukum Kreditor Preferen

“Alasan-alasan yang sah untuk didahulukan”, sebagaimana dimaksud dalam Pasal 1132 BW tersebut di atas dijelaskan lebih lanjut dalam Pasal 1133 ayat (1) BW yang menyatakan bahwa hal untuk didahulukan di antara orang-orang berpiutang (kreditor) terbit dari hak istimewa, dari gadai dan dari hipotik. Demikianlah hak untuk didahulukan itu lahir dikarenakan kreditor memegang suatu hak istimewa atau gadai dan hipotik atas suatu barang milik debitor (jaminan kebendaan). Gadai atau hipotik ini merupakan pembebanan jaminan khusus atas benda milik debitor. Gadai dan hipotik yang disebutkan dalam Pasal 1133 ayat (1) BW hendaknya diinterpretasikan secara meluas sebagai semua bentuk lembaga jaminan kebendaan, karena saat ini lembaga jaminan tidak hanya berupa gadai dan hipotik saja melainkan juga Hak Tanggungan (UU No. 4 Tahun 1996) dan Fidusia (UU No. 42 Tahun 1999).

Hak istimewa dijelaskan oleh BW dalam Pasal 1134 ayat (1) BW sebagai suatu hak yang oleh undang-undang diberikan kepada kreditor sehingga tingkatnya lebih tinggi daripada orang berpiutang lainnya, semata-mata berdasarkan sifat piutangnya. Hak istimewa ini dibedakan sebagaimana terdapat

pada Pasal 1139 BW untuk piutang-piutang yang diistimewakan terhadap benda tertentu (*privilegie khusus*) dan Pasal 1149 BW untuk piutang-piutang yang diistimewakan atas semua benda bergerak dan tidak bergerak berdasarkan urutan prioritas sebagaimana telah ditentukan dalam pasal itu pula (*privilegie umum*). Hak istimewa atau disebut juga dengan *bevoorechte schuld* atau pula disebut dengan *privilegie* merupakan hak yang diberikan oleh undang-undang bukan diperjanjikan seperti gadai dan hipotik.¹⁷ Hak istimewa ini bukan merupakan hak kebendaan, namun dalam satu dua hal ia menunjukkan sifat *droit de suite* yang dimiliki oleh hak kebendaan.¹⁸ Hak istimewa ini sedikit banyak memberikan jaminan juga. Jadi hak istimewa ini juga merupakan hak yang memberi jaminan tapi bukan merupakan hak kebendaan.¹⁹

Jaminan — gadai, hipotik, hak tanggungan, fidusia, dan/ atau hak jaminan kebendaan lainnya — sebagaimana dinyatakan dalam Pasal 1133 ayat (1) BW tersebut memberikan hak kebendaan kepada kreditor pemegangnya, sehingga ia kemudian menjadi hak jaminan kebendaan (*zakelijke zekerheidsrechten*). Sebagai hak kebendaan yang bersifat memberikan jaminan maka ia memiliki pula sifat-sifat dari hak kebendaan yaitu:²⁰

1. Bersifat mutlak (*absoluut*), yaitu dapat dipertahankan terhadap siapapun juga;
2. *Droit de suite* (*zaaksevolg*), yaitu hak itu mengikuti benda tersebut dalam tangan siapapun benda itu berada;

¹⁷ Sri Soedewi Masjchoen Sofwan, *Hukum Perdata: Hukum Benda*, Cetakan Kelima, Penerbit Liberty, Yogyakarta, 2000, h. 33 (Selanjutnya disebut “Sri Soedewi, *Hukum Benda*”)

¹⁸ Menunjukkan sifat *droit de suite* ini berarti bahwa hak istimewa itu melekat mengikuti bendanya di manapun dan di tangan siapapun benda itu berada, karena hak istimewa itu dibebankan pada suatu benda tertentu (Pasal 1139 BW) maupun pada semua benda baik bergerak maupun tidak bergerak (Pasal 1149 BW).

¹⁹ Sri Soedewi, *Hukum Benda*, op. cit., h. 31

²⁰ Ibid, h. 25

3. *Droit de prioriteit*, yaitu hak yang lebih dulu terjadi memiliki tingkat yang lebih tinggi daripada yang terjadi kemudian (tingkat senioritas - penulis);
4. *Droit de preference*, yaitu memiliki hak untuk didahulukan pembayarannya.

Demikianlah hak jaminan kebendaan itu memberikan kedudukan didahulukan kepada pemegangnya dalam hal ini kreditor preferen.

Hak jaminan kebendaan ini lahir karena diperjanjikan. Perjanjian tersebut dituangkan dalam perjanjian pemberian jaminan. Perjanjian pemberian jaminan merupakan perjanjian yang bersifat *accessoir* (tambahan) atau biasa disebut pula sebagai perjanjian ikutan karena perjanjian jaminan ini mengikuti perjanjian pokoknya (perikatan yang dijamin).

Hukum Perdata mengenal pula hak perorangan di samping hak kebendaan, hak perorangan ini memiliki sifat yang relatif (nisbi), yaitu hanya dapat dipertahankan kepada orang-orang tertentu saja. Hak jaminan yang memiliki sifat hak perorangan (*persoonlijke zekerheidsrechten*) disebut dengan *borgtocht* atau hak jaminan perorangan, yaitu hak yang memberikan kreditor suatu kedudukan yang lebih baik, karena adanya lebih dari seorang debitor yang dapat ditagih.²¹ Perjanjian mengenai hal ini diatur dalam Pasal 1820 BW, yaitu perjanjian dengan mana seorang pihak ke tiga/ penjamin (*borg*), guna kepentingan debitor, mengikatkan diri untuk memenuhi perikatan kreditor manakala debitor yang bersangkutan tak mampu memenuhinya. Jadi hak jaminan ini baru memiliki nilai penting bilamana debitor tak mampu lagi melunasi utang-utangnya, yang mana kekayaannya tak dapat menutup seluruh kewajiban-kewajibannya kepada kreditor. Bagi kreditor pemegang jaminan perorangan ini dapatlah ia menuntut

²¹ J. Satrio, *Hukum Jaminan*, h. 14

pelunasan piutangnya — tentunya setelah ia mengambil pelunasan dari harta kekayaan debitor yang ternyata tidak mencukupi — kepada penjamin. Dalam praktek bisnis, jaminan perorangan ini lebih dikenal sebagai *guarantee*, yang dapat berbentuk *personal guarantee*, *bank guarantee*, dan *corporate guarantee*.

Kemudian yang menjadi pertanyaan adalah apakah hak jaminan perorangan ini memberikan pula hak untuk didahulukan bagi kreditor pemegangnya? Untuk hal ini harus kita kembalikan lagi pada asasnya, BW telah menentukan bahwa hak untuk didahulukan terbit dari hak istimewa atau gadai dan hipotik (jaminan kebendaan) sebagaimana dinyatakan dalam Pasal 1133 BW, dengan demikian hak jaminan perorangan tidak sekali-kali memberikan hak untuk didahulukan bagi kreditor pemegangnya.

2.3 Restrukturisasi Utang Informal dan Akibat Hukumnya Bagi Kreditor Preferen

Pada bab pendahuluan telah penulis sampaikan apa yang dimaksud dengan restrukturisasi utang. Pada intinya restrukturisasi utang adalah penyusunan kembali utang debitor, yang mana struktur utang yang baru disesuaikan dengan kondisi dan asumsi-asumsi ekonomi terkini dari debitor. Struktur utang yang lama adalah perikatan terdahulu yang tidak mampu dipenuhi oleh debitor. Struktur utang yang baru tersebut diberi bingkai hukum dengan menuangkannya dalam perjanjian restrukturisasi utang, dengan demikian perjanjian yang lama digantikan dengan perjanjian yang baru yang bertujuan

untuk memberikan kesempatan pada debitor untuk melaksanakan kewajiban-kewajibannya dan menjamin kelangsungan kegiatan usahanya.

Penggantian perjanjian yang lama menjadi perjanjian yang baru dikenal dalam Hukum Perikatan sebagai pembaharuan utang — pembaharuan piutang jika dilihat dari sisi kreditor — atau lebih populer dengan sebutan novasi. Novasi perikatan merupakan salah satu sebab hapusnya suatu perikatan sebagaimana dinyatakan dalam Pasal 1381 BW. Pembuat undang-undang sendiri tidak memberikan rumusan mengenai apa yang dimaksud dengan novasi itu, namun dengan mendasarkan pada ciri-ciri yang ada dalam ketentuan undang-undang — Pasal 1413 sampai dengan Pasal 1424 BW — doktrin telah memberikan perumusannya sendiri. Para sarjana pada umumnya memberikan perumusan yang hampir sama sebagai berikut: Novasi adalah perjanjian, dengan mana suatu perikatan dihapuskan dan sekaligus diadakan (dilahirkan) perikatan baru, yang menggantikan perikatan yang lama (yang hapus).²² Dari rumusan definisi novasi tersebut dapatlah ditarik unsur-unsur novasi yaitu:²³

- ada perjanjian yang sengaja diadakan;²⁴
- untuk menghapus suatu perikatan; dan
- mengadakan (melahirkan) perikatan baru, menggantikan yang lama.

Sedangkan novasi menurut Pasal 1413 BW terbagi atas 3 macam yaitu:

- novasi objektif, apabila debitor membuat perikatan yang baru untuk kepentingan kreditor, dimana perikatan yang baru tersebut menggantikan perikatan yang lama;
- novasi subjektif pasif, apabila terdapat penggantian debitor, dimana ditunjuk seorang debitor baru untuk menggantikan debitor yang lama;

²² Rutten, h. 385 dan Vollmar, h. 456 sebagaimana dikutip dari J. Satrio, Hukum Perikatan: Tentang Hapusnya Perikatan, Buku Kedua, Cetakan Pertama, PT. Citra Aditya Bakti, Bandung, 1996, h. 2 (Selanjutnya disebut "J. Satrio, Hapusnya Perikatan")

²³ Ibid

²⁴ lihat Pasal 1415 BW

- novasi subjektif aktif, apabila terdapat penggantian kreditor, dimana ditunjuk seorang kreditor baru untuk menggantikan kreditor yang lama.

Novasi objektif sebagaimana dimaksud dalam Pasal 1413 sub 1 BW terjadi jikalau para pihak sendiri, antara siapa ada perutangan (perikatan; penulis),²⁵ meniadakan perutangan ini dan menggantinya dengan yang baru.²⁶ Kata perikatan-hutang harus diartikan sebagai “kewajiban perikatan” atau “prestasi perikatan” atau dengan perkataan lain objek perikatannya. Objek perikatan meliputi, antara lain, objek prestasi daripada perikatan yang bersangkutan, dan penggantian yang dimaksud di sini penggantian objek prestasi perikatan.²⁷

Kemudian menjadi pertanyaan lebih lanjut lagi adalah sejauh mana penggantian objek prestasi pada perikatan itu dapat dikatakan telah terjadi novasi, karena tidak semua perubahan objek prestasi merupakan novasi. Undang-undang tidak memberikan batasan mengenai hal ini, namun kiranya para sarjana telah mengemukakan pendapatnya. Doktrin berpendapat, secara umum dapat dikatakan, bahwa dengan adanya perubahan kecil-kecil saja atas objek prestasi, belum dapat kita katakan ada penggantian objek prestasi perikatan. Dikatakan ada penggantian objek prestasi — dengan demikian terjadi novasi — kalau ada perubahan identitas yang cukup besar pada benda yang bersangkutan dan apakah, dalam peristiwa tertentu, ada terjadi hal demikian, untuk itu kita perlu

²⁵ Seksi Hukum Perdata Fakultas Hukum Universitas Gajah Mada lebih cenderung menggunakan istilah perutangan untuk perikatan, dalam skripsi ini penulis tetap menggunakan istilah perikatan sebagaimana pula digunakan oleh Bagian Hukum Perdata Fakultas Hukum Universitas Airlangga.

²⁶ Sri Soedewi Masjchoen Sofwan, SH., Hukum Perdata: Hukum Perutangan Bagian B, Seksi Hukum Perdata Fakultas Hukum Universitas Gajah Mada, Yogyakarta, 1980, h. 100 (Selanjutnya disebut “Sri Soedewi, Hukum Perutangan”)

²⁷ J. Satrio, Hapusnya Perikatan, op. cit., h. 23

memperhitungkan fungsi benda tersebut menurut pandangan masyarakat yang bersangkutan.²⁸ Berdasarkan hal tersebut novasi terjadi bilamana terdapat perubahan objek prestasi perikatan yang demikian prinsipil sehingga merubah sifat khas dari perikatan tersebut.

Memang tidaklah mudah untuk menetapkan batas yang tegas antara perubahan yang mengakibatkan penggantian perikatan dengan yang tidak, dan kesemuanya sudah barang tentu bergantung dari maksud para pihak, yang harus ternyata dengan tegas dari sepakat mereka.²⁹ Pasal 1415 BW menekankan, bahwa adanya suatu pembaharuan utang harus terang ternyata dari perbuatan hukum dari para pihak, tidak boleh hanya dianggap saja (*voorondersteld*).³⁰ Pendapat demikian merupakan patokan yang umum untuk menentukan batasan bahwa memang telah terjadi novasi. Senantiasa harus diselidiki apakah perikatan yang lama sama sekali menjadi hapus dan apakah para pihak bermaksud menjadikan suatu perikatan yang sama sekali baru.³¹ Tidak setiap perubahan harus diterima sebagai novasi, kepatutan dan kebutuhan praktek pergaulan hidup tak dapat menerima pendirian seperti itu, sebab dengan begitu kepastian hukum akan hilang.

Doktrin ternyata masih mengenal satu macam lagi novasi objektif, yaitu persetujuan untuk mengubah kausa daripada perjanjian antara para pihak. Dalam peristiwa novasi seperti ini, dapat terjadi bahwa objek prestasi perikatannya

²⁸ Meijers, h. 102, sebagaimana dikutip dari J. Satrio, Hapusnya Perikatan, op. cit., h. 24

²⁹ Pitlo-Bolweg, h. 393, sebagaimana dikutip dari J. Satrio, Hapusnya Perikatan, loc. cit.

³⁰ Wirjono Prodjodikoro, Azas-azas Hukum Perjanjian, Cetakan VIII, Penerbit Mandar Maju, Bandung, 2000, h. 139

³¹ Sri Soedewi, Hukum Perutangan, loc. cit.

sendiri tidak berubah, tetapi para pihak sepakat untuk mengubah sumber daripada perikatan mereka.³² Sebagai misal perjanjian jual-beli dengan penundaan pembayaran yang karena telah jatuh tempo dan belum dibayar juga oleh si pembeli kemudian atas kesepakatan bersama dirubah menjadi perjanjian utang-piutang dengan mengundurkan lagi masa jatuh tempo dengan disertai pengenaan bunga atas pokok utang. Di sini terdapat perubahan kausa yang semula perikatan itu lahir karena perjanjian jual beli kemudian atas kesepakatan para pihak perjanjian itu dihapus dan diganti dengan perjanjian utang-piutang yang melahirkan perikatan baru.

Bagaimana halnya dengan restrukturisasi utang? Kiranya restrukturisasi utang merupakan novasi objektif yang mana dilakukan perubahan pada objek prestasi perikatannya. Skema-skema restrukturisasi seperti pertukaran utang dengan obligasi konversi, pertukaran utang dengan saham, pertukaran utang dengan aktiva (aset), serta penghapusan sebagian utang (*haircut*) merupakan bentuk-bentuk dari perubahan objek prestasi perikatan. Dengan demikian objek prestasi perikatan yang semula berupa pembayaran sejumlah uang dirubah dengan objek prestasi yang lain yang telah disepakati oleh para pihak.

Dalam beberapa literatur yang membahas mengenai permasalahan novasi menyatakan bahwa perpanjangan masa jatuh tempo suatu utang, bukanlah merupakan suatu novasi.³³ Apakah dengan demikian restrukturisasi utang dengan

³² J. Satrio, Hapusnya Perikatan, op. cit., h. 30

³³ Bandingkan dengan J. Satrio, Hapusnya Perikatan, h. 27 yang menyatakan “..... persetujuan perubahan jadwal atau penjadwalan kembali pembayaran angsuran tidak dapat diterima sebagai suatu novasi.”; dan Sri Soedewi, Hukum Perutangan, h. 100 yang menyatakan “..... tidak dapat dikatakan meniadakan perutangan lama dan menjadikan perutangan baru suatu penundaan belaka daripada pembayaran”

skema *rescheduling* bukan merupakan suatu novasi? Dalam hal ini penulis kembali berpendirian bahwa pada dasarnya novasi objektif itu terjadi bilamana terdapat perubahan prinsipil objek prestasi perikatan sehingga merubah sifat khas dari perikatan itu, yang mana perubahan itu terjadi pada objek prestasi perikatannya ataupun *causa* dari perikatan tersebut. Sekedar perpanjangan jangka waktu jatuh tempo ataupun penjadwalan kembali pembayaran utang tidaklah mengubah prestasi maupun *causa* suatu perikatan sebagaimana disyaratkan untuk terjadinya suatu novasi objektif, oleh karenanya penulis juga sependapat apabila restrukturisasi dengan skema *rescheduling* saja bukan merupakan suatu novasi. Namun dalam praktek pada umumnya seringkali skema *rescheduling* dikombinasikan dengan skema restrukturisasi utang yang lain, sehingga tentunya merubah secara besar-besaran perikatan tersebut.

Kemudian apa akibat hukumnya pada kedudukan kreditor preferen bilamana ia melibatkan diri untuk turut serta dalam program restrukturisasi utang? Pada dasarnya setiap kreditor dapat menolak mengikuti program restrukturisasi utang yang diajukan debitor, namun sekali lagi terdapat pertimbangan-pertimbangan tertentu misalnya saja dalam pertimbangan kreditor preferen itu antara lain kemungkinan nilai penjualan objek jaminan yang jauh di bawah nilai piutang (meskipun toh kekurangan pelunasannya dapat ditagih dan ditempatkan sebagai tagihan konkuren), biaya-biaya yang dikeluarkan untuk kegiatan pelelangan nantinya, lamanya waktu pelaksanaan eksekusi dan lain-lain di samping pertimbangan untuk tetap mempertahankan eksistensi usaha debitor

sebagai mitra bisnis. Untuk itulah kiranya kreditor preferen dapat mempertimbangkan untuk mengikuti program restrukturisasi utang.

Kreditor preferen memiliki hak untuk didahulukan, karena ia memiliki hak istimewa yang lahir karena undang-undang atau memegang suatu jaminan khusus yang lahir karena gadai, hipotik, hak tanggungan, fidusia, atau hak jaminan kebendaan lainnya. Jaminan kebendaan ini haruslah diperjanjikan antara debitor atau pemberi jaminan dengan kreditor yang mana sifat dari perjanjiannya adalah *accessoir* dari perikatan pokoknya. Asas dari perjanjian yang bersifat *accessoir* adalah hapus bilamana perikatan pokoknya hapus.³⁴

Pasal 1381 BW menentukan bahwa novasi adalah salah satu sebab hapusnya suatu perikatan. Hapusnya perikatan yang lama ini akan menghapuskan pula *accessoir-accessoir* dari perikatan itu. Perjanjian jaminan merupakan *accessoir* dari suatu perikatan pokok, dengan hapusnya perikatan pokok ini maka hapus pulalah perjanjian jaminan itu. Hak jaminan itu ada karena diperjanjikan antara kreditor dengan debitor, apabila perjanjian jaminan ini hapus tentunya kreditor tidak lagi memegang suatu hak jaminan kebendaan, dengan demikian ia berkedudukan sebagai kreditor konkuren.

³⁴ Bandingkan dengan J. Satrio, *Hukum Jaminan*, h. 146 yang menyatakan "Hak gadai hapus dengan hapusnya perikatan pokok yang dijamin dengan gadai. Ini sesuai dengan sifat *accessoir* daripada gadai, sehingga nasibnya bergantung kepada perikatan pokoknya" dan pada h. 323 yang menyatakan "Hipotik berakhir karena hapusnya perikatan pokok. Ini sesuai dengan sifat *accessoir* daripada hipotik, sehingga nasibnya bergantung dari perikatan pokoknya." Juga lihat Sri Soedewi, *Hukum Benda*, h. 103 yang menyatakan "Hipotik itu seperti halnya pada gadai merupakan perjanjian yang *accessoir*, Karena merupakan perjanjian yang *accessoir* maka adanya tergantung pada perjanjian pokok, dan akan hapus dengan hapusnya perjanjian pokok." Lihat juga Sutan Remy Sjahdeini, *op.cit.*, h. 281 yang menyatakan "Hak Jaminan merupakan hak *accessoir* terhadap perjanjian pokok yang dijamin dengan jaminan tersebut. Perjanjian pokok yang dijamin itu ialah perjanjian utang-piutang antara Kreditor dan Debitor. Artinya, apabila perjanjian pokoknya berakhir, maka perjanjian Hak Jaminan demi hukum berakhir pula."

Demikian pula halnya dengan hak istimewa. Hak istimewa merupakan hak yang telah ditentukan oleh undang-undang dan melekat pada perikatannya dan karenanya bersifat *accessoir* pula,³⁵ apabila perikatannya ini dinovir sehingga hapus maka akan menghapus pula hak istimewanya. Hapusnya hak istimewa ini akan menempatkan kreditor yang semula memegangnya menjadi kreditor konkuren.

Akan terlihat lebih jelas lagi bagaimana kedudukan kreditor preferen ini dalam hal terjadi novasi atas perikatannya bila kita melihat dalam ketentuan Pasal 1421 BW, yang menyatakan bahwa hak-hak istimewa dan hipotik-hipotik yang melekat pada piutang lama, tidak berpindah pada piutang baru yang menggantikannya, kecuali kalau hal itu secara tegas dipertahankan oleh kreditor. Demikianlah baik hak istimewa maupun hak jaminan kebendaan yang memberikan hak didahulukan bagi kreditor pemegangnya tidaklah secara otomatis melekat pada perikatan baru yang dilahirkan karena novasi. Kreditor preferen yang melakukan novasi atas perikatannya akan menghapus hak preferennya itu yang dengan demikian akan menempatkannya sebagai kreditor konkuren.

Rupanya hukum memberikan upaya perlindungan atas kreditor preferen yang menyetujui melakukan novasi — dalam hal ini restrukturisasi utang — untuk tetap mempertahankan hak didahulukannya ini. Pasal 1421 BW menyatakan bahwa kreditor preferen baik dengan hak istimewa maupun dengan

³⁵ Bandingkan dengan J. Satrio, *Hukum Jaminan*, h. 29 yang menyatakan “....., bahwa lain daripada gadai dan hipotik yang diperjanjikan oleh para pihak, hak privelege menempel pada piutang-piutang tertentu demi undang-undang dan karenanya bersifat *accessoir*.”

hak jaminan dapat tetap mempertahankan hak didahulukannya itu dengan menyatakannya secara tegas. Hapusnya hak istimewa dan hipotik yang *accessoir* pada perikatan lama merupakan suatu konsekuensi logis adanya novasi. Sebenarnya bukan hanya hipotik saja melainkan pula gadai, hak tanggungan, dan fidusia jika ada. Namun hal ini tetap dapat dipertahankan jika kreditor ini menyatakannya dengan tegas.

Apa yang dimaksud dengan “..... secara tegas dipertahankan oleh si berpiutang.” Apakah cukup dengan menyatakan dalam perikatannya yang baru, sehingga dengan demikian perikatan baru tersebut telah mengandung *accessoir-accessoir*, baik hak istimewa maupun jaminan kebendaan dari perikatan yang lama? Namun jika memang ini yang dimaksud, tentunya Pasal 1421 BW bertentangan dengan prinsip novasi.³⁶ Bagaimana pula dengan hak istimewa yang tak dapat diperjanjikan yang mana ia lahir karena semata-mata telah ditentukan oleh undang-undang?

Kiranya yang dimaksud dengan “..... secara tegas dipertahankan oleh si berpiutang” dalam Pasal 1421 BW oleh beberapa sarjana diartikan bahwa sekalipun kreditor menyatakan tetap mempertahankan hak istimewa dan jaminan-jaminan kebendaan yang ada pada perikatan lama, tetapi pemberi jaminan tetap harus memberikan gadai dan hipotik sekali lagi,³⁷ sedang hipotiknya harus didaftarkan lagi. Hanya saja dengan perbedaan, yaitu bahwa sekalipun gadai diberikan sekali lagi dan hipotik dipasang lagi, tetapi kedudukannya tetap sama

³⁶ Pitlo-Bolweg, h. 398, sebagaimana dikutip dari J. Satrio, *Hapusnya Perikatan*, h. 54

³⁷ Dalam kutipan ini hanya disebutkan gadai dan hipotik saja, namun sesungguhnya juga meliputi seluruh lembaga jaminan kebendaan yang ada termasuk Hak Tanggungan dan Fidusia.

seperti gadai dan hipotik yang ada pada perikatan yang telah hapus dengan novasi. Kalau dulu kreditor adalah pemegang gadai yang pertama, maka sekarang kedudukannya juga sebagai pemegang gadai yang pertama dan kalau dulu hak kreditor adalah hak hipotik yang pertama, maka sekarang — sekalipun mungkin sudah ada pemegang hipotik yang kedua — kedudukannya tetap adalah kreditor pemegang hipotik yang pertama, sekalipun pendaftarannya mungkin di belakang pemegang hipotik kedua, tetapi dengan pembatasan hanya sampai sebesar nilai (beban) hipotik lama yang hapus.³⁸ Rupanya memang demikianlah maksud dari pembentuk undang-undang, yakni kreditor tetap dapat mempertahankannya kembali dengan memperjanjikannya serta memasang jaminan untuk sekali lagi, dengan perbedaan dari biasanya bahwa kedudukan jaminannya sebagaimana pada kedudukan jaminan sebelumnya yang melekat pada perjanjian yang telah dinovir.

Sedangkan bagi kreditor pemegang hak istimewa dapatlah ia untuk menyatakan tetap mempertahankan kedudukannya itu pada perikatan yang baru, bukan memperjanjikannya karena hak istimewa tidak dapat diperjanjikan karena ia lahir karena ketentuan undang-undang.

Pada restrukturisasi utang memang demikian yang terjadi. Kreditor-kreditor yang melibatkan diri dalam program restrukturisasi utang senantiasa meminta jaminan kebendaan kepada debitor untuk perikatannya yang baru. Namun pada umumnya terdapat satu hal yang menarik dimana para kreditor tersebut bersama-sama dijamin dengan satu objek jaminan yang sama pula, dalam hal ini penulis mengambil contoh kasus restrukturisasi utang pada *Asia Pulp and*

³⁸ Rutten, h. 404, sebagaimana dikutip dari J. Satrio, Hapusnya Perikatan, h. 55

Paper Group (APP) Indonesia yang mana Pemerintah Republik Indonesia melalui Badan Penyehatan Perbankan Nasional (BPPN) berkedudukan sebagai kreditor bersama-sama dengan *Export Credit Agency* (ECA) suatu konsorsium kreditor dari Eropa dan Kanada, *Trading Company* Jepang, para pemegang obligasi, dan perbankan. Dalam hal ini APP menyetujui dalam restrukturisasi utangnya untuk meletakkan jaminan sebesar maksimum 51% saham yang ia miliki pada empat *Principle Indonesian Operating Company* (PT. Indah Kiat Pulp & Paper, PT. Tjiwi Kimia, PT. Pindo Deli, dan PT. Lontar Papyrus).³⁹ Tentunya karena berupa saham maka lembaga jaminannya adalah gadai.⁴⁰ Yang menjadi permasalahan adalah bagaimana kemudian kedudukan dari para kreditor yang bersama-sama dalam satu dokumentasi perjanjian pokok memegang satu objek jaminan untuk semua kreditor dengan tingkat kedudukan yang sama, yang dikenal dengan kedudukan *pari passu*, yang mana pada umumnya kedudukan demikian ini ada diantara kreditor-kreditor konkuren.

³⁹ Badan Penyehatan Perbankan Nasional (BPPN), *Perkembangan Restrukturisasi Grup APP — Indonesia*, Laporan Bulanan, Edisi 38, Mei 2003, h. 2

⁴⁰ Lembaga jaminan gadai yang mensyaratkan bahwa objek gadai harus berada dalam kekuasaan kreditor, *inbezitstelling* (Pasal 1152 ayat (1) BW), pada Restrukturisasi Utang APP Group ini sebelumnya akan diletakkan di bawah mekanisme *Share in Trust* namun menimbang bahwa mekanisme tersebut bertentangan dengan hukum positif di Indonesia — *Trust* tidak dikenal dalam sistem hukum *Civil Law* yang dianut Indonesia — maka diubah dengan menggunakan *Instant Conversion Mechanism Convertible Bond*, dimana apabila debitor dinyatakan telah *default* atau *wanprestatie* maka atas persetujuan dari mayoritas kreditor peserta restrukturisasi utang, jaminan berupa saham tersebut akan dieksekusi dengan mengkonversikan utang tersebut menjadi saham. *Share in Trust* (Perwalian Saham) yang mengambil konstruksi hukum *Trust* dari *Common Law System* ditolak oleh BPPN karena selain konstruksi hukum yang demikian tidak dikenal di Indonesia juga dikhawatirkan akan terjadi pengambilalihan kepemilikan saham secara sewenang-wenang oleh kreditor.

2.4 Kedudukan *Pari Passu* Di Antara Para Kreditor Preferen

Sebagaimana dikemukakan di atas kedudukan *pari passu* biasanya hanya terjadi pada kreditor-kreditor konkuren yang tidak dijamin dengan suatu jaminan kebendaan, sehingga atas pelunasan piutang-piutangnya di antara mereka berkedudukan sama, tidak ada yang satu lebih didahulukan dari yang lain. Mereka bersama-sama mengambil pelunasan dari aset debitor — dalam hal terjadi pailit — menurut perimbangan berdasarkan besar kecilnya piutang (*pond's-pond's gewijs*). Asas pembagian demikian ini dikenal pula sebagai *pari passu pro rata parte*.⁴¹ Namun kedudukan demikian ini dapat pula terjadi pada kreditor yang terlibat dalam restrukturisasi utang meskipun toh mereka ini memegang suatu jaminan kebendaan secara bersama-sama. Hal ini merupakan konsekuensi logis dari adanya restrukturisasi utang, yang mana perikatan-perikatan lama hapus sehingga menghapuskan pula *accessoir-accessoirnya*, kemudian mereka membuat satu perikatan baru dimana para kreditor ini — dalam rangka mengamankan haknya — biasanya meminta kepada debitor untuk memperjanjikan jaminan kebendaan lagi yang melekat pada perikatan yang baru tersebut. Jaminan kebendaan ini dipegang oleh seluruh kreditor yang terlibat dalam restrukturisasi utang.

Pari passu memiliki pengertian kedudukan yang sama, tidak ada yang didahulukan, khususnya berlaku pada kreditor-kreditor dalam rangka pembagian

⁴¹ Bandingkan dengan Sutan Remy Sjahdeini, op.cit., h. 12 yang menyatakan demikian: "Sedangkan di antara Kreditor konkuren, mereka memiliki kedudukan yang sama dan berhak memperoleh hasil penjualan harta kekayaan Debitor, baik yang telah ada maupun yang baru akan ada di kemudian hari, setelah sebelumnya dikurangi dengan kewajiban membayar piutang kepada para Kreditor pemegang Hak Jaminan dan para Kreditor dengan Hak Istimewa secara proporsional menurut perbandingan besarnya piutang masing-masing Kreditor konkuren tersebut (berbagi secara *pari passu pro rata parte*).

aset yang mana masing-masing berhak untuk memperoleh porsi menurut perimbangan tanpa ada yang didahulukan di antaranya.⁴² Dalam perjanjian restrukturisasi utang biasanya terdapat klausula *pari passu* (*pari passu clause*) yaitu suatu klausula yang menyatakan bahwa tagihan dari kreditor-kreditor yang terlibat ke dalam kesepakatan restrukturisasi utang akan berkedudukan pada tingkat yang sama apapun sifat tagihan itu. Sedangkan *pari passu covenant* merupakan ketentuan yang mencegah debitor untuk memberikan perlakuan diskriminatif terhadap sekelompok kreditor peserta restrukturisasi utang dan atau mencegah sekelompok kreditor peserta restrukturisasi utang untuk menerima hak istimewa melebihi dari yang lain dari debitor.⁴³

Kemudian bagaimana akibat hukumnya bagi para kreditor preferen yang memiliki kedudukan yang sama tingkatnya ini? Pasal 1136 BW mengatur bahwa bagi kreditor yang memiliki kedudukan yang sama maka berlakulah diantara mereka ketentuan-ketentuan kreditor konkuren. Antara sesama kreditor preferen

⁴² Bandingkan dengan Henry Black Campbell, op. cit., h. 1115, yang menyatakan: "*pari passu — By an equal progress: equibly; ratably; without preference. Used especially of creditors who, in marshalling assets, are entitled any precedence over each other.*" Lihat pula *Duhaime's Canadian Law Dictionary*, <http://www.duhaime.org/dictionary/dict-p.aspx>, yang menyatakan: "*Pari passu — Latin: Equitably and without preference. This term is often used in bankruptcy proceedings where creditors are said to be 'pari passu' which means that they are all equal and that distribution of the assets will occur without preference between them.*"

⁴³ United Nations Institute for Training and Research (UNITAR), *The London Club Glossary of Selected Terms: Most Favoured Debt Clause*, Geneva, 2003, diakses melalui situs internet: http://www.unitar.org/dfm/Resource_Center/Glossaries/LondonClubGlossary/#7. Coba bandingkan dengan Sutan Remy Sjahdeini, *Kredit Sindikasi: Proses Pembentukan dan Aspek Hukum*, Cetakan Kedua, PT. Pustaka Utama Grafiti, Jakarta, 1997, h. 367 yang menyatakan demikian: "Berdasarkan *covenant* ini, penerima kredit menjamin bahwa kewajiban-kewajiban penerima kredit sebagaimana yang ditetapkan dalam perjanjian kredit akan mempunyai tingkatan yang sama dengan hak-hak dari kreditor-kreditor konkuren (*unsecured creditors*) lainnya. Di dalam praktek, bentuk umum dari klausula ini menghendaki agar penerima kredit menjamin bahwa kewajiban-kewajiban penerima kredit terhadap sindikasi adalah kewajiban-kewajiban yang tidak berjaminan dan tidak bersyarat dan bertingkat *pari passu* dan sama dengan semua kewajiban yang tidak berjaminan dari penerima kredit. Tujuan utama dari klausul ini adalah untuk memastikan bahwa penerima kredit tidak memberikan prioritas kepada seorang kreditor konkuren manapun pada waktu perjanjian kredit sindikasi disetujui."

dengan tingkat yang sama, berlaku pembagian *pond's-pond's*, menurut perimbangan besarnya tagihan mereka.⁴⁴ Jika kreditor A, preferen, memiliki tagihan terhadap X sebesar Rp 3.000.000, sedangkan kreditor B, preferen dengan tingkat yang sama, memiliki tagihan 1.000.000, dan C, konkuren, memiliki tagihan Rp 1.500.000, maka dalam hal A dan B menuntut hak preferensi mereka dan hasil eksekusi jaminan mereka sebesar Rp 3.000.000, maka perhitungannya sebagai berikut:

A menerima bagian $\frac{3}{4} \times \text{Rp } 3.000.000 = \text{Rp } 2.250.000$

B menerima bagian $\frac{1}{4} \times \text{Rp } 1.000.000 = \text{Rp } 750.000$

Karena hasil pelelangan setelah dikurangi hak preferen tidak bersisa maka C sebagai kreditor konkuren tidak mendapatkan bagian. Jadi dalam hal ini diantara para kreditor preferen yang memiliki tingkat sama berlaku ketentuan kreditor konkuren — pembagian menurut keseimbangan besar kecilnya tagihan — namun mereka ini tetap berkedudukan lebih tinggi bilamana ia dihadapkan dengan kreditor konkuren yang sebenarnya, yang sama sekali tidak dijamin dengan suatu jaminan kebendaan apapun.

Kreditor konkuren yang tidak mendapatkan pembayaran dalam hal aset debitor ternyata habis setelah dikurangi dengan hak preferen adalah konsekuensi hukum dari kedudukan konkurensinya, apakah ini adil? Penulis tidak ingin merelatifkan ukuran adil, tentunya hal ini adalah adil apabila diukur dari ketentuan-ketentuan hukum. Demikianlah hukum telah menentukan prioritas pembayarannya.

⁴⁴ J. Satrio, Hukum Jaminan, h. 37

BAB III

**KEDUDUKAN HUKUM KREDITOR PREFEREN DALAM
PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG DAN
PERDAMAIAN DALAM RANGKA KEPAILITAN
(RESTRUKTURISASI UTANG DALAM FORUM PENGADILAN)**

Pada bab dua telah penulis bahas permasalahan mengenai bagaimana kedudukan hukum kreditor preferen dalam restrukturisasi utang yang mana restrukturisasi utang tersebut dilakukan di luar pengadilan. Restrukturisasi utang di luar pengadilan hanya dapat terjadi karena semata-mata oleh adanya kehendak dari para pihak dalam hal ini yaitu kreditor dan debitor. Restrukturisasi utang di luar pengadilan atau lebih lazim dikenal dalam praktek sebagai restrukturisasi utang informal sepenuhnya tunduk pada ketentuan-ketentuan mengenai hukum perjanjian, demikian pula dengan kedudukan hukum dari kreditor preferen yang terlibat di dalamnya tunduk pada ketentuan mengenai hukum jaminan.

Selain restrukturisasi utang informal yang dilakukan di luar pengadilan, terdapat pula restrukturisasi utang yang dilakukan di dalam forum pengadilan, restrukturisasi utang ini melibatkan campur tangan pengadilan. Restrukturisasi utang yang dilakukan di dalam pengadilan biasa disebut pula sebagai restrukturisasi utang formal. Restrukturisasi utang formal ini dalam UU Kepailitan memiliki bentuk Penundaan Kewajiban Pembayaran Utang (PKPU) dan

Perdamaian dalam rangka Kepailitan (selanjutnya disebut Perdamaian).⁴⁵ Baik PKPU maupun Perdamaian memiliki dasar tujuan yang sama sebagai suatu bentuk restrukturisasi utang, yaitu tercapainya kesepakatan perdamaian di antara debitor dan para kreditornya serta menghindarkan debitor dari proses pailit yang berakibat dilakukannya pemberesan atas harta kekayaan debitor.

Berbeda dari restrukturisasi utang informal, maka restrukturisasi utang formal memiliki ketentuan tersendiri yaitu UU Kepailitan. Sehingga proses (hukum acaranya) maupun kedudukan pihak-pihak yang terlibat di dalamnya diatur dengan ketentuan tersebut, termasuk mengenai kedudukan hukum dari kreditor preferennya.

Bab ini akan membahas mengenai kedudukan hukum kreditor preferen dalam restrukturisasi utang formal. Untuk itu akan dibicarakan sedikit mengenai proses PKPU dan Perdamaian, mengapa PKPU dan Perdamaian itu merupakan bentuk dari restrukturisasi utang, dan akibat hukumnya bagi kreditor preferen baik pemegang hak jaminan kebendaan maupun kreditor dengan hak istimewa.

⁴⁵ Bandingkan dengan White & Case LLP et.al., *Guide to Restructuring in Asia 2001: Legal Issue Indonesia*, Asian Development Bank, 2001, h. 39 yang menyatakan demikian "*Only one formal corporate rescue process is available, namely the suspension of payment (moratorium) under Chapter II of the Bankruptcy Law.*"

3.1 Proses PKPU

UU Kepailitan memberikan wewenang kepada pengadilan untuk memeriksa permohonan PKPU yang diajukan baik oleh debitor maupun kreditor. PKPU hanya dapat diajukan sebelum putusan pailit dijatuhkan oleh pengadilan, dalam hal permohonan PKPU diajukan bersamaan atau setelah permohonan pailit diajukan, maka hakim wajib mendahulukan pemeriksaan PKPU atau menghentikan pemeriksaan permohonan pailit.

Pengadilan wajib memberikan PKPU sementara kepada debitor begitu permohonan PKPU diajukan dan menunjuk Hakim Pengawas dan Pengurus untuk bersama-sama debitor mengurus harta kekayaan debitor. Dengan demikian debitor tetap menguasai dan mengelola harta kekayaannya sejauh mendapat persetujuan dari Pengurus.

Pengadilan mengadakan rapat permusyawaratan dengan dihadiri para kreditor, rapat ini diadakan 45 hari setelah putusan PKPU sementara dijatuhkan. Dalam rapat permusyawaratan ini para kreditor dapat memberikan persetujuan atau penolakannya pada rencana perdamaian debitor yang telah diajukan kepada pengadilan atau untuk menyetujui pemberian PKPU tetap kepada debitor dengan jangka waktu paling lama 270 hari terhitung sejak putusan PKPU sementara dijatuhkan. Pemberian PKPU tetap dan/ atau persetujuan atas rencana perdamaian dapat diterima apabila disetujui oleh lebih dari $\frac{1}{2}$ kreditor konkuren yang haknya diakui atau sementara diakui yang hadir, yang mewakili $\frac{2}{3}$ dari jumlah piutang konkuren yang diakui atau untuk sementara diakui dan disetujui pula oleh $\frac{1}{2}$ jumlah kreditor dengan hak jaminan kebendaan yang hadir dan yang mewakili

paling sedikit $\frac{2}{3}$ bagian dari seluruh tagihan dari kreditor tersebut. Apabila rencana perdamaian tidak mendapat persetujuan dan pemberian PKPU tetap ditolak maka debitor dinyatakan pailit oleh pengadilan selambat-lambatnya pada hari berikutnya.

Tidak lebih dari 14 hari setelah rencana perdamaian mendapatkan persetujuan dari para kreditor, pengadilan harus memutuskan untuk mengesahkan atau menolak pengesahan rencana perdamaian tersebut. Kreditor yang menolak rencana perdamaian dapat mengemukakan alasannya terhadap rencana perdamaian yang akan disahkan. Pengadilan wajib menolak pengesahan dengan alasan limitatif sebagaimana ditentukan dalam Pasal 285 ayat (2) UU Kepailitan.

Suatu rencana perdamaian, sekali diajukan dan disahkan akan mengikat seluruh kreditor kecuali kreditor dengan hak jaminan kebendaan yang menolak memberikan persetujuan terhadap rencana perdamaian tersebut. Rencana perdamaian hanya dapat diajukan sekali, dan apabila ditolak oleh para kreditor atau tidak disahkan oleh pengadilan, debitor akan segera dinyatakan pailit dan seluruh asetnya akan dilikuidasi.

Selama masa PKPU, debitor tidak dapat dipaksa untuk melakukan pembayaran utang-utangnya ia hanya diijinkan untuk melakukan pembayaran kepada semua kreditor menurut perimbangan besarnya utang masing-masing. Semua tindakan eksekusi untuk memperoleh pelunasan utang, selama masa PKPU harus ditangguhkan dan semua sita yang telah diletakkan dinyatakan gugur.

Apabila debitor dinyatakan pailit dalam PKPU maka ia tidak dapat lagi mengajukan perdamaian dalam rangka kepailitan. Seluruh perbuatan hukum yang

dilakukan oleh debitor selama masa PKPU dengan persetujuan Pengurus apabila kelak dinyatakan pailit oleh pengadilan, maka perbuatan hukum tersebut dianggap dilakukan oleh kurator dan mengikat harta pailit. Atas keputusan ini debitor dapat mengajukan upaya hukum kasasi.

3.2 Akibat Hukum PKPU Bagi Kreditor Preferen

Pasal 222 UU Kepailitan memberikan hak baik kepada debitor maupun kreditor untuk mengajukan permohonan PKPU apabila mereka ini memperkirakan bahwa debitor tidak dapat melanjutkan pembayaran utangnya yang telah jatuh waktu dan dapat ditagih, dengan maksud agar debitor dapat mengajukan rencana perdamaian kepada para kreditornya. Adapun kreditor yang dimaksud di sini menurut penjelasan Pasal 222 ayat (2) adalah kreditor konkuren dan kreditor preferen. Dengan demikian PKPU ditujukan untuk semua kreditor, hal ini dengan pertimbangan bahwa keberhasilan tujuan PKPU hanya dapat tercapai apabila semua kreditor memberikan dukungan pada rencana perdamaian yang ditawarkan debitor dan terikat dengan kesepakatan tersebut.

Namun patut dicermati adalah Pasal 244 UU Kepailitan yang nampaknya tidak sejalan dengan maksud dari Pasal 222 UU Kepailitan yang memberlakukan PKPU bagi semua kreditor, Pasal 244 tersebut menyatakan demikian:

Dengan tetap memperhatikan ketentuan Pasal 246, penundaan kewajiban pembayaran utang tidak berlaku terhadap:

- a. tagihan yang dijamin dengan gadai, jaminan fidusia, hak tanggungan, hipotek, atau hak agunan atas kebendaan lainnya;
- b. tagihan biaya pemeliharaan, pengawasan, atau pendidikan yang sudah dibayar dan Hakim Pengawas harus menentukan jumlah tagihan yang sudah ada dan belum dibayar sebelum penundaan kewajiban pembayaran utang yang bukan merupakan tagihan dengan hak diistimewakan; dan

- c. tagihan yang diistimewakan terhadap benda tertentu milik Debitor maupun terhadap seluruh harta Debitor yang tidak tercakup pada ayat (1) huruf b.

Jika Pasal 222 UU Kepailitan menyatakan bahwa PKPU ditujukan bagi seluruh kreditor baik kreditor konkuren maupun kreditor preferen maka dalam Pasal 244 dinyatakan bahwa PKPU tidak berlaku bagi kreditor preferen.

Meskipun demikian terdapat akibat-akibat hukum bagi kreditor preferen atas hak preferennya, Pasal 246 UU Kepailitan menentukan tentang penangguhan pelaksanaan hak eksekusi kreditor dengan hak jaminan kebendaan untuk jangka waktu paling lama 270 hari, pasal ini merupakan ketentuan *stay* dalam PKPU yang memberlakukan Pasal 56 UU Kepailitan dengan penyesuaian jangka waktu PKPU tetap. Demikian pula Pasal 242 UU Kepailitan terhadap kreditor dengan hak istimewa khusus atas benda-benda tertentu milik debitor (*privilege* khusus) yang selama berlangsungnya PKPU juga harus menangguhkan pula haknya untuk menuntut pelunasan tagihannya dengan meminta penjualan benda-benda yang dibebani dengan *privelegie* khusus tersebut.

Berbeda dengan ketentuan kepailitan sebelum UU Kepailitan ini berlaku, maka dalam UU Kepailitan ini kreditor preferen diberikan hak untuk mengeluarkan suara bahkan merupakan syarat baik dalam penentuan pemberian PKPU tetap maupun dalam memberikan persetujuan penerimaan atas rencana perdamaian. Tidak terdapat ketentuan mengenai apa akibatnya jika kreditor preferen ini turut mengeluarkan suara dalam rapat-rapat tersebut, yang dalam ketentuan lama mereka ini akan kehilangan hak didahulukannya sehingga

berkedudukan sebagai kreditor konkuren. Ketentuan Pasal 281 ayat (1) mengenai syarat penerimaan rencana perdamaian menyatakan sebagai berikut:

Rencana perdamaian dapat diterima berdasarkan:

- a. persetujuan lebih dari $\frac{1}{2}$ (satu perdua) jumlah kreditor konkuren yang haknya diakui atau sementara diakui yang hadir pada rapat Kreditor sebagaimana dimaksud dalam Pasal 268 termasuk Kreditor sebagaimana dimaksud dalam Pasal 280, yang bersama-sama mewakili paling sedikit $\frac{2}{3}$ (dua pertiga) bagian dari seluruh tagihan yang diakui atau sementara diakui dari kreditor konkuren atau kuasanya yang hadir dalam rapat tersebut; dan
- b. persetujuan lebih dari $\frac{1}{2}$ (satu perdua) jumlah Kreditor yang piutangnya dijamin dengan gadai, jaminan fidusia, hak tanggungan, hipotek, atau hak agunan lainnya yang hadir dan mewakili paling sedikit $\frac{2}{3}$ (dua pertiga) bagian dari seluruh tagihan dari Kreditor tersebut atau kuasanya yang hadir dalam rapat tersebut.

Dengan tidak adanya ketentuan yang mengatur akibat hukum apabila kreditor preferen ini mengeluarkan suara dalam rapat-rapat PKPU termasuk mengajukan tagihannya kepada Pengurus, maka mereka ini akan tetap berkedudukan sebagai kreditor preferen dengan segala haknya untuk didahulukan. Hal ini merupakan konsekuensi yang logis jika dilihat dari ketentuan Pasal 222 UU Kepailitan yang melibatkan seluruh kreditor dalam PKPU.

Bagaimana dengan kreditor preferen dengan hak jaminan kebendaan yang tidak menyetujui rencana perdamaian yang diajukan oleh debitor? Pasal 281 ayat (2) UU Kepailitan menentukan bahwa bagi kreditor dengan hak jaminan kebendaan yang tidak menyetujui rencana perdamaian diberikan kompensasi sebesar nilai terendah di antara nilai jaminan atau nilai aktual pinjaman yang secara langsung dijamin dengan hak agunan atas kebendaan. Lebih lanjut Pasal 286 menentukan bahwa mereka ini tidak terikat dengan perdamaian yang disahkan oleh pengadilan.

Rencana perdamaian yang disahkan dan memperoleh kekuatan hukum tetap mengikat seluruh kreditor termasuk kreditor preferen yang menyetujui rencana perdamaian tersebut, karena tidak terdapat ketentuan UU yang menghapus atau mengurangi hak preferen mereka, maka dalam hal ini adalah tetap berkedudukan sebagai kreditor preferen dan apabila ternyata perdamaian ini dibatalkan di kemudian hari sehingga debitor dinyatakan pailit, maka kreditor preferen tersebut akan tetap berkedudukan separatis seolah-olah kepailitan tidak pernah terjadi pada debitor, dan ia pada waktunya dapat mengeksekusi jaminan yang ada di tangannya.

3.3 PKPU dan Perdamaian Dalam Kepailitan Sebagai Bentuk Restrukturisasi Utang

Perlu kiranya bagi penulis untuk memberikan penjelasan mengapa PKPU dan Perdamaian itu termasuk sebagai suatu restrukturisasi utang. *PriceWaterHouseCooper* membagi secara garis besar proses restrukturisasi utang itu ke dalam dua bagian.⁴⁶

Pertama, adalah restrukturisasi utang informal, sebagaimana telah dibahas pada Bab II skripsi ini, restrukturisasi utang informal merupakan kesepakatan belaka antara debitor dan kreditor. Restrukturisasi informal merupakan suatu proses dimana perusahaan dan para kreditornya menegosiasikan kembali perjanjian utang-piutangnya dan kewajiban kontraktual mereka yang didasarkan pada kesukarelaan dan demi kepentingan bersama. Prosesnya tidak didasarkan

⁴⁶ *PriceWaterHouseCoopers*, op.cit., h. 1

pada peraturan dan acuan tertentu ataupun intervensi pihak ketiga.⁴⁷ Suatu perjanjian tertulis menjadi bukti mengenai rencana restrukturisasi dan berbagai ketentuan baru merupakan hasil restrukturisasi tersebut.⁴⁸

Kedua adalah restrukturisasi utang formal, restrukturisasi utang ini merupakan suatu proses yang berlangsung di dalam konteks UU Kepailitan. Ini merupakan proses dimana perusahaan (debitor) memutuskan untuk mengajukan permohonan merehabilitasi perusahaan pada pengadilan.⁴⁹ Pengadilan kemudian memutuskan dengan berdasar pada persetujuan para kreditor untuk mengabulkan atau menolak permohonan tersebut.

PKPU atau juga dalam istilah Belanda dengan *Surseance van Betaling* atau dalam istilah Inggrisnya dengan *Suspension of Payment*, merupakan upaya perdamaian yang hanya dapat diajukan oleh debitor sebelum putusan pailit dijatuhkan oleh pengadilan. Sebagaimana dikatakan oleh Kartini Muljadi, S.H., PKPU merupakan pemberian kesempatan kepada debitor untuk melakukan restrukturisasi utang-utangnya, yang dapat meliputi pembayaran seluruh atau sebagian utangnya kepada kreditor konkuren. Jika hal tersebut dapat terlaksana dengan baik, pada akhirnya Debitor dapat memenuhi kewajiban-kewajibannya

⁴⁷ Meskipun tidak terdapat acuan tertentu sebagai *code of conduct* dari pelaksanaan proses restrukturisasi utang informal namun dalam beberapa kasus penyelesaian utang melalui restrukturisasi utang informal dapat melibatkan Satuan Tugas Prakarsa Jakarta (*the Jakarta Initiative Task Force*) yang dibentuk oleh Pemerintah yang berperan sebagai mediator dengan tata cara yang telah ditetapkan oleh Komite Kebijakan Sektor Keuangan (KKSK) yang bertujuan mempercepat penyelesaian utang swasta dengan pihak kreditor asing. Kegagalan dalam mediasi dapat berakhir dengan rekomendasi KKSK kepada Jaksa Agung untuk memohonkan pailit debitor.

⁴⁸ PriceWaterHouseCoopers, *ibid.*, h. 2

⁴⁹ *Ibid.*, h. 3

dan meneruskan usahanya.⁵⁰ Debitor selama PKPU tidak kehilangan penguasaan dan hak (*beheer en beschikking*) atas kekayaannya, tetapi hanya kehilangan kebebasannya dalam menguasai kekayaannya. Dalam PKPU, debitor dan pengurus merupakan dwi tunggal karena salah satu antara mereka tidak dapat bertindak dengan sah tanpa yang lain.⁵¹

Lebih lanjut Fred B. G. Tumbuan berpendapat, PKPU diajukan tidak berdasarkan pada keadaan dimana debitor tidak membayar utangnya atau insolvensi (lihat Pasal 222 UU Kepailitan; penulis) dan juga tidak bertujuan dilakukannya pemberesan (likuidasi atas *boedel* pailit). PKPU tidak dimaksudkan untuk kepentingan debitor saja, melainkan juga untuk kepentingan kreditornya, khususnya kreditor konkuren. PKPU bertujuan untuk menjaga jangan sampai seorang debitor karena suatu keadaan semisal likuid dan sulit memperoleh kredit, dinyatakan pailit, sedangkan bila debitor diberi waktu maka besar harapan ia dapat melunasi utang-utangnya. Pernyataan pailit dan keadaan seperti ini akan berakibat pengurangan nilai perusahaan, hal mana jelas merugikan para kreditor. Karenanya, dengan memberi waktu dan kesempatan kepada debitor, diharapkan bahwa ia, melalui reorganisasi usahanya dan atau restrukturisasi utang-utangnya,

⁵⁰ Kartini Muljadi, Kepailitan dan Penyelesaian Utang Piutang, sebagaimana dimuat dalam: Rudy A. Lontoh, et.al, Penyelesaian Utang-piutang: Melalui Pailit atau Penundaan Kewajiban Pembayaran Utang, Penerbit Alumni, Bandung, 2001, h. 173, sebagaimana dikutip pula oleh penulis dari Sutan Remy Sjahdeini, op. cit., h. 323

⁵¹ Kartini Muljadi, Kepailitan dan Penyelesaian Utang Piutang, sebagaimana dimuat dalam: Rudy A. Lontoh, et.al, *ibid*, h. 175, sebagaimana dikutip pula oleh penulis dari Sutan Remy Sjahdeini, *ibid*.

dapat melanjutkan usahanya dan dengan demikian membayar lunas utang-utangnya.⁵²

PKPU diajukan bilamana debitor memperkirakan bahwa dirinya tidak dapat membayar kewajibannya yang sudah dapat ditagih. Dalam kasus penundaan pembayaran, bahwa debitor berada dalam keadaan sulit untuk dapat memenuhi (membayar) utangnya secara penuh, misalnya, perusahaan debitor pada saat itu menderita kerugian, kebakaran yang menimpa pabrik, resesi ekonomi, dan lain-lain peristiwa *overmacht*. Kesulitan debitor seperti itu belumlah menjadi indikasi ke arah kebangkrutan (kepailitan). Apabila debitor diberikan waktu, ia akan sanggup (mampu) untuk memenuhi atau melunasi utangnya secara penuh. Untuk itulah, debitor dapat memohon penundaan pembayaran dengan tujuan agar ia bisa memperbaiki ekonomi dan perusahaannya yang terjebak oleh situasi di atas.⁵³

Dengan disetujuinya pemberian PKPU oleh pengadilan, dimana dalam masa tersebut kepada pihak kreditor dan debitor diberikan kesempatan untuk memusyawarahkan cara-cara pembayaran utangnya dengan memberikan rencana pembayaran seluruh atau sebagian utangnya, termasuk apabila perlu merestrukturisasi utangnya tersebut, jadi penundaan kewajiban pembayaran utang sebenarnya sejenis *moratorium*, dalam hal ini *legal moratorium*.⁵⁴

Mengenai mengapa PKPU merupakan bentuk restrukturisasi utang dapat pula kita lihat dalam ketentuan Pasal 265 UU Kepailitan, yang menentukan bahwa

⁵² Fred B. G. Tumbuan, Pokok-pokok Undang-undang tentang Kepailitan Sebagaimana Diubah oleh Perpu No. 1/ 1998, dalam: Rudhy Lontoh et. al., *ibid*, h. , sebagaimana dikutip pula oleh penulis dari Sutan Remy Sjahdeini, *ibid*, h. 324

⁵³ Zainal Asikin, Hukum Kepailitan dan Penundaan Pembayaran di Indonesia, Edisi Revisi, Cetakan Kedua, PT. Raja Grafindo Persada, Jakarta, 1994, h. 94

⁵⁴ Munir Fuady, Hukum Pailit 1998: Dalam Teori dan Praktek, PT. Citra Aditya Bakti Bandung, 1999, h. 177

Debitor berhak pada waktu mengajukan permohonan penangguhan pembayaran atau setelah itu menawarkan suatu perdamaian kepada kreditor. Mengacu pada pasal tersebut dapat disimpulkan bahwa bentuk restrukturisasi utang dalam PKPU adalah:

1. Debitor berhak menawarkan suatu perdamaian kepada kreditor-kreditornya, baik pada saat pengajuan PKPU ataupun sesudahnya;
2. Perdamaian tersebut ditujukan untuk diberikannya suatu penundaan pembayaran.

Sebagaimana telah penulis kemukakan di awal skripsi ini, restrukturisasi utang tidak lain merupakan penyusunan kembali utang-utang debitor, dengan ditawarkannya perdamaian dalam PKPU merupakan upaya debitor untuk menyusun atau mengonstruksikan kembali utang-utangnya terutama dengan menunda pembayarannya (*rescheduling*) baik disertai dengan bentuk-bentuk skema yang lain ataupun tidak sebagai strategi untuk penyelesaian kewajibannya.

Dari uraian di atas telah jelaslah mengapa PKPU itu termasuk sebagai suatu bentuk restrukturisasi utang. PKPU tidak lain memberikan kesempatan bagi kreditor untuk — dalam masa penundaan tersebut — melakukan berbagai upaya untuk memperbaiki kondisi keuangannya. Upaya-upaya tersebut tertuang dalam rencana perdamaian yang diajukan oleh debitor untuk mendapatkan persetujuan para kreditornya yang mana bila disetujui oleh sebagian besar kreditor akan disahkan oleh pengadilan yang akan mengikat semua pihak. Pada umumnya

rencana perdamaian sebagai upaya untuk merestrukturisasi utang debitor layak untuk disetujui apabila:⁵⁵

- a. Perusahaan debitor masih memiliki prospek usaha yang baik untuk mampu melunasi utang atau utang-utang tersebut apabila perusahaan debitor diberi penundaan pelunasan utang atau utang-utang tersebut dalam jangka waktu tertentu, baik dengan atau tanpa diberi keringanan-keringanan persyaratan dan atau diberi tambahan utang baru. Prakarsa Jakarta atau *the Jakarta Initiative Task Force*, menentukan jangka waktu tidak lebih dari 8 (delapan) tahun.
- b. Selain hal tersebut di atas, utang debitor dianggap layak untuk direstrukturisasi apabila para kreditor akan memperoleh pelunasan utang-utang mereka yang jumlahnya lebih besar melalui restrukturisasi daripada apabila perusahaan debitor dinyatakan pailit.
- c. Apabila syarat-syarat utang berdasarkan kesepakatan restrukturisasi menjadi lebih menguntungkan bagi para kreditor daripada apabila tidak dilakukan restrukturisasi.

Rencana perdamaian sebagaimana dimaksud di atas akan mengambil berbagai bentuk skema restrukturisasi utang sebagaimana pula telah penulis sampaikan di awal skripsi ini.

Dapatlah diperbandingkan PKPU yang terdapat dalam UU Kepailitan dengan *Chapter 11 U.S. Bankruptcy Code* tentang *Reorganization*. *Chapter 11* merupakan bagian dari *Bankruptcy Code* Amerika Serikat memberikan kesempatan baik kepada debitor (*voluntary petition*) maupun kreditor (*involuntary petition*) untuk menghindari upaya pailit pada diri debitor di bawah *Chapter 7 Liquidation*. Dalam *reorganization* menurut *Chapter 11*, debitor yang mengajukan permohonan *reorganization* dalam *Section 1101 sub section (1)* disebut sebagai "*debtor in possession*"⁵⁶ yang tetap berhak untuk menguasai harta kekayaannya

⁵⁵ Sutan Remy Sjahdeini, op.cit., h. 367

⁵⁶ United States of America, *Chapter 11 of US Bankruptcy Code: Reorganization*, Section 1101: Definitions for this chapter.

bersama-sama *trustee*.⁵⁷ Para kreditor pada umumnya dibayar dari pendapatan-pendapatan yang debitor peroleh setelah pengajuan permohonan *reorganization*,⁵⁸ dan setiap kreditor memperoleh hasil pelunasannya sesuai dengan rencana yang diusulkan (bandingkan dengan rencana perdamaian yang diajukan dalam PKPU) yang telah disetujui oleh para kreditor dan mendapatkan pengesahan pengadilan. Demikianlah halnya mengapa PKPU itu termasuk dalam restrukturisasi utang formal yang melibatkan campur tangan pengadilan dalam konteks undang-undang Kepailitan.

Tidak jauh berbeda dengan PKPU, Perdamaian juga memiliki persamaan dalam banyak hal dengan apa yang telah penulis kemukakan di atas. Perbedaan utamanya terletak pada lingkup penawaran perdamaian, PKPU memiliki lingkup tawaran perdamaian yang lebih luas dengan mengupayakan berbagai bentuk pembayaran kepada para kreditor, sedangkan Perdamaian lingkungnya lebih sempit yaitu sebatas mengupayakan kesepakatan untuk menentukan bagian masing-masing atau prosentase tertentu yang akan dibayar oleh debitor pailit atau kurator⁵⁹ tentunya dengan disertai *rescheduling* karena tidak mungkin tidak dilakukan penundaan pembayaran sementara salah satu syarat untuk memohonkan pailit adalah adanya utang yang telah jatuh waktu dan dapat ditagih. Lingkup tawaran perdamaian yang lebih sempit ini tidak lain merupakan akibat telah jatuhnya putusan pailit yang telah mendahuluinya.

⁵⁷ Ibid, Section 1107: Rights, powers, and duties of debtor in possession.

⁵⁸ Ibid, Section 1123: Contents of the plan

⁵⁹ Bandingkan dengan Munir Fuady, op.cit., h. 116 juga lihat pada Pasal 158 UU Kepailitan.

Dengan demikian Perdamaian juga merupakan upaya untuk menyusun kembali utang debitor setelah jatuh putusan pailit dan apabila perdamaian yang ditawarkan debitor disetujui serta mendapatkan pengesahan dari pengadilan maka kepailitan dinyatakan berakhir, demikian Pasal 166 UU Kepailitan menentukan.

3.4 Proses Perdamaian Dalam Kepailitan

Proses Perdamaian tidak jauh berbeda dengan proses PKPU. Hanya saja apabila PKPU diajukan sebelum jatuh putusan pailit, maka Perdamaian ini diajukan setelah putusan pailit dijatuhkan. Pasal 144 UU Kepailitan menyatakan bahwa debitor berhak menawarkan perdamaian kepada semua kreditor. Sedangkan Pasal 145 UU Kepailitan menetapkan bahwa rencana perdamaian harus diajukan paling lambat 8 (delapan) hari sebelum rapat verifikasi dengan mengumumkan dan meletakkannya pada kepaniteraan pengadilan dan salinannya disampaikan kepada masing-masing anggota Panitia Kreditor sementara.

Adapun yang berhak untuk mengeluarkan suara menyetujui atau tidak atas rencana perdamaian tersebut adalah para kreditor konkuren yang hadir dalam rapat. Rencana perdamaian diterima apabila disetujui oleh lebih dari $\frac{1}{2}$ kreditor yang hadir yang mewakili sedikitnya $\frac{2}{3}$ dari piutang yang diakui atau sementara diakui demikian Pasal 151 UU Kepailitan menentukan. Pasal 152 UU Kepailitan menetapkan voting kedua dilakukan jika rapat pertama dihadiri oleh lebih dari $\frac{1}{2}$ jumlah kreditor yang mewakili paling sedikit $\frac{1}{2}$ dari jumlah piutang yang menyatakan setuju atas rencana perdamaian yang diajukan, dengan ketentuan

para kreditor tidak terikat dengan suara yang telah dikeluarkan dalam rapat yang pertama.

Apabila rencana perdamaian disetujui oleh para kreditor konkuren, maka rencana perdamaian tersebut harus mendapatkan persetujuan dari pengadilan dalam sidang yang disebut *homologasi*. Pengadilan berwenang untuk mengesahkan atau menolak pengesahan dengan alasan-alasan limitatif sebagaimana ditentukan dalam Pasal 159 ayat (2) UU Kepailitan, yaitu:

- (1) Harta pailit, termasuk hak retensi sangat jauh melebihi jumlah yang dijanjikan dalam perdamaian;
- (2) Pememenuhan perdamaian tidak cukup terjamin;
- (3) Perdamaian telah tercapai karena penipuan, kolusi dengan seorang kreditor atau lebih, atau penggunaan cara-cara lain yang tidak jujur, tanpa melihat apakah debitor pailit turut melakukannya atau tidak.

Pasal 166 UU Kepailitan menyatakan apabila pengesahan perdamaian telah memperoleh kekuatan hukum yang pasti, berakhirlah kepailitan yang telah dijatuhkan sebelumnya.

Atas penolakan pengesahan rencana perdamaian yang telah disetujui, debitor dan kreditor yang menyetujui rencana perdamaian dapat mengajukan kasasi. Demikian pula kreditor yang menolak rencana perdamaian dapat mengajukan kasasi atas pengesahan perdamaian tersebut dengan alasan sebagaimana ditentukan dalam Pasal 159 ayat (2) UU Kepailitan.

3.5 Akibat Hukum Perdamaian Dalam Kepailitan Bagi Kreditor Preferen

Undang-undang nampaknya masih memberikan kesempatan bagi debitor pailit untuk mengajukan upaya Perdamaian tentunya dengan tujuan agar proses kepailitan — terutama likuidasi atas *boedel* pailit — dapat dihindari. Perdamaian — *accoord* (Belanda) atau *composition* (Inggris) — diartikan sebagai suatu perjanjian perdamaian antara si pailit (debitor; penulis) dengan para kreditor, di mana diadakan suatu ketentuan bahwa si pailit dengan membayar suatu prosentase tertentu (dari utangnya), ia akan dibebaskan untuk membayar sisanya.⁶⁰

Perdamaian ditawarkan oleh debitor kepada semua kreditor, demikian Pasal 144 UU Kepailitan menentukan. Berdasarkan ketentuan tersebut, maka yang berhak mengajukan Perdamaian adalah debitor saja yang ditujukan pada semua kreditor. Kemudian siapa pula yang dimaksud dengan “semua kreditor” dalam Pasal 144 UU Kepailitan itu? Jika kita lihat ketentuan dalam Pasal 149 ayat (1) jo. Pasal 162 UU Kepailitan yang menyatakan sebagai berikut:

Pemegang gadai, jaminan fidusia, hak tanggungan, hipotek, atau hak agunan atas kebendaan lainnya dan Kreditor yang diistimewakan, termasuk Kreditor yang mempunyai hak didahulukan yang dibantah, tidak boleh mengeluarkan suara berkenaan dengan rencana perdamaian, kecuali apabila mereka telah melepaskan haknya untuk didahulukan demi kepentingan harta pailit sebelum diadakannya pemungutan suara tentang rencana perdamaian tersebut.

Perdamaian yang disahkan berlaku bagi semua Kreditor yang tidak mempunyai hak untuk didahulukan, dengan tidak ada pengecualian, baik yang telah mengajukan diri dalam kepailitan maupun tidak.

Dengan demikian jelas bahwa Perdamaian hanya ditujukan bagi kreditor konkuren saja. Hal ini merupakan konsekuensi logis karena putusan pailit telah

⁶⁰ Zainal Asikin, op.cit., h. 48

dijatuhkan, dimana putusan pailit itu ditujukan untuk pembagian aset-aset debitor kepada kreditor yang tagihannya tidak mendapat hak didahulukan. Kemudian apakah akibatnya bagi kedudukan hukum kreditor preferen ini dengan adanya Perdamaian?

Sebagaimana telah disampaikan bahwa Perdamaian itu diajukan setelah jatuhnya putusan pailit oleh pengadilan. Jatuhnya putusan pailit ini akan diikuti dengan penangguhan hak eksekusi (*stay*) kreditor preferen dengan hak jaminan atas objek jaminan yang ada di tangannya untuk jangka waktu paling lama 90 (sembilan puluh) hari, demikian Pasal 56 ayat (1) UU Kepailitan menentukan. Apabila Perdamaian telah disetujui oleh para kreditor, kemudian disahkan oleh pengadilan dan telah memperoleh kekuatan hukum tetap maka akan berakibat pada berakhirnya proses kepailitan, dengan berakhirnya proses kepailitan tersebut penangguhan eksekusi sebagaimana diatur dalam Pasal 56 ayat (1) UU Kepailitan dapat diangkat berdasarkan Pasal 57 ayat (1) UU Kepailitan yang menyatakan bahwa apabila kepailitan diakhiri lebih dini maka penangguhan itu berakhir demi hukum. Berakhirnya penangguhan itu, tentu saja memulihkan hak kreditor preferen dengan hak jaminan untuk mengeksekusi objek jaminan yang ada di tangannya dengan kekuatan sendiri ataupun melalui penetapan pengadilan.

Perdamaian tidak berpengaruh terhadap kreditor dengan hak jaminan dan kreditor yang diistimewakan, tanpa melihat apakah mereka mengajukan diri (merupakan pihak) dalam proses kepailitan atau tidak.⁶¹ Undang-undang menentukan kreditor preferen tidak boleh mengeluarkan suara/ tidak mempunyai

⁶¹ Munir Fuady, *op. cit.*, h. 122

hak suara dalam rapat kreditor untuk menyetujui atau menolak rencana perdamaian yang ditawarkan oleh debitor pailit, sebab putusan Perdamaian ini (baik yang ditolak maupun yang diterima) tidak akan mempengaruhi posisinya.⁶² Ketentuan mengenai larangan kreditor preferen mengeluarkan suara dalam rencana perdamaian diatur dalam Pasal 149 ayat (1) UU Kepailitan dengan tidak mengurangi hak kreditor dengan jaminan dan kreditor diistimewakan tersebut untuk meminta haknya selaku kreditor konkuren apabila nilai objek jaminan yang dieksekusi tidak mencukupi pembayaran utangnya sebagaimana ditentukan dalam Pasal 138 UU Kepailitan.

Bagaimana halnya kreditor preferen yang menghendaki untuk terlibat dalam Perdamaian sehingga ia berhak pula untuk mengeluarkan suara dalam penentuan rencana perdamaian? Undang-undang membolehkannya asalkan kreditor tersebut melepaskan haknya selaku kreditor dengan hak jaminan dan atau kreditor dengan hak istimewa, yang berarti selanjutnya dia akan menjadi kreditor konkuren, demikian Pasal 149 ayat (1) dan ayat (2) UU Kepailitan menetapkan.⁶³ Bahkan apabila ternyata rencana perdamaian itu ditolak baik oleh para kreditor konkuren maupun pengadilan, sehingga proses kepailitan dibuka kembali, maka kreditor preferen yang telah melepaskan haknya ini akan tetap berkedudukan sebagai kreditor konkuren.

Pasal 169 UU Kepailitan patut dicermati dalam kaitannya dengan kedudukan kreditor dengan hak istimewa, pasal tersebut menentukan demikian:

⁶² Ibid, h. 82

⁶³ Bandingkan Ibid, h. 123

Apabila piutang yang hak istimewanya diakui dengan syarat, kewajiban sebagaimana dimaksud dalam Pasal 168 terbatas pada pemberian jaminan, dan apabila pemberian jaminan tersebut tidak dipenuhi, kurator hanya wajib menyediakan suatu jumlah cadangan dari harta pailit sebesar hak istimewa tersebut.

Maka bagi kreditor dengan hak istimewa yang haknya tersebut diakui dengan bersyarat, untuk memenuhi tuntutan mereka ini cukup dengan memberikan jaminan saja dan apabila tidak dipenuhi, kurator wajib menyediakan sejumlah uang cadangan dari harta pailit yang dapat dituntut berdasarkan hak istimewa tersebut.

Dalam hal rencana perdamaian telah mendapatkan persetujuan dari kreditor yang memiliki hak suara yang sah agar memiliki kekuatan mengikat diperlukan pengesahan dari Pengadilan. Dengan disahkannya rencana perdamaian tersebut untuk menjadi perjanjian perdamaian yang mengikat segenap kreditor konkuren maka pengesahan perdamaian ini membatalkan putusan pernyataan pailit yang telah diucapkan sebelumnya. Meskipun telah mendapat persetujuan dari mayoritas kreditor yang memiliki hak suara yang sah, Pengadilan wajib untuk menolak pengesahan rencana perdamaian tersebut dengan pertimbangan sebagaimana Pasal 159 ayat (2) UU Kepailitan, dengan ditolaknya permohonan pengesahan rencana perdamaian tersebut maka proses kepailitan tetap dilanjutkan.

Kreditor dapat menuntut dibatalkannya perdamaian yang telah disahkan dalam hal debitor pailit lalai memenuhi isi perdamaian, demikian Pasal 170 ayat (1) UU Kepailitan mengatur. Atas tuntutan tersebut beban pembuktian ada pada debitor pailit untuk membuktikan bahwa isi perdamaian telah dipenuhi dan hakim

karena jabatannya berwenang memberikan kesempatan kepada debitor untuk memenuhi kewajibannya itu dalam waktu satu bulan. Dalam hal tuntutan pembatalan oleh kreditor tersebut tersebut dipenuhi, maka hakim memerintahkan agar proses kepailitan dibuka kembali serta Hakim Pengawas dan Panitia Kreditor yang menjabat dalam putusan pailit sebelumnya diangkat kembali, dan untuk itu diberlakukan kembali seluruh ketentuan dalam proses kepailitan. Dengan dibukanya kembali proses kepailitan ini, debitor tidak dapat lagi menawarkan perdamaian untuk kedua kalinya.

BAB IV

PENUTUP

4.1 Kesimpulan

Kesimpulan yang diperoleh dalam pembahasan dua bab sebelumnya adalah sebagai berikut:

1. Bahwa restrukturisasi utang informal pada hakikatnya merupakan suatu novasi perikatan sebagaimana diatur dalam Pasal 1413 BW, adapun jenis novasinya adalah novasi objektif yaitu terdapat penggantian objek prestasi perikatan yang bersangkutan. Adanya novasi berakibat hapusnya perikatan yang lama dan lahir perikatan baru yang menggantikannya. Hapusnya perikatan yang lama menghapus pula *accessoir-accessoir* dari perikatan tersebut, hal ini berakibat pada hak istimewa ataupun perjanjian jaminan kebendaan yang merupakan *accessoir* perikatan tersebut akan turut hapus pula. Hak untuk didahulukan dari kreditor preferen lahir karena kreditor tersebut memegang hak istimewa maupun hak jaminan kebendaan, dengan hapusnya *accessoir* tersebut maka akan menempatkan kreditor preferen yang bersangkutan pada kedudukan sebagai kreditor konkuren. Namun hal tersebut tidaklah berlaku mutlak, kreditor preferen yang melibatkan diri dalam restrukturisasi utang itu dapat mempertahankan kedudukannya dengan memperjanjikannya kembali secara tegas dan memasang kembali jaminan-jaminan yang diperjanjikan seperti pada perikatan sebelumnya.

2. Bahwa di samping restrukturisasi utang informal terdapat pula restrukturisasi utang formal yang merupakan restrukturisasi utang dengan melibatkan peran pengadilan dalam konteks UU Kepailitan. Bentuk dari restrukturisasi utang ini adalah PKPU dan Perdamaian dalam rangka kepailitan.

Akibat Hukum PKPU bagi kreditor preferen antara lain:

- Ditangguhkannya pelaksanaan eksekusi selama masa PKPU tetap yaitu paling lama 270 (dua ratus tujuh puluh) hari terhitung sejak PKPU sementara ditetapkan;
- Kreditor preferen boleh mengajukan tagihan-tagihannya kepada pengurus dan berhak memberikan suara dalam rapat berkenaan dengan penentuan pemberian PKPU tetap dan/ atau persetujuan penerimaan perdamaian;
- Rencana perdamaian yang disahkan pengadilan mengikat pula kreditor preferen yang menyetujuinya dengan tidak mengurangi atau menghapus hak didahulukannya, karena tidak ada ketentuan dalam UU Kepailitan yang menentukan hapusnya hak didahulukan dari kreditor preferen akibat ia terlibat dalam rapat-rapat PKPU
- Bagi kreditor preferen yang tidak menyetujui rencana perdamaian diberikan kompensasi sebesar nilai terendah di antara nilai jaminan atau nilai aktual pinjaman yang secara langsung dijamin dengan hak agunan atas kebendaan.

Akibat hukum Perdamaian dalam Kepailitan bagi kreditor preferen:

- Diangkatnya penangguhan eksekusi akibat putusan pailit sebelumnya dalam hal Perdamaian telah mendapatkan pengesahan pengadilan;

- Kreditor preferen tidak boleh mengeluarkan suara berkenaan dengan rencana perdamaian yang diajukan oleh debitor pailit, kecuali kreditor preferen menyatakan melepas haknya untuk didahulukan sehingga ia berkedudukan sebagai kreditor konkuren beserta akibat-akibat hukumnya;
- Bagi kreditor dengan hak istimewa yang diakui dengan bersyarat maka bagi mereka disediakan jaminan atas tuntutan hak tersebut, apabila tidak disediakan jaminan maka kurator wajib menyediakan cadangan dari harta pailit untuk memenuhi tuntutan tersebut

4.2 Saran

Saran-saran yang dapat disampaikan berkenaan dengan kedudukan hukum kreditor preferen dalam restrukturisasi utang antara lain sebagai berikut:

1. Perlu adanya peraturan perundang-undangan yang definitif untuk menjamin kepastian hukum yang mengatur permasalahan restrukturisasi utang informal termasuk ketentuan yang mengatur kedudukan hukum kreditor preferen yang menghendaki untuk terlibat dalam restrukturisasi utang dengan perlindungan hukum yang wajar;
2. Bahwa kesepakatan restrukturisasi utang informal hanyalah mengikat debitor dan para kreditor yang menyetujuinya, sedangkan bagi kreditor yang tidak menyetujui dapat saja menggagalkan kesepakatan tersebut dengan mengajukan permohonan pailit kepada Pengadilan. Kondisi tersebut dapat merugikan program restrukturisasi utang yang telah berjalan, untuk itu perlu diadakan ketentuan yang dapat melindungi kepentingan segenap pihak.

3. Perlu pula dibuat suatu ketentuan yang menjamin bahwa apabila telah dilaksanakan restrukturisasi utang informal dan ternyata gagal akibat itikad buruk debitor dalam memenuhi kewajibannya, maka tertutup kesempatan bagi debitor untuk mengajukan restrukturisasi utang formal, hal ini demi menjamin kepastian hukum dan keadilan bagi kreditor yang beritikad baik.

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SUMMARY OF KEY TERMS RESTRUCTURING

APP GROUP — INDONESIA

1. Amount of Debt

The amount of liabilities by Purinusa and 4 PIOC is no less than USD 6 billion (IBRA's (Indonesian Bank Restructuring Agency) portion +/- 15.2%), of which the amount will be recalculated and verified by Ernst & Young as proof of debt process.

2. Restructuring Scheme

Tranche A (sustainable debt — Term Loan) amounts to USD 1.2 Billion

- Interest Rate:

Years 1~3 : Applicable Rate + 1% (capped at 6% p.a, while in Rupiah is capped at 14% p.a)

Years 4~5 : Applicable Rate + 2% p.a

Years 6~10 : Applicable Rate + 3% p.a

Applicable Rate:

a. In USD : SIBOR

b. In Euro : EURIBOR

c. In JPY : TIBOR

d. In Rupiah: SBI

- Tenor: 10 years

- Tranche A must be paid off within 10 years without fixed schedule and cannot be extended

Tranche B (Refinanceable Debt) amounts to USD 3 Billion

- Interest Rate:

Years 1~3 : Applicable Rate + 1% (capped at 6% p.a, while for the Rupiah is capped at 14% p.a)

Years 4~5 : Applicable Rate + 2% p.a

Years 6~10 : Applicable Rate + 3% p.a

- Tenor: 10 years

Debt principal in Tranche B will be paid in full by the end of the period with payment source from the proceeds of refinancing.

Tranche C (Unsustainable Debt/ Instant Convertible Bonds)

- Total amount of debt in Tranche C derives from the total amount of debt determined through Proof of Debt process added with *Contingent* and *Unresolved Claims* and subtracted by the total amounts of Tranche A and Tranche B.
- Interest coupon of Tranche C is accrued and capitalized for 12 years and the financing source derives from Monthly Mandatory Debt Service (MMDS) and Excess Cash.
Years 1~3 : 1%
Years 4~12: 2%
- Tenor: 12 years, PIOC holds option right to extend the tenor by 3 years with interest rate SIBOR + 1% (capped at 3% p.a)

3. Allocation Formula

Allocation of EBITDA/ Tranche A/ Tranche B in each PIOC:

- Indah Kiat : 55%
- Tjiwi Kimia : 18%
- Pindo Deli : 13.5%
- Lontar Papyrus : 13.5%

4. Monthly Mandatory Debt Service (MMDS)

Year Amount of MMDS To Pay (in USD million)

1~3 : 30

4~5 : 35

6~onwards: 40

- MMDS be paid as of Effective Date by each of PIOC and is controlled by each PIOC and Creditor.
- MMDS be paid on until all tranches are paid in full.
- MMDS allotted to payment in the following consecutive order:
 - a. Tranche A Interest
 - b. Tranche B Interest
 - c. Tranche A Principal up to full payment
 - d. In case Tranche A is paid in full, the payment is allotted to Tranche B principal.
- MMDS application for Tranche C will further be governed in the Definitive Restructuring Documentation.

5. Debt of Purinusa

In particular the debt of PT. Purinusa Ekapersada originating from IBRA/ BII will be allotted to each PIOC with the formula as specified in the above-mentioned point 3.

6. Excess Cash

Excess Cash balance will be allotted to:

- a. 10% for Tranche C
- b. 90% for Debt Buy Back of Tranche A, B, and C

7. Debt to Equity (in event of default)

In event of default, as much as 50% of total amount of Tranches A, B, C will be converted to Equity with the following formula, while the remaining 50% of other debt to be treated as debt.

Formula:

$51\% \times \text{Remaining Debt}$

Total Restructured Debt

Note: 51% is percentage of shares ownership

8. Oversight Committee

The Committee is assigned to oversee the activities of APP-Indonesia which consists of 3 Monitoring Committees and 2 Commissioners representing the Creditor in each PIOC and are not in violation against the prevailing laws.

Note: 1 (one) Monitoring Committee to be elected directly by IBRA

9. Cash Control

Consists of 3 accounts as follows:

- Revenue Account (owned by PIOC)
- Operating Account (controlled by PIOC)
- MMDS Account (jointly controlled by PIOC and Creditor representatives)

10. Default Mechanism

The scheme as attached.

11. Cash Buffer

Maximum 6 x MMDS every month.

12. Cross Default

Cross default may happen if 3 PIOC are declared in default condition. If Indah Kiat and Tjiwi Kimia are under default condition, the Creditors in other 2 PIOC hold the option to declared the corresponding PIOC as default.

13. Debt to Equity Conversion Mechanism

The parties have agreed to exercise instant conversion mechanism (as attached).

14. Capital Expenditure (CAPEX)

Maximum CAPEX allowed is USD 180 million/ year.

IBRA has won approval from FSPC (Financial Sector Policy Committee) on the signing of this Summary of Key Restructuring Terms and subsequently the parties agreed that by early July 2003 the Definitive Restructuring Agreement will be signed.

**Lampiran II:
Master Debt Restructuring Agreement**

MASTER DEBT RESTRUCTURING AGREEMENT

by and among

GENERAL ELECTRIC COMPANY,
a New York corporation
acting through GE MEDICAL SYSTEMS,

and

GENERAL ELECTRIC CAPITAL CORPORATION,
a New York corporation,

and

INSIGHT HEALTH SERVICES CORP.,
a Delaware corporation,

AMERICAN HEALTH SERVICES CORP.,
a Delaware corporation,

and

MAXUM HEALTH CORP.,
a Delaware corporation,
and Certain of Its Subsidiaries

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- 7.1(k) Insurance Maintained by InSight
- 7.2(j) Guaranty Obligations of InSight
- 7.2(l) Indebtedness of InSight

EXHIBITS

1.51	Form of Management Stock Option Plan
1.83(i)	Form of AHS Termination Agreement
1.83(ii)	Form of Maxum Termination Agreement
2.1(c)	Form of Automatic Drafting Agreement
2.1(l)	Form of AHS Amended and Restated Promissory Note
5.1(a)	Form of Release and Settlement Agreement
5.1(d)(i)	Form of AHS Guaranty
5.1(d)(ii)	Form of Maxum Guaranty
5.1(k)(i)	Form of AHS Counsel's Opinion
5.1(k)(ii)	Form of Maxum Counsel's Opinion

MASTER DEBT RESTRUCTURING AGREEMENT

THIS MASTER DEBT RESTRUCTURING AGREEMENT (this "Agreement") is entered into as of _____, 1996 by and among General Electric Company, a New York corporation acting through GE Medical Systems ("GE Medical"), General Electric Capital Corporation, a New York corporation ("GE Capital"), and InSight Health Services Corp., a Delaware corporation ("InSight"), American Health Services Corp., a Delaware corporation ("AHS"), Maxum Health Corp., a Delaware corporation ("MHC"), and each of the undersigned subsidiaries of MHC (the "MHC First-Tier Subsidiaries").

R E C I T A L S

A. GE Capital is a financial institution which finances, among other things, equipment leases and purchases and GE Medical is a primary supplier of equipment and services to AHS, MHC and the MHC First-Tier Subsidiaries.

B. GE Capital has entered into a Loan and Security Agreement dated as of June 1, 1993 with AHS (the "Existing AHS Agreement"), pursuant to which GE Capital extended to AHS a term loan in the principal amount of \$15,188,229.68, evidenced by a Promissory Note dated June 1, 1993 (the "Original Term Note") made by AHS in favor of GE Capital, to finance (i) the buy out by AHS of certain equipment leases between GE Medical, as lessor, and AHS, as lessee, and (ii) the purchase by AHS of certain equipment from GE Medical. Also pursuant to the Existing AHS Agreement, AHS has issued in favor of GE Capital the Promissory Note dated June 1, 1993 in the principal amount of \$1,810,851.78 to provide for the payment of, among other things, state sale taxes imposed as a result of the sale of certain equipment by GE Medical to AHS. The obligations of AHS under the Existing AHS Agreement are secured by the collateral described in the Existing AHS Agreement.

C. GE Capital has also entered into the Asset Purchase Agreement dated as of December 31, 1992 with Philips Credit Corporation ("PCC") pursuant to which GE Capital purchased from PCC the Promissory Note dated March 9, 1989 (the "Original PCC Note") made by AHS in favor of PCC in the original principal amount of \$14,280,000. The remaining obligations of AHS under the Original PCC Note were restructured effective as of May 1, 1994 by reducing the then outstanding principal amount of \$9,582,205 to \$8,000,000, evidenced by the Amended and Restated Promissory Note dated April 12, 1994 made by AHS in favor of GE Capital in the principal amount of \$8,000,000. In addition, in connection with such refinancing, the Original Term Note (as such term is defined in Recital B above) was amended pursuant to the First Amendment to Promissory Note dated as of April 12, 1994

between AHS and GE Capital for the purpose of amending the amortization schedule thereto (the Original Term Note, as so amended, is referred herein as the "Term Note").

D. GE Medical has entered into certain installment sales contracts, lease agreements, financing agreements, service agreements, promissory notes and installment notes with AHS (collectively, the "AHS Financing Agreements").

E. GE Medical has entered into (i) an Agreement dated as of June 1, 1993 (the "Existing Maxum Agreement") and (ii) certain installment sales contracts, lease agreements, financing agreements, service agreements, promissory notes and installment notes (collectively, the "Maxum Financing Agreements"), in each case with MHC and the MHC First-Tier Subsidiaries. The obligations of MHC and the MHC First-Tier Subsidiaries under the Existing Maxum Agreement and the Maxum Financing Agreements are secured by the collateral described in the Maxum Security Agreement and the Maxum Financing Agreements.

F. AHS, MHC, InSight and GE Medical have entered into the Preferred Stock Acquisition Agreement, dated as of February __, 1996 (the "PS Acquisition Agreement"), pursuant to which GE Medical acquired from (i) AHS an aggregate of 1,000,000 shares of Series C Preferred Stock, par value \$0.03 per share, of AHS (the "AHS Shares") and (ii) MHC an aggregate of 15,000 shares of Series B Preferred Stock, par value \$0.01 per share, of MHC (the "Maxum Shares"), in exchange for certain financial accommodations from GE Capital and GE Medical described herein.

G. AHS, MHC and InSight have also entered into the Agreement and Plan of Merger, dated as of February __, 1996 (the "Merger Agreement"), contemplating the merger of two newly-formed wholly-owned subsidiaries of InSight with and into AHS and MHC (the "Merger"), respectively, after which AHS and MHC will be wholly-owned subsidiaries of InSight.

H. InSight, AHS, MHC and the MHC First-Tier Subsidiaries have requested that GE Medical and GE Capital (i) make certain financial accommodations in exchange for the issuance of the AHS Shares and the Maxum Shares, including, without limitation, (A) amending and waiving certain provisions and covenants of the Existing AHS Agreement and the Existing Maxum Agreement, (B) releasing AHS of certain obligations under the Existing AHS Agreement and the AHS Financing Agreements and (C) releasing MHC and the MHC First-Tier Subsidiaries of certain obligations under the Maxum Financing Agreements and (ii) consent to the Merger. GE Medical and GE Capital are, on the terms and conditions stated below, agreeable to granting the requests of InSight, AHS, MHC and the MHC First-Tier Subsidiaries on the terms and conditions set forth herein.

I. In accordance with the terms, conditions and provisions of the Merger Agreement, immediately after the consummation of

the transactions contemplated by the PS Acquisition Agreement and this Agreement and as a condition subsequent to GE Medical's acquisition of the AHS Shares and the Maxum Shares, the Merger will occur and the AHS Shares and the Maxum Shares will be exchanged for an aggregate of 2,501,760 shares of Series A Convertible Preferred Stock of InSight (the "InSight Preferred Shares"), which shall constitute all of the issued and outstanding shares of preferred stock of InSight and 48 percent of all of the capital stock of InSight on a fully-diluted basis.

NOW, THEREFORE, in consideration of the foregoing recitals and the terms and conditions contained herein, and of any extension of credit or financial accommodation heretofore, hereby or hereafter made by GE Medical or GE Capital to or on behalf of InSight, AHS, MHC or any of the MHC First-Tier Subsidiaries, the parties hereto hereby agree as follows:

ARTICLE 1
GENERAL DEFINITIONS AND RULES OF CONSTRUCTION

Capitalized terms used but not defined in Sections 2.1, 2.2 and 2.3 hereof are used therein as defined in the Existing AHS Agreement and capitalized terms used but not defined in Sections 3.1, 3.2, 3.3 and 3.4 hereof are used therein as defined in the Existing Maxum Agreement. The following terms used in this Agreement have the following respective meanings:

- 1.1 "Affiliate" shall mean as to any Person, (a) any other Person which, directly or indirectly, controls, is controlled by or is under common control with that Person and (b) any other Person in which, directly or indirectly, any Person described in (i) controls, is controlled by or is under common control.
- 1.2 "AHS Amended and Restated Term Note" shall mean the Amended and Restated Promissory Note in the principal amount of \$7,500,000 to be executed by AHS in favor of GE Capital on the Closing Date to evidence the Term Loan (as defined in the Amended AHS Agreement), in substantially the form attached hereto as Exhibit 2.1(1).
- 1.3 "AHS Chicago Loop Equipment" shall mean a .5T Signa system located at Chicago Loop Center of AHS.
- 1.4 "AHS Chicago Loop Obligations" shall have the meaning set forth in Section 2.2(c) hereof.
- 1.5 "AHS Collateral" shall mean the Collateral described in Section 4.1 of the Amended AHS Agreement.
- 1.6 "AHS Deferred Obligations" shall have the meaning set forth in Section 2.2(e) hereof.

1.7 "AHS Financing Agreements" shall have the meaning set forth in the Recitals hereof.

1.8 "AHS Guaranty" shall have the meaning set forth in Section 5.1(d)(i) hereof.

1.9 "AHS Litigation" shall mean the civil action filed in the United States District Court of the District of Puerto Rico styled P.R.F., Inc. d/b/a San Juan Health Centre, Inc., et. al. v. Phillips Credit Corporation, American Health Services Corporation, et. al., 92 Civ. 2266, and claims related thereto or asserted therein.

1.10 "AHS Location Obligations" shall have the meaning set forth in Section 2.2(b)(i) hereof.

1.11 "AHS Prepayment Amount" shall have the meaning set forth in Section 4.1 hereof.

1.12 "AHS Shares" shall have the meaning set forth in the Recitals hereof.

1.13 "AHS Warrant" shall mean, collectively, the Common Stock Purchase Warrants issued by AHS to GE Medical on July 9, 1993 and on April 12, 1994.

1.14 "Amended AHS Agreement" shall mean the Existing AHS Agreement, as amended by this Agreement.

1.15 "Amended Maxum Agreement" shall mean the Existing Maxum Agreement, as amended by this Agreement.

1.16 "Amended Maxum Security Agreement" shall mean the Maxum Security Agreement, as amended by this Agreement.

1.17 "Automatic Drafting Agreement" shall mean the Authorization Agreement for Pre-Arranged Payments (Debits) dated as of the Closing Date between GE Medical and InSight and AHS, in substantially the form of Exhibit 2.1(c) attached hereto.

1.18 "Bankruptcy Code" shall mean Title 11 of the United States Code, as from time to time amended, and the rules and regulations promulgated thereunder.

1.19 "Business Day" shall mean any day except Saturday, Sunday or any day on which banks in New York, New York are required or authorized by law to be closed.

1.20 "Closing Date" shall mean the date of this Agreement.

1.21 "Consolidated Depreciation Expense" shall mean, for any period, the depreciation expense of InSight and the InSight Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

1.22 "Consolidated Net Income" shall mean, for any period, the net income (or loss) of InSight and the InSight Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

1.23 "Consolidated Net Revenues" shall mean, for any period, the net revenues of InSight and the InSight Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

1.24 "Consolidated Tax Expense" shall mean, for any period, the income tax expense of InSight and the InSight Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

1.25 "Collateral" shall mean, collectively, the AHS Collateral and the Maxum Collateral.

1.26 "Credit Parties" shall mean, collectively, InSight, AHS, MHC and the MHC First-Tier Subsidiaries.

1.27 "Default" shall mean any event which, with the passage of time, the giving of notice, or both, would become an Event of Default, unless cured or unless waived as specifically provided in this Agreement.

1.28 "Default Rate" shall mean the lower of (a) the rate per annum equal to the sum of the fluctuating interest rate, from time to time, for three-year treasury notes plus 8 percent or (b) the highest rate permitted by applicable law.

1.29 "Disclosing Party" shall have the meaning set forth in Section 10.18(a) hereof.

1.30 "Disposition" shall mean the sale, transfer or other disposition in any single transaction or series of related transactions of any asset or group of related assets, of any of the Credit Parties that has or have at the date of the Disposition an aggregate book value or fair market value (which shall be deemed to be equal to the sales price for such asset or assets upon a sale to a Person that is not an Affiliate of such Credit Party) of \$100,000 or more, other than (a) the sale or other disposition of inventory in the ordinary course of business and (b) the sale or other disposition of equipment that is replaced not later than 90 days thereafter, by equipment performing substantially the same function. For purposes hereof (i) the phrase "series of related transactions" shall refer to transactions which, taken as a whole, are conceived and implemented on a strategically integrated basis and (ii) the phrase "related assets" shall refer to assets which are functionally related to one another.

1.31 "Distribution" shall mean, with respect to any shares of capital stock or any warrant or right to acquire shares of

capital stock or any other equity security issued by a Person (a) the retirement, redemption, purchase or other acquisition, directly or indirectly, for value by such Person of any such security, except to the extent that the consideration therefor consists of shares of capital stock, (b) the declaration or (without duplication) payment by such Person of any dividend in cash or in Property, directly or indirectly, on or with respect to any such security, (c) any investment by such Person in the holder of five percent or more of any such security if a purpose of such investment is to avoid characterization as a Distribution and (d) any other payment by such Person constituting a distribution under applicable laws with respect to such security.

1.32 "Distribution Note" shall mean a promissory note made by InSight in favor of GE Medical to evidence InSight's obligation to pay certain premiums to GE Medical for GE Medical's services to AHS and MHC upon the terms set forth in the InSight Master Addendum.

1.33 "Event of Default" shall have the meaning set forth in Section 9.1 hereof.

1.34 "Existing AHS Agreement" shall have the meaning set forth in the Recitals hereof.

1.35 "Existing Maxum Agreement" shall have the meaning set forth in the Recitals hereof.

1.36 "Financing Statements" shall mean the Form UCC-1 or other financing statements to be filed in the appropriate offices for the perfection of a security interest in any of the Collateral.

1.37 "Fraud and Abuse Laws" shall have the meaning set forth in Section 5.1(n) hereof.

1.38 "GAAP" shall mean generally accepted accounting principles applied on a consistent basis as in effect from time to time and practices which are recognized as such by the American Institute of Certified Public Accountants acting through its Accounting Principles Board or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof and which are consistently applied for all periods after the date of this Agreement.

1.39 "GE Parties" shall mean, collectively, GE Capital and GE Medical.

1.40 "GE Party's Accountant" shall have the meaning set forth in Section 4.2(a) hereof.

1.41 "Hazardous Materials" shall mean any substance, material or waste that is regulated because of its hazardous,

toxic or polluting nature by any city, county or other local or regional government authority, any State in which any of the Credit Parties does business, or the United States Government or any agency thereof having jurisdiction, including any material or substance that is (a) petroleum or petroleum distillates, including crude oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas, (b) asbestos, (c) designated as a "hazardous substance" pursuant to section 311 of the Clean Water Act, 33 U.S.C. 1251, et seq., 33 U.S.C. 1321, or listed pursuant to section 307 of the Clean Water Act, 33 U.S.C. 1317, (d) defined as a "hazardous waste" pursuant to section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., 42 U.S.C. 6903, (e) defined as a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, et seq., 42 U.S.C. 9601, (f) determined to be a chemical substance or mixture that poses an unreasonable risk of injury to human health or the environment under the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., (g) determined to be a "Hazardous Air Pollutant" under the Clean Air Act, 42 U.S.C. 7501, et seq. or (h) listed, defined or identified in the regulations adopted pursuant to any of the laws enumerated in clauses (a) through (g) of this Section 1.41.

1.42 "Indebtedness" shall mean, as applied to any Person, without duplication (a) all items, except items of capital stock or of surplus or of general contingency or deferred tax reserves that would, in accordance with GAAP, be required to be included as liabilities on a balance sheet of such Person on the date as of which Indebtedness is to be determined, (b) all obligations secured by (or regarding which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien to which any Property owned or held by such Person is subject, whether or not the obligation secured thereby shall have been assumed and (c) all obligations of other Persons which such Person has guaranteed, including, without limitation, all obligations of such Person consisting of recourse liabilities with respect to accounts receivable sold or otherwise disposed of by such Person.

1.43 "InSight Excess Cash Flow" shall mean, for any fiscal year of InSight, an amount equal to (a) the sum of the amounts for such fiscal year of (i) Consolidated Net Income, (ii) Consolidated Depreciation Expense, (iii) non-cash interest expense incurred by InSight and the InSight Subsidiaries during such fiscal year, (iv) the excess of (A) Consolidated Tax Expense over (B) income taxes actually paid and (v) other non-cash items reducing Consolidated Net Income, all as determined on a consolidated basis for InSight and the InSight Subsidiaries in accordance with GAAP, minus (b) the sum of the amounts for such fiscal year of (i) all principal payments made by InSight and the InSight Subsidiaries on Indebtedness and (ii) capital expenditures made by InSight and the InSight Subsidiaries that would be capitalized on the consolidated balance sheet of

InSight, all as determined on a consolidated basis for InSight and the InSight Subsidiaries in accordance with GAAP.

1.44 "InSight Master Addendum" shall mean the Master Service Agreement Addendum, dated as of the Closing Date, among GE Medical, InSight, AHS and MHC, providing for, among other things, InSight's payment of premiums to GE Medical for GE Medical's services to AHS and MHC upon the terms set forth therein.

1.45 "InSight Payment Obligations" shall have the meaning set forth in Section 9.1(a) hereof.

1.46 "InSight Preferred Shares" shall have the meaning set forth in the Recitals hereof.

1.47 "InSight Subsidiary" shall mean each of AHS, MHC, the MHC First-Tier Subsidiaries and any other corporation of which 50 percent or more of the outstanding shares of each class having voting power (other than shares having such power by reason of the happening of a contingency) is owned or controlled, directly or indirectly, by InSight.

1.48 "Liabilities" or "Liability" shall mean, as applied to any Person, all loans, advances, indebtedness, liabilities, and obligations of such Person to the GE Parties of any and every kind and nature, whether now or hereafter owing, arising, due or payable by such Person, whether or not evidenced by any note, agreement or other instrument and whether primary, secondary, direct, contingent, fixed or otherwise, including, without limitation (a) obligations of performance, (b) principal, interest, loan fees, charges, expenses, attorneys' fees and other amounts chargeable to such Person and (c) future advances made to or for the benefit of such Person.

1.49 "Lien" shall mean (a) any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien (including tax liens, judgment liens, liens of mechanics, suppliers, and other Persons for the provision of goods or services, and all other liens arising under statute, common law or judicial interpretation), charge, claim, security interest, capitalized lease obligation, easement, encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement or any financing lease having substantially the same economic effect as any of the foregoing), (b) any arrangement, express or implied, under which any Property is transferred, sequestered or otherwise identified for the purpose of subjecting such Property to the payment of Indebtedness or performance of any other obligation in priority to the payment of general, unsecured creditors, (c) any Indebtedness which is unpaid more than 45 days after such Indebtedness shall have become due and payable and which if unpaid would by law (including but not limited to bankruptcy and insolvency laws) or

otherwise, be given any priority whatsoever over general, unsecured creditors and (d) the filing of, or agreement to give, any Financing Statement perfecting a security interest under the UCC or comparable law of any jurisdiction.

1.50 "Major Acquisition" shall mean any acquisition by InSight, directly or indirectly, of all of the outstanding capital stock or substantially all of the assets of any Person, which Person had annual net revenues in excess of \$20,000,000 for such Person's most recent fiscal year, as determined in accordance with GAAP.

1.51 "Management Stock Option Plan" shall mean the Management Stock Option Plan contemplated to be adopted by the Board of Directors of InSight, in substantially the form attached hereto as Exhibit 1.51, on or before the Closing Date.

1.52 "Maryland Gamma Knife Equipment" shall have the meaning set forth in Section 2.2(d)(i) hereof.

1.53 "Maryland Gamma Knife Obligations" shall have the meaning set forth in Section 2.2(d)(i) hereof.

1.54 "Material Adverse Effect" shall mean, with respect to any Credit Party, any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability of this Agreement or any other Restructuring Document, (b) is or could reasonably be expected to be material and adverse to the business, condition (financial or otherwise), operations, performance, Property or prospects of such Credit Party, (c) materially impairs or could reasonably be expected to materially impair the ability of such Credit Party to satisfy the Liabilities or (d) materially impairs or could reasonably be expected to materially impair the ability of any GE Party to enforce its legal remedies under this Agreement or any Restructuring Document.

1.55 "Maxum" shall mean, collectively, MHC and the MHC First-Tier Subsidiaries.

1.56 "Maxum Collateral" shall mean the Collateral described in Section 1 of the Amended Maxum Security Agreement.

1.57 "Maxum Deferred Obligations" shall have the meaning set forth in Section 3.3(b) hereof.

1.58 "Maxum Early Return Obligations" shall have the meaning set forth in Section 3.3(c) hereof.

1.59 "Maxum Early Return Units" shall have the meaning set forth in Section 3.3(c) hereof.

1.60 "Maxum Financing Agreements" shall have the meaning set forth in the Recitals hereof.

1.61 "Maxum Guaranty" shall have the meaning set forth in Section 5.1(d) (ii) hereof.

1.62 "Maxum Litigation" shall mean the civil action filed in the United States District Court of the Southern District of New York styled In re Maxum Health Corp. Securities Litigation, 93 Civ. 3287, and claims related thereto or asserted therein.

1.63 "Maxum Security Agreement" shall mean the Security Agreement dated as of June 1, 1993, and amended hereby, by and among MHC, the MHC First-Tier Subsidiaries and GE Medical.

1.64 "Maxum Shares" shall have the meaning set forth in the Recitals hereof.

1.65 "Merger" shall have the meaning set forth in the Recitals hereof.

1.66 "Merger Agreement" has the meaning set forth in the Recitals hereof.

1.67 "MHC Warrant" shall mean the Common Stock Purchase Warrant issued by MHC to GE Medical on February 8, 1994.

1.68 "Original PCC Note" shall have the meaning set forth in the Recitals hereof.

1.69 "Original Term Note" shall have the meaning set forth in the Recitals hereof.

1.70 "PCC" shall have the meaning set forth in the Recitals hereof.

1.71 "PCC Agreement" shall have the meaning set forth in Section 2.4(a) hereof.

1.72 "Person" shall mean any individual, corporation, partnership, trust, association or other entity or organization, including any government, political subdivision, agency or instrumentality thereof.

1.73 "Philips Certificate" shall have the meaning set forth in Section 5.1(f) hereof.

1.74 "Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

1.75 "PS Acquisition Agreement" shall have the meaning set forth in the Recitals hereof.

1.76 "Release and Settlement Agreement" shall have the meaning set forth in Section 5.1(a) hereof.

1.77 "Restructuring Documents" shall mean, collectively, this Agreement, the Release and Settlement Agreement, the AHS Amended and Restated Term Note, the AHS Guaranty, the Maxum Guaranty, the Termination Agreements, the Philips Certificate, the Automatic Drafting Agreements, the Merger Agreement, the PS Acquisition Agreement, the Existing AHS Agreement and the other Loan Documents (as such term is defined in the Existing AHS Agreement), the Existing Maxum Agreement and the Scheduled Documents (as such term is defined in the Existing Maxum Agreement), the PCC Agreement, the Distribution Notes, the InSight Master Addendum, the AHS Financing Agreements, the Maxum Financing Agreements and all other agreements and notes of any type or nature heretofore or hereafter executed and delivered by any of the Credit Parties in favor of any of the GE Parties in any way relating to or in furtherance of this Agreement, in each case as originally executed or as may from time to time be supplemented, modified, amended, restated or extended.

1.78 "Restructuring Termination Date" shall mean the date on which all Liabilities under the Restructuring Documents have been completely and finally paid and discharged, whether by prepayment or otherwise.

1.79 "Seattle Gamma Knife Equipment" shall have the meaning set forth in Section 2.2(d)(ii) hereof.

1.80 "Seattle Gamma Knife Obligations" shall have the meaning set forth in Section 2.2(d)(ii) hereof.

1.81 "St. Benedicts Equipment" shall have the meaning set forth in Section 2.2(b)(ii) hereof.

1.82 "Subject Party" shall have the meaning set forth in Section 10.18(a) hereof.

1.83 "Termination Agreements" shall mean the Termination Agreements, substantially in the forms attached hereto as Exhibits 1.83(i) and 1.83(ii) attached hereto, to be entered into between GE Medical and AHS and between GE Medical and MHC and the MHC First-Tier Subsidiaries, respectively, in each case on the Closing Date.

1.84 "Term Note" shall have the meaning set forth in the Recitals hereof.

1.85 "Third Accountant" shall have the meaning set forth in Section 4.2(b) hereof.

1.86 "Total Balloon Payment Amount" shall have the meaning set forth in Section 4.1 hereof.

1.87 "UCC" shall mean the Uniform Commercial Code of the jurisdiction with respect to which such term is used, as in effect from time to time.

1.88 "Withholding Charges" shall have the meaning set forth in Section 7.3 hereof.

1.89 Other Terms: All terms used in this Agreement, where the context so indicates or requires, shall have the meanings provided by the UCC as in effect in the applicable jurisdiction to the extent the same are used or defined therein. Any accounting terms used in this Agreement and not specifically defined herein shall have the meanings given them in accordance with GAAP, and all financial computations hereunder shall be computed, unless otherwise specifically provided herein, in accordance with GAAP.

1.90 Rules of Construction: Except as otherwise specifically provided in this Agreement, the singular of any term shall include the plural, and vice versa, the use of any term shall be equally applicable to any gender, "or" shall not be exclusive and "including" shall not be limiting. The words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole, including the Schedules and Exhibits hereto, as from time to time be amended, modified or supplemented, and not to any particular Section or clause contained in this Agreement. Any reference to a "Section," "Schedule" or "Exhibit" shall refer to the relevant Section of, or Schedule or Exhibit to, this Agreement, unless specifically indicated to the contrary.

ARTICLE 2
AMENDMENTS, WAIVERS, RELEASES AND CONSENTS

RELATING TO AHS DEBT.

2.1 Amendments to Existing AHS Agreement. Effective as of the Closing Date and subject to satisfaction of all of the conditions precedent and the conditions subsequent set forth in Article 5 hereof, including the consummation of the Merger, the Existing AHS Agreement is amended as follows:

(a) Section 1 of the Existing AHS Agreement is amended by inserting the following definition of "AHS Guaranty" between the definitions of "Affiliate" and "Ancillary Note" therein:

"AHS Guaranty" shall mean the Guaranty, dated as of the Restructuring Closing Date, made by Borrower in favor of Lender and Lender's Agent to guarantee the obligations of MHC and the MHC First-Tier Subsidiaries to Lender and Lender's Agent."

(b) Section 1 of the Existing AHS Agreement is amended by inserting the following definition of "Amended Maxum Agreement" between the definitions of "AHS Guaranty" and "Ancillary Note" therein:

"Amended Maxum Agreement" shall mean the Agreement dated as of June 1, 1993 between Lender's Agent and MHC and the MHC First-Tier Subsidiaries, as amended by the Restructuring Agreement."

(c) Section 1 of the Existing AHS Agreement is amended by inserting the following definition of "Automatic Drafting Agreement" between the definitions of "Ancillary Note" and "Bankruptcy Code" therein:

"Automatic Drafting Agreement" shall mean the Authorization Agreement for Pre-Arranged Payments (Debits) dated as of the Restructuring Closing Date between Borrower and Lender, in substantially the form of Exhibit 2.1(c) attached to the Restructuring Agreement."

(d) Section 1 of the Existing AHS Agreement is amended by inserting the following definition of "Guaranteed Liabilities" between the definitions of "GAAP" and "Hazardous Materials" therein:

"Guaranteed Liabilities" shall mean the liabilities of Borrower under the Guaranty, dated as of the Restructuring Closing Date, made by Borrower in favor of Lender's Agent to guarantee the liabilities of MHC and the MHC First-Tier Subsidiaries to the Lender's Agent, which liabilities are secured by the Collateral of Borrower."

(e) Section 1 of the Existing AHS Agreement is amended by inserting the following definition of "InSight" between the definitions of "Indebtedness" and "Invasive Technology" therein:

"InSight" shall mean InSight Health Services Corp., a Delaware corporation."

(f) Section 1 of the Existing AHS Agreement is amended by inserting the following definition of "MHC" between the definitions of "Maximum Lawful Rate" and "Nonrevolving Credit Loan" therein:

"MHC" shall mean Maxum Health Corp., a Delaware corporation."

(g) Section 1 of the Existing AHS Agreement is amended by inserting the following definition of "MHC First-Tier Subsidiaries" between the definitions of "MHC" and "Nonrevolving Credit Loan" therein:

"'MHC First-Tier Subsidiaries' shall mean the subsidiaries of MHC named in the Amended Maxum Agreement as parties thereto."

(h) Section 1 of the Existing AHS Agreement is amended by inserting the following definition of "Restructuring Agreement" between the definitions of "Restructured Lease Documents" and "Solvent" therein:

"'Restructuring Agreement' shall mean the Master Debt Restructuring Agreement, dated as of _____, 1996, by and among Lender's Agent, Lender, InSight, Borrower, MHC and the MHC First-Tier Subsidiaries."

(i) Section 1 of the Existing AHS Agreement is amended by inserting the following definition of "Restructuring Closing Date" between the definitions of "Restructuring Agreement" and "Solvent" therein:

"'Restructuring Closing Date' shall mean _____, 1996."

(j) Section 1.63 of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"1.63 'Term' shall mean the period of _____ months commencing on the Restructuring Closing Date and ending on the last Business Day of March 2000."

(k) To reduce the outstanding principal amount of the Term Loan from \$ _____ to \$7,500,000 as of the Closing Date, Section 1.65 of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"1.65 'Term Loan' shall mean the outstanding principal amount of the term loan in the amount of \$7,500,000 owed by Borrower to Lender and identified by GE contract number 8506754-004, which amount is allocated among the seven locations of Borrower's operations set forth on Schedule 2.1(k) attached to the Restructuring Agreement."

(l) Section 1.67 of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"1.67 'Term Note' shall mean the Amended and Restated Promissory Note (including any modifications, renewals, extensions and replacements thereof) in the original principal amount of \$7,500,000, to be dated as of the Restructuring Closing Date and executed and delivered by Borrower to Lender on the same date to evidence the obligations, repayment terms and conditions of the Term Loan. A form of Term Note is attached to the Restructuring Agreement as Exhibit 2.1(l)."

(m) The Existing AHS Agreement is amended by deleting the definition of "Warrant" in Section 1.69 and all other references therein to "Warrant" and "Warrants."

(n) Section 2.2 of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"2.2 Interest on Term Loan. Except as otherwise provided in this Agreement, the Term Loan shall bear interest, payable monthly, calculated daily on the basis of a 360 day year until paid in full at the lower of (a) the rate of 10.75 percent or (b) the highest rate permitted by applicable law. Interest which has accrued and is not paid monthly by Borrower shall be added to the principal balance due under the Term Note (as set forth in such Term Note) for purposes of subsequent calculations of interest due hereunder and thereunder."

(o) Section 2.3(A) of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"(A) Term Loan. Principal and interest under the Term Loan shall be payable in consecutive equal monthly installments, each in the amount specified in the amortization schedule attached to the Term Note, payable on the last Business Day of each calendar month, commencing on the last Business Day of the calendar month in which the Restructuring Closing Date occurs and ending on the last Business Day of March 2000; provided, however, that the last such installment shall be in the amount necessary to repay in full the unpaid principal amount of the Term Loan and interest accrued thereon."

(p) The first paragraph of Section 4.1 of the Existing AHS Agreement is amended to read in full as follows:

"4.1 Security Interest. To secure the prompt and complete payment and performance by Borrower when due of the Liabilities and the Guaranteed Liabilities, Borrower hereby grants, sells, assigns, conveys, pledges, hypothecates and transfers to Lender and Lender's Agent for the ratable benefit of Lender and Lender's Agent, a continuing security interest in and Lien in accordance with Section 4.2 hereof upon all of the following Property and interests in Property of Borrower, whether now owned or existing or hereafter acquired or arising and wherever located (all of which Property, together with all other personal Property and interests in personal property which shall from time to time secure the Liabilities and the Guaranteed Liabilities being hereinafter collectively called the "Collateral"):"

(q) Section 4.2 of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"4.2 Priority of Security Interest. The priority of Lender's and Lender's Agent's Liens in the Collateral granted by Borrower to Lender and Lender's Agent pursuant to Section 4.1 hereof shall be as follows:

(A) Each of Lender and Lender's Agent shall have an equal first priority Lien and, with respect to the Property described in Subsections 4.2(A)(i) and (ii) hereof, purchase money security interest in (i) all Equipment purchased by Borrower from Lender's Agent with a portion of the proceeds of the Term Loan; (ii) the equipment identified in the Restructured Leases to the extent such Restructured Leases are capital leases; and (iii) except as provided in Subsections 4.2(B) and (C) hereof, all property, rights and other interests identified in Subsections 4.1(D) and 4.1(E) hereof with respect to the property described in Subsections 4.2(A)(i) and (ii).

(B) Each of Lender and Lender's Agent shall have an equal second priority Lien junior only to the Liens created under the Philips Loan Documents in the portion of the Collateral identified in Subsections 4.1(D) and (E) hereof to the extent a Lien exists under the Philips Loan Documents with respect to such Collateral.

(C) Notwithstanding any provision in Section 4.1 or this Section 4.2 to the contrary, in no event shall Lender or Lender's Agent have any Lien on Collateral that is prior to or of equal priority with any Lien on such Collateral existing under the Philips Loan Documents; provided that each of Lender's and Lender's Agent's Liens in the Equipment identified in Subsections 4.2(A)(i) and (ii) hereof and all additions to, substitutions for, replacements of or accessories to such Equipment in all events shall be a first priority Lien and purchase money security interest.

(D) Lender's Agent shall have a third priority Lien junior only to the Liens created under clauses (A), (B) and (C) of this Section 4.2 to secure the Guaranteed Liabilities in the portion of the Collateral identified in Subsections 4.1(D) and 4.1(E) hereof."

(r) Section 4.3 of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"4.3 Disclosure of Security Interest. Borrower shall make appropriate entries in its financial statements and its books and records disclosing Lender's Lien and Lender's Agent's Lien on the Collateral."

(s) Section 4.4 of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"4.4 Payment by Lender and Lender's Agent of Claims Asserted Against Borrower. Except as provided in Section 8.4 hereof, each of Lender and Lender's Agent may, at any time hereafter, in its sole discretion and without waiving or releasing any obligation, Liability, Guaranteed Liability or duty of Borrower under this Agreement or any Event of Default, pay, acquire or accept an assignment of any Lien asserted after a default by Borrower in the payment or performance of the obligation secured by such Lien by any Person against the Collateral or cure any default of Borrower under any contract or agreement; provided, however, that neither Lender nor Lender's Agent shall take such action unless Lender or Lender's Agent shall first give Borrower written notice of its intent to do so, and Borrower does not, within 20 days of such notice, pay such claim or obtain, to the reasonable satisfaction of Lender's or Lender's Agent's, as the case may be, the release of the Liens to which such notice relates. Notwithstanding the foregoing, neither Lender nor Lender's Agent shall take any action to pay any Lien referenced in this Section 4.4 if Borrower is taking all reasonable action necessary to remove such Lien and is proceeding diligently with such removal, as determined in the reasonable discretion of Lender and Lender's Agent. All amounts advanced by Lender or Lender's Agent under this Section 4.4 and all costs, fees, and expenses, including attorneys' fees, court costs, expenses, and other charges relating thereto, incurred by Lender or Lender's Agent on account thereof, shall be payable, on demand, by Borrower to Lender and Lender's Agent and shall be the Liabilities hereunder and the Guaranteed Liabilities, in each case secured by the Collateral."

(t) Section 4.5 of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"4.5 Termination Statements. Borrower acknowledges and agrees that it is Borrower's intent that all Financing Statements filed hereunder shall remain in full force and effect until this Agreement shall have been terminated in accordance with the provisions hereunder, even if, at any time or times prior to such termination, no loans or advances shall be outstanding under this Agreement. Accordingly, Borrower waives any rights which it may have under the UCC to demand the filing of termination statements with respect to the Collateral, and agrees that neither Lender nor Lender's Agent shall be required to send such termination statements to Borrower, or to file them with any filing office, unless and until this Agreement and the Amended Maxum Agreement shall have been terminated in accordance with their respective terms and all Liabilities hereunder and the Guaranteed Liabilities paid in full in immediately available funds. Notwithstanding the provisions of this Section 4.5, Lender

and Lender's Agent shall deliver a termination statement to Borrower with respect to any Financing Statement describing Equipment that is sold by Borrower in accordance with the provisions of Section 6.2(P) hereof, provided that Borrower has paid Lender the amount required to be paid by Borrower to Lender pursuant to Section 6.2(P) hereof."

(u) Section 6.1 of the Existing AHS Agreement is amended by inserting the following provision as Section 6.1(V) therein:

"(V) Automatic Drafting. After the occurrence and during the continuance of a Default or an Event of Default pursuant to this Agreement, Borrower shall at all times adequately fund the accounts identified in the Automatic Drafting Agreement and set forth on Schedule 2.1(u) attached to the Restructuring Agreement in amounts sufficient to pay the Liabilities when due and owing."

(v) Section 6.1 of the Existing AHS Agreement is amended by inserting the following provision as Section 6.1(W) therein:

"(W) Customer Contracts Entered into after Restructuring Closing Date. Borrower shall not, at any time following the Restructuring Closing Date, enter into any contract for use of equipment by a hospital or other facility or entity (a "Customer") that is leased by Borrower from Lender's Agent, financed by Lender or leased from Lender's Agent pursuant to installment sales agreements, capital leases or other financing methods or is or will be after it is acquired subject to a first priority security interest of Lender or Lender's Agent, unless such contract expressly provides for (x) the assignability thereof to Lender or Lender's Agent, as applicable and (y) the acknowledgment and consent by the Customer to the security interest of Lender or Lender's Agent in such contract. Borrower shall, promptly after entering into any such contract, provide a copy thereof to Lender."

(w) Section 6.1 of the Existing AHS Agreement is amended by inserting the following provision as Section 6.1(X) therein:

"(X) Security Interests in Future Entities. Borrower shall not, at any time after the Restructuring Closing Date, form or create any joint venture or partnership, unless (i) Lender is granted a first priority security interest in Borrower's interest therein and any distributions to Borrower therefrom or (ii) Lender otherwise consents to the formation or creation thereof without the granting thereto of such security interest."

(x) Section 6.2(B) of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"(B) Investments and Acquisitions. Borrower shall not create, form or otherwise acquire any Subsidiary unless such Subsidiary is separate and separately funded. Borrower shall not make, nor shall it permit any Subsidiary (other than RCI) to make, any loan or advances of money to any Person or any investment, directly or indirectly (by way of transfer of Property, contributions to capital, purchase of stock or securities or evidences of Indebtedness, acquisition of business or assets, or otherwise), in any Person in amounts exceeding \$200,000 in any single transaction or \$1,000,000 in the aggregate during any fiscal year of Borrower, except for those transactions described in Schedule 6.1(c) attached to the Restructuring Agreement. Notwithstanding the foregoing, RCI may and, subject to the prior written consent of Lender, any other Subsidiary may make investments with respect to business activities associated with Gamma Knife or any other Invasive Technology (as defined below), however, Borrower shall not purchase, finance, operate or control business activities associated with Gamma Knife or any other invasive technology except through such separate and separately funded Subsidiary. For purposes of this Section 6.2(B), "Invasive Technology" shall mean any business wherein permanent change in anatomy, structure, physiology or metabolism is introduced to the customer as a direct result of the technology used or actually performed; provided, however, that Invasive Technology shall not include radiation therapy. Requests by Borrower to take any action that is not permitted by this Section 6.2(B) shall comply with Section 6.6 hereof and shall be approved or disapproved by Lender in accordance with Section 6.6 hereof within 10 Business Days following Lender's receipt of Borrower's request for consent. The parties acknowledge that this Section 6.2(B) shall not restrict or limit activities permitted by the terms of Sections 6.2(H) and (I) hereof."

(y) Section 6.2(H) of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"(H) Capital Expenditures. Neither Borrower nor any Subsidiary (other than RCI) shall make capital expenditures (including expenditures for capitalized leases but excluding expenditures for routine repairs and replacement) in excess of \$200,000 in any single transaction or \$1,000,000 in the aggregate during any fiscal year. Notwithstanding the foregoing, this Section 6.2(H) shall not apply to (i) capital expenditures made by Borrower pursuant to transactions with Lender or Lender's Affiliates and Subsidiaries, or (ii) capital expenditures made by any Subsidiary of Borrower that is separate and

separately funded. Requests by Borrower to take any action that is not permitted by this Section 6.2(H) shall comply with Section 6.6 hereof and shall be approved or disapproved by Lender in accordance with Section 6.6 hereof within 10 Business Days following Lender's receipt of Borrower's request for consent."

(z) Section 6.2(L) of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"(L) Guarantees. Except as set forth in Schedule 6.1(c) attached to the Restructuring Agreement, Borrower shall not guarantee or in any way become liable, directly or indirectly, with respect to the obligations or liabilities of any Person, whether by guaranty, endorsement, agreement to purchase or repurchase, agreement to supply or advance funds or otherwise; provided, however, that the foregoing restrictions shall not apply to:

(i) the Guaranteed Liabilities; and

(ii) endorsements of negotiable instruments for collection in the ordinary course of business."

(aa) Section 6.2(M) of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"(M) Liens; Negative Pledges; Sales and Leasebacks. Except for (i) Liens identified in Schedule 6.1(c) attached to the Restructuring Agreement, (ii) Liens expressly permitted in this Agreement, (iii) Liens created pursuant to this Agreement, (iv) Liens for taxes, assessments and other similar charges which are not yet due and payable, (v) Liens of landlords, mechanics, materialmen, warehousemen, carriers or other similar statutory Liens securing obligations that are not yet due, (vi) Liens resulting from good faith deposits to secure payments of workmen's compensation or other social security programs or to secure the performance of statutory obligations or surety or appeal bonds and (vii) Liens consented to by Lender, Borrower shall not create, permit or suffer to exist, and Borrower shall defend the Collateral against and take such other action as is necessary to remove, any Lien of any nature whether by sale, lease, negative pledge, merger, consolidation, liquidation, dissolution or otherwise, on the Collateral, whether now owned or hereafter acquired, and Borrower shall defend the right, title and interest of Lender in and to any Borrower's rights to the Collateral against the claims and demands of all Persons whomsoever, except as hereinabove provided."

(bb) Section 6.2(N) of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"(N) Indebtedness. Borrower shall not create, incur, assume or permit to exist and will not permit any Subsidiary to create, incur, assume or permit to exist any Indebtedness or evidence of Indebtedness, except for (i) the Liabilities, (ii) the Philips Debt, (iii) trade indebtedness in the ordinary course of business, including trade payables for services performed, (iv) nonrecourse debt as to Borrower incurred by a separate and separately funded Subsidiary, (v) Indebtedness expressly permitted in this Agreement, (vi) Indebtedness to Lender, Lender's Agent and Lender's Affiliates, (vii) such other permitted Indebtedness identified in Schedule 6.1(c) attached to the Restructuring Agreement, (viii) liabilities for taxes, assessments, governmental charges or levies which are not yet due and payable, (ix) endorsements of negotiable instruments for collection in the ordinary course of business, (x) Indebtedness up to but not exceeding \$200,000 in any single transaction or \$1,000,000 in the aggregate during any fiscal year of Borrower and (xi) Indebtedness of Borrower consented to by Lender."

(cc) Section 6.6 of the Existing AHS Agreement is amended in its entirety to read in full as follows:

"6.6 Requests for Lender's Consent. Any request by Borrower for Lender's written consent prior to taking any action prohibited by Subsections 6.2(B), 6.2(G), 6.2(H), 6.2(I), 6.2(J), 6.2(O), 6.2(P) and 6.2(S) hereof as described in such Subsections, shall be in writing and shall include a detailed description that is reasonably acceptable to Lender of the proposed action to be taken by Borrower. Lender shall approve or disapprove of such request within the number of Business Days provided in the respective Subsections identified in Section 6.2 hereof; provided, however, that any failure by Lender to respond to such request shall be deemed to be a rejection thereof."

(dd) Sections 7.1, 7.2, 7.3, 7.4, 7.5 and 7.6 are deleted from the Existing AHS Agreement in their entirety.

2.2 Waivers, Releases and Consents relating to AHS Debt. Effective as of the Closing Date and subject to satisfaction of all of the conditions precedent and the conditions subsequent set forth in Article 5 hereof, including the consummation of the Merger, each of the GE Parties makes the following waivers, releases and consents:

(a) GE Capital hereby consents to the Merger and waives the covenants set forth in Section 6.2(A) and Section 6.2(S) of the Existing AHS Agreement for the sole purpose of consenting to the Merger.

(b) (i) GE Medical shall release AHS of all of its obligations under the AHS Financing Agreements set forth on

Schedule 2.2(b)(i) attached hereto (the "AHS Location Obligations"), relating to the seven locations of AHS operations set forth on Schedule 2.1(k) attached hereto; provided, however, that GE Medical shall not so release such AHS Location Obligations in the event there shall have occurred and be continuing a payment default with respect thereto as of the Closing Date. GE Medical and AHS shall execute and deliver a Termination Agreement in connection with any such release and, if necessary, GE Medical shall file UCC termination statements in appropriate jurisdictions with respect thereto.

(ii) The parties hereto acknowledge that (A) certain Equipment set forth on Schedule 2.2(b)(ii) attached hereto (the "St. Benedicts Equipment") has been sold to Ogden Regional Medical Center with the consent of GE Capital and (B) the proceeds of \$800,000.00 received by AHS from such sale have been applied to repayment of the Term Loan (as such term is defined in the Existing AHS Agreement), thereby reducing the outstanding principal amount of the Term Loan to \$7,500,000 as reflected in the Amended and Restated Term Note.

(c) Upon return and delivery of the AHS Chicago Loop Equipment to GE Medical by AHS, at the sole cost and expense of AHS, to a location designated by GE Medical in the continental United States, GE Medical shall release AHS of all of its obligations under (i) the Maxiservice Agreement dated November 12, 1991 between AHS and GE Medical and identified by GE contract number 8505023-003, (ii) the Maxiservice Agreement, dated November 12, 1991, between AHS and GE Medical and identified by GE contract number 8505023-004, and (iii) the promissory note, dated January 9, 1992, made by AHS in favor of GE Medical and identified by GE contract number 8505052-001 (collectively, the "AHS Chicago Loop Obligations"); provided, however, that GE Medical shall not so release such AHS Chicago Loop Obligations in the event there shall have occurred and be continuing a payment default with respect thereto as of the Closing Date. GE Medical and AHS shall execute and deliver a Termination Agreement in connection with any such release and, if necessary, GE Medical shall file UCC termination statements in appropriate jurisdictions with respect thereto.

(d) (i) In connection with the sale of certain Equipment set forth on Schedule 2.2(d)(i) attached hereto (the "Maryland Gamma Knife Equipment") by AHS to the University of Maryland Medical Systems consented to by GE Capital and the application of proceeds to obligations of AHS to GE Medical evidenced by the promissory note, dated June 30, 1992 and identified by GE contract number 8506307-006, and the installment note, dated December 17, 1993 and identified by GE contract number 8506307-008, in each case by AHS in favor of GE Medical (collectively, the "Maryland Gamma Knife Obligations"), GE Medical shall forgive the remaining amounts owed by AHS under the Maryland Gamma Knife Obligations of \$200,000.00. GE Medical and AHS shall execute and deliver a Termination Agreement in

connection with such sale and, if necessary, GE Medical shall file UCC termination statements in appropriate jurisdictions with respect thereto.

(ii) The GE Parties shall consent to the sale by Radiosurgery Centers, Inc., a wholly-owned subsidiary of AHS ("RCI"), of certain Equipment set forth on Schedule 2.2(d)(ii) attached hereto (the "Seattle Gamma Knife Equipment") to Northwest Hospital and the assumption by Northwest Hospital of the obligations of RCI to GE Medical evidenced by (A) the installment note, dated March 2, 1993 and identified by GE contract number 8505837-001, (B) the promissory note, dated July 20, 1993 and identified by GE contract number 8505837-002, (C) the promissory note, dated July 20, 1993 and identified by GE contract number 8506808-001, and (D) the promissory note, dated February 11, 1994 and identified by GE contract number 8506808-002, in each case made by RCI in favor of GE Medical (collectively, the "Seattle Gamma Knife Obligations"); provided, however, that no such consent shall be required to be given by the GE Parties if there shall have occurred and be continuing a payment default with respect to any of the Seattle Gamma Knife Obligations as of the Closing Date.

(iii) In connection with such sale of the Seattle Gamma Knife Equipment to Northwest Hospital and the assumption by Northwest Hospital of the Seattle Gamma Knife Obligations, GE Medical shall forgive RCI of a portion of the Seattle Gamma Knife Obligations in the amount of \$415,000. GE Medical and AHS shall execute and deliver a Termination Agreement in connection with such sale and, if necessary, GE Medical shall file UCC termination statements in appropriate jurisdictions with respect thereto.

(e) GE Medical shall release AHS of all of its obligations under (i) the promissory note, dated June 1, 1993 and identified by GE contract number 8506748-001, (ii) the promissory note, dated April 12, 1994 and identified by GE contract number 8505616-002, and (iii) the promissory note, dated April 12, 1994 and identified by GE contract number 8505616-003, in each case made by AHS in favor of GE Medical (collectively, the "AHS Deferred Obligations"); provided, however, that GE Medical shall not so release such AHS Deferred Obligations in the event there shall have occurred and be continuing a payment default with respect thereto as of the Closing Date. GE Medical and AHS shall execute and deliver a Termination Agreement in connection with any such release and, if necessary, GE Medical shall file UCC termination statements in appropriate jurisdictions with respect thereto.

(f) The amortization schedules of three promissory notes, dated June 15, 1988, June 15, 1988 and March 9, 1989, respectively, identified by GE contract numbers 8506307-001, 8506307-002 and 8506307-009, respectively, in each case made by AHS in favor of PCC and purchased by GE Capital from PCC

pursuant to the Asset Purchase Agreement dated December 31, 1992 between GE Capital and PCC (collectively, the "Re-Amortized Notes"), shall be amended to be as set forth on Schedule 2.2(f) attached hereto. AHS shall repay the principal amount of each of the Re-Amortized Notes in 84 consecutive monthly installments, in the amounts set forth on Schedule 2.2(f), payable on the last Business Day of each calendar month, commencing on the last Business Day of January 1996 and ending on the last Business Day of December 2002; provided, however, that the last such installment shall be in the principal amount necessary to repay in full the unpaid principal amount of each Re-Amortized Note and interest accrued thereon. The unpaid principal amount of each of the Re-Amortized Notes shall bear interest at the lower of (i) the rate of 10.75 percent per annum or (ii) the highest rate permitted by applicable law, and, upon full payment of the Total Balloon Payment Amount by AHS with InSight Excess Cash Flow pursuant to Section 4.1 hereof, at the lower of (y) the rate of 10.25 percent per annum or (z) the highest rate permitted by applicable law.

2.3 Reference to and Effect on the Existing AHS Agreement and other Loan Documents.

(a) On and after the Closing Date, each reference in the Existing AHS Agreement to "this Agreement," "hereunder," "hereof," "herein" or words of like import, and each reference in the other Loan Documents (as defined in the Existing AHS Agreement) to the Existing AHS Agreement shall mean and be a reference to the Existing AHS Agreement as amended hereby.

(b) Except as specifically amended, waived or released above, the Existing AHS Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed in all respects. Without limiting the generality of the foregoing, the AHS Collateral does and shall continue to secure the payment of all obligations of AHS under the Loan Documents, as amended hereby, and the AHS Guaranty.

(c) The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of GE Capital or GE Medical under any of the Loan Documents or the AHS Financing Agreements or constitute a waiver of any provision of any of the Loan Documents or the AHS Financing Agreements.

2.4 Amendment to PCC Agreement.

(a) The GE Parties hereby agree that the Agreement, dated as of March 9, 1989, between AHS and PCC, as amended (the "PCC Agreement"), is amended by deleting Sections 5.13, 5.14, 5.16, 5.27 and 5.28 therefrom in their entirety.

(b) On and after the Closing Date, each reference in the PCC Agreement to "this Agreement," "hereunder," "hereof,"

"herein" or words of like import, and each reference in the other documents relating thereto to the PCC Agreement shall mean and be a reference to the PCC Agreement as amended hereby.

(c) Except as specifically amended above, the PCC Agreement and the other documents relating thereto shall remain in full force and effect and are hereby ratified and confirmed in all respects. Without limiting the generality of the foregoing, the collateral securing the payment of all obligations of AHS under the PCC Agreement does and shall continue to secure such obligations.

(d) The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of GE Capital or GE Medical under the PCC Agreement or any of the other documents relating thereto or constitute a waiver of any provision of the PCC Agreement or any such document.

ARTICLE 3
AMENDMENTS, WAIVERS, RELEASES AND CONSENTS

RELATING TO MAXUM DEBT.

3.1 Amendments to Existing Maxum Agreement. Effective as of the Closing Date and subject to satisfaction of all of the conditions precedent and the conditions subsequent set forth in Article 5 hereof, including the consummation of the Merger, the Existing Maxum Agreement is amended as follows:

(a) Section 1 of the Existing Maxum Agreement is amended by inserting the following definition of "InSight" between the definitions of "Indebtedness" and "IRC" therein:

"InSight" shall mean InSight Health Services Corp., a Delaware corporation."

(b) Section 1 of the Existing Maxum Agreement is amended by inserting the following definition of "Maxum Guaranty" between the definitions of "Maxum" and "Merrill/Highline Promissory Note" therein:

"Maxum Guaranty" shall mean the Joint and Several Guaranty, dated as of the Restructuring Closing Date, made by MHC and the First-Tier Subsidiaries in favor of GE and GE Capital to guarantee the obligations of AHS to GE and GE Capital."

(c) Section 1 of the Existing Maxum Agreement is amended by inserting the following definition of "Restructuring Agreement" between the definitions of "Reserves" and "Scheduled Documents" therein:

"'Restructuring Agreement' shall mean the Master Debt Restructuring Agreement, dated as of _____, 1996, by and among GE, General Electric Capital Corporation, a New York corporation ("GE Capital"), InSight, American Health Services Corp., a Delaware corporation ("AHS"), MHC and the First-Tier Subsidiaries."

(d) Section 1 of the Existing Maxum Agreement is amended by inserting the following definition of "Restructuring Closing Date" between the definitions of "Restructuring Agreement" and "Scheduled Documents" therein:

"'Restructuring Closing Date' shall mean _____, 1996."

(e) Section 1.46 of the Existing Maxum Agreement is amended in its entirety to read in full as follows:

"1.46 'Minimum Lease Payment' shall mean \$18,000; provided, however, that with respect to the leases between GE and MHC that are identified on Schedule 3.1(e) attached to the Restructuring Agreement, the 'Minimum Lease Payment' shall mean \$13,000 and provided further, however, that GE shall, upon InSight's request, reassess the amount of the Minimum Lease Payment from time to time to determine, in its sole and absolute discretion, whether any additional adjustments thereto would be appropriate in light of various factors, including market conditions."

(f) The Existing Maxum Agreement is amended by deleting the definition of "Warrant" in Section 1.61 and all other references therein to "Warrant" and "Warrants."

(g) Section 5.1(N) of the Existing Maxum Agreement is amended in its entirety to read in full as follows:

"(N) Insurance; Payment of Premiums. MHC and the First-Tier Subsidiaries shall, at their sole cost and expense, maintain in full force and effect the types of insurance coverages set forth on Schedule 3.1(g) attached to the Restructuring Agreement. All policies of insurance required to be maintained under this Section 5.1(N) shall be in form and with insurers reasonably acceptable to GE. All policies of insurance on that portion of the Collateral in which GE holds a first Lien shall contain an endorsement in form and substance acceptable to GE and showing GE as loss payee with respect to such Collateral. Such endorsement or independent instrument furnished to GE shall provide that the insurance company providing any such policy of insurance will give GE at least 30 days' prior written notice before any such policy or policies of insurance shall be materially altered or canceled, and that no act or default of MHC or any of the First-Tier Subsidiaries or any other Person shall affect the right of

GE to recover under such policy or policies of insurance in case of loss or damage. Each of MHC and the First-Tier Subsidiaries shall deliver to GE the original (or a certified copy) of each such policy of insurance and evidence of payment of all premiums therefor. In addition, MHC and the First-Tier Subsidiaries shall notify GE promptly of any occurrence causing a material loss to any real or personal property covered by any such insurance and the estimated (or actual, if available) amount of such loss. Each of MHC and the First-Tier Subsidiaries shall direct all insurers under such policies of insurance to pay all proceeds payable thereunder with respect to the Collateral directly to GE. Such proceeds shall be held by GE to be applied, first, to GE's expenses in settling, prosecuting and defending any insurance claim and, then, so long as no Default or Event of Default shall have occurred and be continuing, to the restoration or repair of any portion of the Collateral that has been damaged or destroyed to the same condition, character and value as existed prior to such damage or destruction. In the event that a Default or an Event of Default shall have occurred and be continuing, GE shall have the right to apply all such insurance proceeds towards repayment of the Liabilities secured by the Collateral. Each of MHC and the First-Tier Subsidiaries shall forthwith, at the request of GE, duly execute and deliver instruments of assignment of any such insurance policies to comply with this Section 5.1(N) and cause the insurers with respect to such policies to acknowledge notice of such assignment. After the occurrence and during the continuance of a Default or an Event of Default, each of MHC and the First-Tier Subsidiaries irrevocably makes, constitutes, and appoints GE (and all officers, employees or agents designated by GE) as true and lawful attorney (and agent-in-fact) therefor for the purpose of making, settling and adjusting claims under such policies of insurance that relate to the Collateral (provided that GE shall consult therewith prior to finally making, settling or adjusting claims under such policies of insurance) or endorsing the name thereof on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance that relates to the Collateral. In the event MHC or any of the First-Tier Subsidiaries at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required hereunder or shall fail to pay any premium in whole or in part, relating thereto, GE, without waiving or releasing any Liabilities or Default or Event of Default hereunder, may (but shall not be obligated to) at any time or times thereafter obtain and maintain such policies of insurance and pay such premiums and take such other action with respect thereto which is deemed advisable thereby. All sums so disbursed by GE, including attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, on demand, by MHC and the First-Tier

Subsidiaries to GE and shall be additional Liabilities hereunder secured by the Collateral.

GE reserves the right at any time, upon review of the risk profile of MHC and the First-Tier Subsidiaries, to require additional forms and insurance to, in GE's reasonable opinion, adequately protect GE's interests in the Collateral."

(h) Section 5.1 of the Existing Maxum Agreement is amended by inserting the following provision as Section 5.1(S) therein:

"(S) Financing Statements. MHC and the First-Tier Subsidiaries hereby authorize GE to file one or more Financing Statements, and amendments thereto, relative to all or any part of the Collateral without the signature of MHC or any of the First-Tier Subsidiaries where permitted by law. MHC and the First-Tier Subsidiaries hereby agree to execute, within 10 days after receipt of GE's written request, such Financing Statements as may be necessary to replace, prior to expiration, any Financing Statements delivered to GE on the Closing Date and to evidence GE's continuing security interest in the Collateral."

(i) Section 5.2 of the Existing Maxum Agreement is amended by inserting the following provision as Section 5.2(T) therein:

"(T) Guarantees. Neither MHC nor any of the First-Tier Subsidiaries shall guarantee or in any way become liable, directly or indirectly, with respect to the obligations or liabilities of any Person, whether by guaranty, endorsement, agreement to purchase or repurchase, agreement to supply or advance funds or otherwise; provided, however, that the foregoing restriction shall not apply to:

- (i) the Liabilities evidenced by the Maxum Guaranty;
- (ii) the Indebtedness of MHC and the First-Tier Subsidiaries existing on the Restructuring Closing Date which are set forth on Schedule 6.2(c) attached to the Restructuring Agreement; and
- (iii) endorsements of negotiable instruments for collection in the ordinary course of business."

(j) Section 5.2(H) of the Existing Maxum Agreement is amended in its entirety to read in full as follows:

"(H) Capital Expenditures. Neither MHC nor any of the First-Tier Subsidiaries shall make capital expenditures (including expenditures for capitalized leases but excluding expenditures for routine repairs and replacements) in excess of \$200,000 in any single transaction or series of related

transactions or \$1,000,000 in the aggregate during any fiscal year of MHC. Notwithstanding the foregoing, this Section 5.2(H) shall not apply to capital expenditures made by MHC or any of the First-Tier Subsidiaries pursuant to transactions with GE. Requests by MHC or any of the First-Tier Subsidiaries to take any action that is prohibited by this Section 5.2(H) shall comply with Section 5.6 hereof and shall be approved or disapproved by GE in accordance with Section 5.6 hereof within ten (10) Business Days following GE's receipt of MHC's or any of the First-Tier Subsidiaries' request for consent. Capital expenditures following the Closing Date for equipment with an acquisition cost in excess of \$50,000 shall be made by MHSC and not MHC, any other First-Tier Subsidiary or any other Subsidiary."

(k) Section 5.2 (L) of the Existing Maxum Agreement is amended in its entirety to read in full as follows:

"(L) Liens; Negative Pledges; Sales and Leasebacks. Except for (i) Liens which are Permitted Liens as identified in Schedule 6.2(c) attached to the Restructuring Agreement, (ii) Liens expressly permitted by the terms of this Agreement, (iii) Liens created pursuant to this Agreement or any of the Scheduled Documents, (iv) Liens for taxes, assessments and other similar charges which are not yet due and payable, (v) Liens of landlords, mechanics, materialmen, warehousemen, carriers or other similar statutory Liens securing obligations which are not yet due, (vi) Liens resulting from good faith deposits to secure payments of workmen's compensation or other social security programs or to secure the performance of statutory obligations or surety or appeal bonds, and (vii) Liens consented to by GE, neither MHC or any of the First-Tier Subsidiaries shall create, permit or suffer to exist, and MHC and the First-Tier Subsidiaries shall defend the Collateral whether now owned or hereafter acquired, and MHC and the First-Tier Subsidiaries shall defend the right, title and interest of GE in and to any of the MHC's or any of the First-Tier Subsidiaries' rights to the Collateral against the claims and demands of all Persons whomsoever, except as hereinabove provided."

(l) Section 5.2(M) of the Existing Maxum Agreement is amended in its entirety to read as follows:

"(M) Indebtedness. Except for (i) Indebtedness outstanding on the Restructuring Closing Date, (ii) the liabilities, (iii) liabilities for taxes, assessments, governmental charges or levies which are not yet due and payable or which are being contested in accordance with the terms of this Agreement, (iv) endorsements of negotiable instruments for collection in the ordinary course of business, (v) reimbursement obligations under bonds required to be obtained under the terms of this agreement, (vi) trade indebtedness in the ordinary

course of business, including payable for services performed and (vii) Indebtedness expressly permitted in this Agreement, neither MHC nor any of the First-Tier Subsidiaries shall create, incur, assume, permit to exist or guarantee more than \$200,000 of Indebtedness in any single transaction or series of related transactions or \$1,000,000 of Indebtedness in the aggregate during any fiscal year of MHC. Requests by MHC or any of the First-Tier Subsidiaries to take any action that is prohibited by this Section 5.2(M) shall comply with Section 5.6 below and shall be approved or disapproved by GE in accordance with Section 5.6 below within 10 Business Days following GE's receipt of MHC's or any of the First Tier Subsidiaries' request for consent."

(m) Section 5.6 of the Existing Maxum Agreement is amended in its entirety to read as follows:

"5.6 Requests for GE's Consent. Any request by MHC or any of the First-Tier Subsidiaries for GE's written consent prior to taking any action prohibited by Sections 5.2(B), 5.2(C), 5.2(G), 5.2(H), 5.2(I), 5.2(J), 5.2(M), 5.2(N) and 5.2(R) above as described in such Sections, shall be in writing and shall include (i) a reference to the covenant(s) relevant to the request, (ii) a detailed description that is reasonably acceptable to GE of the requested deviation from the covenant(s) and (iii) the reason for the requested deviation from the covenant(s). GE shall approve or disapprove of such request within the number of Business Days provided in the respective Sections identified in Section 5.2 hereof; provided, however, that any failure by GE to respond to such request shall be deemed to be a rejection thereof."

(n) Sections 6.1, 6.2, 6.3, 6.4 and 6.5 are deleted from the Existing Maxum Agreement in their entirety.

3.2 Amendments to Maxum Security Agreement. Effective as of the Closing Date and subject to satisfaction of all of the conditions precedent and the conditions subsequent set forth in Article 5 hereof, including the consummation of the Merger, the Maxum Security Agreement is amended as follows:

(a) Section 1 of the Maxum Security Agreement is amended by inserting the following definition of "Amended AHS Agreement" between the definitions of "Accounts" and "Chattel Paper" therein:

"'Amended AHS Agreement' shall mean the Loan and Security Agreement dated as of June 1, 1993 between General Electric Capital Corporation, a New York corporation ("GE Capital"), and American Health Services Corp., a Delaware corporation ("AHS"), as amended by the Restructuring Agreement."

(b) Section 1 of the Maxum Security Agreement is amended by inserting the following definition of "Maxum Guaranty" between the definitions of "Joint Ventures" and "Obligations" therein:

"'Maxum Guaranty' shall mean the Joint and Several Guaranty, dated as of the Restructuring Closing Date, made by Obligors in favor of GE and GE Capital to guarantee the obligations of AHS to GE and GE Capital."

(c) The definition of "Obligations" in Section 1 of the Maxum Security Agreement is amended in its entirety to read in full as follows:

"'Obligations' shall mean all loans, advances, indebtedness, liabilities and obligations of the Obligors (a) to GE under the Agreement, as amended by the Restructuring Agreement (as so amended, the 'Agreement'), and (b) to GE and GE Capital under the Maxum Guaranty, in each case every kind and nature, whether now or hereafter owing, arising, due or payable from any of the Obligors to GE or GE Capital, as the case may be, whether or not evidenced by any note, agreement or other instrument and whether primary, secondary, direct, contingent, fixed or otherwise, including obligations of performance and including, particularly, principal, interest, loan fees, charges, expenses, attorneys' fees and other amounts chargeable to the Obligors by GE or by GE Capital."

(d) The definition of "Permitted Liens" in Section I of the Maxum Security Agreement is amended in its entirety to read in full as follows:

"'Permitted Liens' shall mean (a) the Liens described in Schedule 6.2(c) attached to the Restructuring Agreement, (b) any existing Liens of GE and Liens hereafter granted to GE, and (c) Liens granted to Persons consented to by GE."

(e) Section 2 of the Maxum Security Agreement is amended in its entirety to read in full as follows:

"2. Grant of Security Interest. As collateral security for the prompt and complete payment and performance when due of all the Obligations, including the Obligations under the Scheduled Documents, and in order to induce GE to enter into the Agreement and GE and GE Capital to accept the Maxum Guaranty and make the accommodations contemplated thereby in accordance with the terms thereof, the Obligors hereby assign, convey, mortgage, pledge, hypothecate and transfer to GE and GE Capital, and hereby grant to GE and GE Capital, (a) a continuing first priority (except with respect to Collateral that is subject to a Permitted Lien) and perfected security interest in and lien on, all the Obligors' right, title and interest in, to and under any and all of the Collateral to secure the Obligations of Obligors under the Agreement and (b) a continuing second priority (except with respect to Collateral that is subject to a Permitted Lien) and perfected security interest in and lien on, all the Obligors' right, title and interest in, to and under any and all of the Collateral to secure the Obligations of the Obligors under the Maxum Guaranty."

3.3 Waivers, Releases and Consents relating to Maxum Debt. Effective as of the Closing Date and subject to satisfaction of all of the conditions precedent and the conditions subsequent set forth in Article 5 hereof, including the consummation of the Merger, GE Medical makes the following waivers, releases and consents:

(a) GE Medical hereby consents to the Merger and waives the covenants set forth in Section 5.2(A) and Section 5.2(R) of the Existing Maxum Agreement for the sole purpose of consenting to the Merger.

(b) GE Medical shall release Maxum of all of its obligations under (i) the promissory note, dated January 1, 1995 and identified by GE contract number 8507278-006, (ii) the promissory note, dated June 21, 1995 and identified by GE contract number 8507278-007, and (iii) the promissory note, dated October 23, 1995 and identified by GE contract number 8507278-008, in each case made by Maxum in favor of GE Medical (collectively, the "Maxum Deferred Obligations"); provided, however, that GE Medical shall not so release such Maxum Deferred Obligations in the event there shall have occurred and be continuing a payment default with respect thereto as of the Closing Date. GE Medical and Maxum shall execute and deliver a Termination Agreement in connection with any such release and, if necessary, GE Medical shall file UCC termination statements in appropriate jurisdictions with respect thereto.

(c) Upon return and delivery of each of the Units set forth on Schedule 3.3(c) attached hereto (collectively, the "Maxum Early Return Units") to GE Medical by Maxum, at the sole cost and expense of Maxum, to a location in the continental United States designated by GE Medical and Maxum's payment of an early termination fee of \$40,000 with respect to each such Maxum Early Return Unit, GE Medical shall release Maxum of all of its obligations under the Maxum Financing Agreements set forth on Schedule 3.3(c) attached hereto (collectively, the "Maxum Early Return Obligations"); provided, however, that GE Medical shall not so release such Maxum Early Return Obligations in the event there shall have occurred and be continuing a payment default with respect thereto as of the Closing Date. GE Medical and Maxum shall execute and deliver a Termination Agreement in connection with any such release and, if necessary, GE Medical shall file UCC termination statements in appropriate jurisdictions with respect thereto.

3.4 Reference to and Effect on Existing Maxum Agreement, Maxum Security Agreement and Scheduled Documents.

(a) On and after the Closing Date, each reference in the Existing Maxum Agreement to "this Agreement," "hereunder," "hereof," "herein" or words of like import, each reference in the Maxum Security Agreement to "this Agreement," "hereunder," "hereof," "herein" or words of like import, and each reference in the other Scheduled Documents (as defined in the Existing Maxum Agreement) to each of the Existing Maxum Agreement and the Maxum Security Agreement shall mean and be a reference to each of the Existing Maxum Agreement as amended hereby and the Maxum Security Agreement as amended hereby, respectively.

(b) Except as specifically amended, waived or released above, the Existing Maxum Agreement, the Maxum Security Agreement and the other Scheduled Documents shall remain in full force and effect and are hereby ratified and confirmed in all respects. Without limiting the generality of the foregoing, the Amended Maxum Security Agreement and all of the Maxum Collateral described therein do and shall continue to secure the payment of all obligations of MHC and the MHC First-Tier Subsidiaries under (i) the Amended Maxum Agreement and (ii) the Maxum Guaranty.

(c) The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of GE Medical under the Existing Maxum Agreement or any of the Scheduled Documents or constitute a waiver of any provision of the Existing Maxum Agreement or any of the Scheduled Documents.

ARTICLE 4
OBLIGATIONS OF InSight

4.1 AHS Prepayment Amount. As soon as possible but no later than 30 days after the delivery to GE Medical of the audited annual consolidated financial statements of InSight pursuant to Section 8.1(a) hereof (together with a certificate of InSight's chief financial officer showing in reasonable detail the calculation of the AHS Prepayment Amount), InSight shall cause AHS to prepay, on each such date, the outstanding principal amount of the Re-Amortized Notes to GE Capital in an amount equal to the amount (the "AHS Prepayment Amount") by which (a) InSight Excess Cash Flow for the immediately preceding fiscal year exceeds (b) an amount equal to six percent of InSight's Consolidated

Net Revenues as reflected in the consolidated financial statements of InSight and the InSight Subsidiaries for such immediately preceding fiscal year, determined in accordance with GAAP with each prepayment being applied to the installments of principal of the Re-Amortized Notes bearing the highest rate of interest as of the date of such application is made in the inverse order of their stated maturity; provided, however, that, upon full payment by AHS under this Section 4.1 of \$2,072,111.83 (the "Total Balloon Payment Amount"), which is the sum of the final installments due on the last Business Day of December 2002 under the Re-Amortized Notes, (i) InSight Excess Cash Flow in an amount equal to the AHS Prepayment Amount shall continue to be applied to prepayment of each of the Distribution Notes as provided therein and interest on the principal amount of each Re-Amortized Note shall be reduced to 10.25 percent per annum.

4.2 GE Parties' Right to Challenge. Each of the GE Parties shall have the right to, directly or through an agent, examine, audit, inspect or copy the books, records and files kept and maintained by InSight as well as any underlying documentation reasonably necessary for such GE Party to confirm the accuracy of InSight's determination of the AHS Prepayment Amount under Section 4.1 hereof.

(a) In the event that any such audit or examination discloses any discrepancies as reasonably determined by any GE Party,

InSight and such GE Party shall meet within 5 days to attempt to resolve such discrepancies. Notwithstanding any provision to the contrary contained in this Agreement, in the event that any discrepancy cannot be resolved by InSight and such GE Party within 20 days thereafter, a determination of the accuracy of the AHS Prepayment Amount shall be made by an independent certified public accountant selected by such GE Party ("GE Party's Accountant"); provided, however, that InSight reserves the right to protest findings made by GE Party's Accountant if an additional payment would be required to be made by InSight as a result of the determination of GE Party's Accountant, by providing written notice to such GE Party within 10 days following such GE Party's delivery of notice to InSight regarding the results of the audit performed by GE Party's Accountant. If the findings of GE Party's Accountant are not challenged by InSight within the time period specified above, then the findings of such accountant shall be binding on InSight.

(b) In the event that InSight protests the findings of GE Party's Accountant under paragraph (a) above, then such GE Party and InSight shall select a third accountant ("Third Accountant") to audit InSight's determination of the AHS Prepayment Amount, at InSight's sole cost and expense; provided, however, that the findings of such Third Accountant shall be binding on InSight and such GE Party (if such GE Party and InSight cannot agree on who shall be the Third Accountant, then the Third Accountant shall be selected by an arbitrator that is selected by the Commercial Panel of the American Arbitration Association). If it is determined by such Third Accountant that an additional payment by InSight is required, then InSight shall make such additional payment to such GE Party within five days of the receipt of the results of such Third Accountant's audit. If it is determined by such Third Accountant that InSight has overpaid, then such GE Party shall immediately apply such overpayment towards repayment of the Liabilities of InSight hereunder.

(c) The fees and expenses of GE Party's Accountant shall be borne by such GE Party, unless as a result of any such audit, it is determined that the AHS Prepayment Amount, as determined by GE Party's Accountant, exceeds the amount determined by InSight by at least \$50,000, in which event the fees and expenses of GE Party's Accountant shall be borne by InSight.

4.3 Payments. All payments to be made by InSight shall be made without set-off, recoupment or counterclaim in immediately available funds pursuant to the Automatic Drafting Agreement between InSight and GE Medical.

ARTICLE 5 CONDITIONS PRECEDENT; CLOSING -----

5.1 Conditions Precedent to Obligations of GE Parties. The obligations of the GE Parties to consummate the transactions contemplated hereby shall be subject to satisfaction of each of the following conditions (which may be waived specifically in writing by the GE Parties in whole or in part) at or prior to the Closing Date:

(a) Release and Settlement Agreement. AHS, MHC and the MHC First-Tier Subsidiaries shall have executed and delivered a Release and Settlement Agreement in substantially the form attached hereto as Exhibit 5.1 (a) (the "Release and Settlement Agreement").

(b) Termination Agreements. AHS, MHC and the MHC First-Tier Subsidiaries shall have executed and delivered Termination Agreements with respect to the release of certain obligations of (i) AHS set forth in Sections 2.2 hereti and (ii) MHC and the MHC First-Tier Subsidiaries hereto as Exhibit 2.1(1).

(c) Term Note. AHS shall have executed and delivered the AHS and Amended Restated Term Note in substantially the form attached hereto as Exhibit 2.1 (1).

(d) Guaranties. (i) AHS shall have executed and delivered a Guaranty in favor of GE Medical, in substantially the form attached hereto as Exhibit 5.1(d)(i) (the "AHS Guaranty"), guaranteeing the obligations of MHC and the MHC First-Tier Subsidiaries to GE Medical and (ii) MHC shall have executed and delivered a Joint and Several Guaranty in favor of the GE Parties, in substantially the form attached hereto as Exhibit 5.1(d)(ii) (the "Maxum Guaranty"), guaranteeing the obligations of AHS to the GE Parties.

(e) InSight Master Addendum. InSight, AHS and MHC shall have executed and delivered the InSight Master Addendum.

(f) Philips Certificate and Consent. PCC shall have executed and delivered a certificate and consent (the "Philips Certificate") in form and content satisfactory to the GE Parties.

(g) Severance Payments. InSight shall have delivered evidence satisfactory to the GE Parties that the aggregate amount of severance payments made by the Credit Parties to their employees in connection with the transactions contemplated by the Merger Agreement, the PS Acquisition Agreement or this Agreement does not exceed \$500,000.

(h) Warranties True; Covenants Performed. Each of the representations and warranties made by the Credit Parties and set forth in this Agreement, the Schedules and Exhibits attached hereto, any of the other Restructuring Documents or otherwise made in writing in connection herewith shall be true and correct in all material respects at and as of the Closing Date, and the covenants required by this Agreement or any of the other Restructuring Documents to be performed and complied with by the Credit Parties as of the Closing Date shall have all been performed and complied with in all material respects.

(i) Credit Parties' Consents, Approvals and Authorizations. All governmental and third party consents, approvals and authorizations necessary in connection with the valid execution, delivery and performance of this Agreement and the other Restructuring Documents by the Credit Parties and in connection with the Merger shall have been obtained and shall be in full force and effect.

(j) Unfavorable Action or Proceeding. On the Closing Date, no action or proceeding shall be pending or threatened against any of the Credit Parties and no unfavorable judgment, decree or order, in GE Medical's reasonable opinion, is likely to occur that would prevent or make unfavorable the consummation of the transactions contemplated by this Agreement and the other Restructuring Documents, cause the transactions contemplated by this Agreement to be rescinded or have a Material Adverse Effect on any of the Credit Parties.

(k) Opinions of Counsel. GE Medical shall have received the favorable opinions of Arent Fox Kintner Plotkin & Kahn, counsel for AHS, in substantially the form attached hereto as Exhibit 5.1(k) (i), and Storey Armstrong Steger & Martin, P.C., counsel for Maxum, in substantially the form attached hereto as Exhibit 5.1(k) (ii), each dated the Closing Date.

(l) Litigation. The AHS Litigation and the Maxum Litigation shall have been settled on terms satisfactory to GE Medical and dismissed with prejudice.

(m) Obligations. Except as otherwise specifically provided in this Agreement or in the other Restructuring Documents, all obligations of AHS, MHC and the MHC First-Tier Subsidiaries and their respective Affiliates under all leases, instruments and agreements with any of the GE Parties that shall have accrued and be payable as of the Closing Date shall have been paid by AHS, MHC and the MHC First-Tier Subsidiaries and their respective Affiliates.

(n) Charter Documents; Good Standing Certificates. GE Medical shall have received copies of the respective charter documents of the Credit Parties, including all amendments thereto, certified by the Secretaries of State of their respective states of incorporation, and good standing certificates for each such Credit Party, issued by the Secretaries of State of the states where they are incorporated and qualified to do business, as set forth on Schedule 5.1(n).

(o) Default. Except as set forth on Schedule 5.1(o) attached hereto, there shall exist on the Closing Date no (i) Default or Event of Default, (ii) default under other Indebtedness involving an aggregate amount in excess of \$100,000 or (iii) payment default under the AHS Location Obligations, AHS Chicago Loop Obligations, Seattle Gamma Knife Obligations, AHS Deferred Obligations, Maxum Deferred Obligations or Maxum Early Return Obligations.

(p) Officer's Certificate. GE Medical shall have received a certificate of each of the Presidents of the Credit Parties, dated as of the Closing Date, in form acceptable to GE Medical, certifying to the GE Parties (i) the accuracy of the representations and warranties set forth in this Agreement and the other Restructuring Documents and compliance with such Credit Party's covenants set forth in this Agreement and the other Restructuring Documents that are required to be performed as of the Closing Date and (ii) as to such Credit Party's compliance with applicable health care laws, rules and regulations relating to the payment or receipt of illegal remuneration (collectively, the "Fraud and Abuse Laws") to

the knowledge of such officer (which officer signing the certificate shall be sufficiently knowledgeable regarding such matters in the reasonable judgment of the GE Parties).

(q) Certificate of Incumbency. GE Medical shall have received a certificate of each of the corporate Secretaries of the Credit Parties, dated as of the Closing Date, in form acceptable to GE Medical, certifying to the GE Parties (i) that attached thereto is a true and complete copy of the Articles of Incorporation and the Bylaws of such Credit Party, as in effect on the date of such certification, (ii) as to the incumbency and genuineness of the signatures of the officers of such Credit Party from the date hereof to the Closing Date and bearing the authentic signatures of all such officers who shall execute this Agreement and the other Restructuring Documents on behalf of such Credit Party, (iii) as to the resolutions of the Board of Directors of such Credit Party authorizing the execution, delivery and performance of this Agreement and the other Restructuring Documents on behalf of such Credit Party and (iv) that such resolutions have not been amended or rescinded and remain in full force and effect.

5.2 Conditions Subsequent of Obligations of GE Parties. The obligations of the GE Parties to consummate the transactions contemplated hereby shall be subject to satisfaction of each of the following conditions (which may be waived specifically in writing by the GE Parties in whole or in part) immediately after the consummation of the transactions contemplated hereby:

(a) Merger Agreement. The Merger shall have been consummated strictly in accordance with the terms of the Merger Agreement, without any waiver or amendment of any term, provision or condition set forth therein (unless consented to by the GE Parties), and in compliance with all applicable laws.

(b) InSight Preferred Shares. The AHS Shares and the Maxum Shares shall have been exchanged for all of the issued and outstanding InSight Preferred Shares.

5.3 Conditions Precedent to Obligations of Credit Parties. The obligations of the Credit Parties to consummate the transactions contemplated hereby shall be subject to satisfaction of each of the following conditions (which may be waived specifically in writing by such Credit Parties in whole or in part) at or prior to the Closing Date:

(a) UCC Amendments and Termination Statements. GE Medical shall have filed UCC amendments and termination statements in appropriate jurisdictions.

(b) AHS Warrants and MHC Warrants. GE Medical shall have surrendered the AHS Warrants to AHS and the MHC Warrants to MHC for cancellation thereof.

5.4 Closing. The delivery of documents and instruments on the Closing Date as contemplated hereby shall take place at 10:00 a.m. at the offices of McDermott, Will & Emery, counsel for the GE

Parties, located at 2049 Century Park East, Suite 3400, Los Angeles, California 90067.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES OF CREDIT PARTIES

6.1 Representations and Warranties of AHS. AHS represents and warrants to the GE Parties that:

(a) Authority; Binding Obligations. AHS has the requisite corporate power and authority, and has taken all necessary corporate and other actions, to enter into, execute, deliver and perform its obligations under this Agreement, the Release and Settlement Agreement and the other Restructuring Documents to which it is a party and to consummate the Merger. This Agreement, the Release and Settlement Agreement and each of the other Restructuring Documents to which AHS is a party, when executed and delivered, shall constitute the legal, valid and binding obligations of AHS, enforceable against AHS in accordance with their respective terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by equitable principles).

(b) Compliance with Laws; No Conflict. Except as set forth on Schedule 6.1(b) attached hereto, the execution, delivery and performance by AHS of this Agreement, the Release and Settlement Agreement and the other Restructuring Documents to which it is a party and the consummation of the Merger does not, by the lapse of time, the giving of notice or otherwise, directly or indirectly (i) constitute a violation of any applicable law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to AHS, (ii) result in a default under or a breach of any provision contained in the Certificate of Incorporation or By-Laws of AHS or, any indenture, loan, mortgage, lease or deed of trust, agreement relating to the borrowing of monies, instrument, document or, to the knowledge of AHS, any agreement, to which AHS is now a party or by which it is bound, the violation or breach of which would in aggregate have a Material Adverse Effect on AHS or result in the creation or imposition of any material Lien upon any of the Property of AHS. AHS is not a party to, or otherwise subject to, any provision contained in any instrument evidencing Indebtedness of AHS or any agreement relating thereto or any other contract or agreement that limits the amount of, or otherwise imposes restrictions on, the incurrence of obligations by AHS that would have a Material Adverse Effect on the ability of AHS to perform its obligations hereunder or under any other Restructuring Document.

(c) Representations and Warranties in the Existing AHS Agreement. Except as set forth on Schedule 6.1(c) attached hereto, AHS hereby repeats and reaffirms all of the representations and warranties made by AHS in the Existing AHS Agreement and the PCC Agreement. Such representations and warranties are incorporated herein as if set forth and repeated in this Agreement.

6.2 Representations and Warranties of MHC and MHC First-Tier Subsidiaries. MHC and each of the MHC First-Tier Subsidiaries represent and warrant to the GE Parties that:

(a) Authority; Binding Obligations. MHC and the MHC First-Tier Subsidiaries have the requisite corporate power and authority, and have taken all necessary corporate and other actions, to enter into, execute, deliver and perform their respective obligations under this Agreement, the Release and Settlement Agreement and the other Restructuring Documents to which MHC or any of the MHC First-Tier Subsidiaries, as the case may be, is a party and to consummate the Merger. This Agreement, the Release and Settlement Agreement and each of the other Restructuring Documents to which MHC or any MHC First-Tier Subsidiary is a party, when executed and delivered, shall constitute the legal, valid and binding obligations of MHC and the MHC First-Tier Subsidiaries, enforceable against MHC and the MHC First-Tier Subsidiaries, in accordance with their respective terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by equitable principles).

(b) Compliance with Laws; No Conflict. The execution, delivery and performance by each of MHC and the MHC First-Tier Subsidiaries of this Agreement, the Release and Settlement Agreement and the other Restructuring Documents to which it is a party and the consummation of the Merger does not, by the lapse of time, the giving of notice or otherwise, directly or indirectly (i) constitute a violation of any applicable law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to MHC or any of the MHC First-Tier Subsidiaries, (ii) result in a default under or a breach of any provision contained in the Certificate of Incorporation or By-Laws of MHC or any of the MHC First-Tier Subsidiaries or any indenture, loan, mortgage, lease or deed of trust, agreement relating to the borrowing of monies, instrument, document or, to MHC's or such MHC First-Tier Subsidiary's knowledge, any agreement, to which MHC or such MHC First-Tier Subsidiary is now a party or by which it is bound, the violation or breach of which would in aggregate have a Material Adverse Effect on MHC or such MHC First-Tier Subsidiary or result in the creation or imposition of any material Lien upon any of MHC's or such MHC First-Tier Subsidiary's Property. Neither MHC nor any of the MHC First-Tier Subsidiaries is a party to, or otherwise subject to, any provision contained in any instrument evidencing Indebtedness of MHC or such MHC First-Tier Subsidiary or any agreement relating thereto or any other contract or agreement that limits the amount of, or otherwise imposes restrictions on, the incurrence of obligations by MHC or such MHC First-Tier Subsidiary that would have a Material Adverse Effect on the ability of MHC or such MHC First-Tier Subsidiary to perform its obligations hereunder or under any other Restructuring Document.

(c) Representations and Warranties in the Existing Maxum Agreement. Except as set forth on Schedule 6.2(c) attached hereto, MHC and each of the MHC First-Tier Subsidiaries hereby repeat and reaffirm all of the representations and warranties made by MHC and each of the MHC First-Tier Subsidiaries in the Existing Maxum

Agreement. Such representations and warranties are incorporated herein as if set forth and repeated in this Agreement.

6.3 Representations and Warranties of InSight. InSight represents and warrants to the GE Parties that:

(a) Existence and Qualification; Power; Good Standing. InSight is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. InSight has the requisite corporate power and authority to carry on its business as it is now being conducted. InSight is duly qualified and in good standing to do business in each jurisdiction in which the character of its properties or the character of its business requires such qualification, license or good standing. Schedule 6.3(a) sets forth InSight's chief executive office, (ii) principal place of business, and (iii) a complete list of all jurisdictions in which InSight is qualified to do business. InSight has previously delivered to the GE Parties complete and correct copies of the Certificate of Incorporation and Bylaws of InSight as currently in effect.

(b) Authority; Binding Obligations. InSight has the requisite corporate power and authority, and has taken all necessary corporate and other actions to enter into, execute, deliver and perform this Agreement and the other Restructuring Documents to which it is a party and to consummate the Merger. This Agreement and each of the other Restructuring Documents to which InSight is a party, when executed and delivered, will constitute the legal, valid and binding obligations of InSight, enforceable against InSight in accordance with their respective terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by equitable principles).

(c) Compliance with Laws/No Conflict. The execution, delivery and performance by InSight of this Agreement and the other Restructuring Documents to which it is a party and the consummation of the Merger does not, by the lapse of time, the giving of notice or otherwise, directly or indirectly (i) constitute a violation of any applicable law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to InSight, (ii) result in a default under or a breach of any provision contained in the Certificate of Incorporation or Bylaws of InSight or any instrument, document or agreement to which InSight is now a party or by which it is bound, the violation or breach of which would in the aggregate have a Material Adverse Effect on InSight or result in the creation or imposition of any material Lien upon any of InSight's Property.

(d) Absence of Indebtedness. Except for this Agreement, InSight is not a party to, or otherwise subject to, any indenture, agreement or instrument relating to the borrowing of monies or otherwise evidencing any Indebtedness.

(e) Absence of Defaults. InSight has not breached any material provisions of, and is not in default in any material respect under the terms of, and has not engaged in any activity which would cause revocation or suspension of, any governmental license,

franchise, permit or authorization and no action or proceeding seeking or contemplating the revocation or suspension of any such license, franchise, permit or authorization is pending or threatened. InSight is not in default under or in breach of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award that will have a Material Adverse Effect upon InSight. InSight is not in default, nor is any third party in default, under or with respect to any contract, agreement, lease or other instrument to which InSight is a party. No Default or Event of Default has occurred and is continuing.

(f) Consents and Approvals. Except as set forth on Schedule 6.3(f) attached hereto, no consent, approval, permit, waiver, authorization or other action of or by any court or governmental or nongovernmental Person or entity, is required or will be necessary in connection with the execution, delivery or performance of this Agreement or any other Restructuring Document or for the consummation of the Merger except for the consents, approvals, permits, waivers, authorizations and other actions which have been duly obtained, taken, given or made and are in full force and effect.

(g) Liabilities. InSight has no Indebtedness and has not guaranteed the obligations of any Person, except for money borrowed and other financial accommodations from the GE Parties.

(h) Burdensome Provisions; Disputes. InSight is not (i) a party to any contract, agreement or other instrument or subject to any charge, corporate restriction, judgment, decree or order that has a Material Adverse Effect on InSight, (ii) a party to any material labor dispute, (iii) the subject of any material pending or threatened strikes or walkouts relating to any labor contract or (iv) a party to any collective bargaining agreement. InSight is not bound by any provision of any applicable law or governmental regulation, that has a Material Adverse Effect upon InSight or, insofar as InSight can reasonably foresee, will have a Material Adverse Effect upon InSight.

(i) Joint Ventures. InSight is not engaged in any joint venture or partnership with any Person.

(j) Subsidiaries and Affiliates. InSight has no Subsidiaries or Affiliates except as set forth on Schedule 6.3(j) attached hereto.

(k) Litigation or Claims. Neither InSight nor InSight's properties, businesses or assets is engaged in or a party to or threatened with any suit, action, proceeding, inquiry, enforcement action, investigation, claim or demand or legal, administrative, arbitration or other method of settling disputes or disagreements and InSight does not know, anticipate or have notice of any basis for any such action. InSight has not received written notice of any investigation, threatened or contemplated, by any federal or state governmental authority or agency, that remains unresolved.

(l) Brokers. Except as set forth on Schedule 6.3(1) attached hereto, to InSight's knowledge, all negotiations relating to this Agreement and the transactions contemplated hereby have been carried out without the intervention of any person on behalf of InSight in such manner as to give rise to any claim against the GE Parties or InSight for any brokerage or finder's fee, commission or other similar compensation.

(m) Corporate Records. The corporate records and minute books of InSight accurately reflect all material actions taken by the stockholders, the Board of Directors or any committee thereof.

(n) No Untrue or Inaccurate Representations or Warranties. All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of InSight or any of the InSight Subsidiaries pursuant to or in connection with this Agreement or any of the other Restructuring Documents (including, without limitation, any such statements made in or in connection with any amendment hereto or thereto) shall constitute representations and warranties made by InSight or such InSight Subsidiary under this Agreement. The representations and warranties of InSight and each of the InSight Subsidiaries contained in this Agreement and the schedules and exhibits attached hereto and the other Restructuring Documents and the certificates and other written statements delivered pursuant to this Agreement or any of the other Restructuring Documents, or otherwise in connection with the transactions contemplated hereby or thereby, are accurate, correct and complete, and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements and information contained in this Agreement or any such schedules or exhibits attached hereto or any of the other Restructuring Documents or any of the certificates or other written statements delivered pursuant hereto or any of the other Restructuring Documents, as the case may be, not misleading.

ARTICLE 7 COVENANTS AND CONTINUING AGREEMENTS -----

7.1 Affirmative Covenants of InSight. InSight covenants that at all times until the Restructuring Termination Date:

(a) Payment of Indebtedness. InSight shall pay and discharge, and, except as provided in the Amended AHS Agreement and the Amended Maxum Agreement, shall cause each of the InSight Subsidiaries to pay and discharge, all of its Indebtedness, including the Liabilities owed to the GE Parties, as and when due and payable except for such Indebtedness as is reasonably being contested and disputed by InSight or such InSight Subsidiary, as the case may be, provided that InSight shall have given the GE Parties written notice of such dispute and shall be diligently contesting such Indebtedness in good faith in an appropriate forum and proceeding. If such disputed Indebtedness is in excess of \$100,000 in the aggregate, at any time, InSight shall give the GE Parties such additional assurances as the GE Parties reasonably deem necessary under the circumstances.

(b) Inspection Rights. InSight shall permit, and shall cause each of the InSight Subsidiaries to permit, the GE Parties and their respective agents and representatives to enter upon its premises at any time during usual business hours (or at such other times as may be reasonably requested by the GE Parties) upon at least three Business Days prior written notice to InSight or such InSight Subsidiary, exercisable as frequently as the GE Parties or any designated representative of the GE Parties may reasonably request (but in no event more often than once during each calendar quarter), for the purpose of inspecting all records, files and books of account of InSight and such InSight Subsidiary (and to make extracts from such records, files and books of account at the GE Parties' expense). All executive officers and other officers of InSight and each of the InSight Subsidiaries charged with knowledge of the financial condition of InSight or any such InSight Subsidiary shall make themselves available at all reasonable times to discuss, and provide all reasonable information requested by any of the GE Parties with respect to the business of InSight or such InSight subsidiary.

(c) Compliance with Laws. InSight shall comply, and shall cause each of the InSight Subsidiaries to comply, in a timely fashion with the requirements of all (i) applicable federal, state and local laws, rules and regulations, including those regarding the collection, payment and deposit of sales, employees' income, unemployment and social security taxes and other charges and those relating to environmental matters and health care matters and (ii) orders of any governmental authority having jurisdiction over InSight, where the failure to so comply may have a Material Adverse Effect upon InSight or any of the InSight Subsidiaries, or affect InSight's ability to perform its obligations under this Agreement or any of the other Restructuring Documents, unless the same is being contested in good faith by appropriate proceedings.

(d) Compliance with Agreements. InSight shall perform, and except as provided in the Amended AHS Agreement and the Amended Maxum Agreement shall cause each of the InSight Subsidiaries to perform, within all required time periods (after giving effect to any applicable grace periods), all of its obligations and enforce all of its rights under each agreement to which it is a party where the failure to so perform or enforce could have a Material Adverse Effect upon InSight or such InSight Subsidiary. InSight shall not terminate or modify, and shall not permit any of the InSight Subsidiaries to terminate or modify, in any manner adverse to it any provision of any agreement or lease to which it is a party which termination or modification could reasonably be expected to have a Material Adverse Effect upon InSight or such InSight Subsidiary.

(e) Hazardous Materials Laws. InSight shall comply, and shall require each of the InSight Subsidiaries to comply, in all material respects with all laws governing Hazardous Materials and shall promptly advise the GE Parties in writing of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, contemplated or threatened in writing pursuant to any applicable laws governing Hazardous Materials, (ii) any and all claims made or threatened in writing by any third party against InSight or any of the InSight Subsidiaries or their respective real property relating to damage, contribution, cost recovery,

compensation, loss or injury resulting from any Hazardous Materials, and (iii) the discovery by any officer or employee of InSight or any of the InSight Subsidiaries of any occurrence or condition on any real property adjoining or in the vicinity of InSight's or such InSight Subsidiary's respective real property that could reasonably be expected to cause any real property of InSight or such InSight Subsidiary to be subject to any restrictions on the ownership, occupancy, transferability or use of such real property under any laws governing Hazardous Materials.

(f) Payment of Taxes. Except as set forth on Schedules 6.1(c) and 6.2(c) attached hereto, InSight shall prepare and file, and shall cause each of the InSight Subsidiaries to prepare and file, all tax returns and pay and discharge at or before their due date, all taxes, assessments and other similar governmental levies, charges, fees and imposts, all liabilities for judgments, assessments and other governmental charges and all other obligations for the payment of money, which, if unpaid, might become a Lien on the Property of InSight or any of the InSight Subsidiaries (except those being contested in good faith by appropriate proceedings in which no material item or portion of such Property taken as a whole is in jeopardy of being seized, levied upon or forfeited prior to judgment). InSight shall maintain, and shall cause each of the InSight Subsidiaries to maintain, in accordance with GAAP, appropriate reserves for the accrual of any of the foregoing obligations and liabilities.

(g) Preserve Accuracy of Representations and Warranties. InSight shall refrain, and shall cause each of the other Credit Parties to refrain, from any action or inaction that would render inaccurate any representation or warranty or any covenant contained in Sections 6.3(a), 6.3(c) and 6.3(m) of this Agreement.

(h) Maintenance of Existence. InSight shall (i) preserve and maintain, and cause each of the InSight Subsidiaries to preserve and maintain, its separate corporate existence in the jurisdiction of its formation and all authorizations, rights, franchises, licenses, privileges, consents, approvals, orders, licenses, permits or registrations from any governmental agency that are necessary for the transaction of its business, except where the failure to so preserve and maintain would not have a Material Adverse Effect on InSight or any such InSight Subsidiary and (ii) qualify and remain qualified, and cause each of the InSight Subsidiaries to qualify and remain qualified, as a foreign corporation in each jurisdiction in which such qualification is necessary in view of its business or the ownership of its Property.

(i) Accounting Methods; Books and Records of Account. InSight shall maintain, and shall cause each of the InSight Subsidiaries to maintain, its present customary system of accounting established and administered in accordance with GAAP and keep such books, records and accounts (which shall be true and complete) with respect to its business activities in reasonable detail as necessary to permit preparation of financial statements in conformity with GAAP.

(j) Further Assurances. In addition to the acts contemplated hereunder to be performed and executed by InSight, InSight hereby agrees, at any time and from time to time, to perform, execute and deliver, and to cause each of the InSight Subsidiaries to perform and execute upon request and in form and substance reasonably acceptable to the GE Parties, any and all such further acts, additional instruments or further assurances as may be reasonably necessary or proper to (i) promptly implement the intent of the parties under this Agreement and the other Restructuring Documents, (ii) promptly correct any defect, error or omission which may be discovered in this Agreement or any other Restructuring Document, and execute any and all additional documents as may be reasonably requested by the GE Parties to correct such defect, error or omission, or to identify any additional properties which are or become subject to this Agreement, the Amended AHS Agreement or the Amended Maxum Security Agreement, (iii) assure the GE Parties valid Liens and security interests on the Collateral referenced in this Agreement, the Amended AHS Agreement, the Amended Maxum Security Agreement, the AHS Financing Agreements and the Maxum Financing Agreements, (iv) create, perfect, preserve, maintain and protect the Liens created or intended to be created pursuant to this Agreement, the Amended AHS Agreement and the Amended Maxum Security Agreement and (v) provide the rights and remedies to the GE Parties granted or provided for by this Agreement, the Amended AHS Agreement, the Amended Maxum Security Agreement, the AHS Financing Agreements and the Maxum Financing Agreements. InSight shall pay, or cause the InSight Subsidiaries to pay, the costs of any recording or filing of any documents if required under this Section 7.1(j). Upon the occurrence and during the continuance of an Event of Default, InSight hereby irrevocably makes, constitutes and appoints the GE Parties (and all Persons designated by the GE Parties for that purpose) as InSight's true and lawful agents and attorneys-in-fact to sign the name of InSight on any Restructuring Document and to deliver any Restructuring Document to such Persons as the GE Parties, in their sole and absolute discretion, may elect. InSight agrees that a carbon, photographic, photostatic or other reproduction of this Agreement, the Amended AHS Agreement, the Amended Maxum Security Agreement, any AHS Financing Agreement, any Maxum Financing Agreement or a Financing Statement is sufficient as a Financing Statement.

(k) Insurance; Payment of Premiums. InSight shall, at its sole cost and expense, maintain in full force and effect the types of insurance coverages set forth on Schedule 7.1(k) attached hereto and shall cause each of the InSight Subsidiaries to maintain in full force and effect the insurance required by the terms of the Amended AHS Agreement and the Amended Maxum Agreement. All policies of insurance on the Property of InSight shall contain an endorsement in form and substance acceptable to the GE Parties.

(l) Litigation. InSight shall indemnify and hold the GE Parties harmless from any and all losses, claims, damages, costs, expenses (including court costs and attorneys' fees) and obligations (including, without limitation, any loss of any right, title or interest of the GE Parties in and to the Collateral arising out of or related to, directly or indirectly, any litigation or the claim of any third party for alleged liabilities and/or obligations of InSight arising out of transactions or events affecting the Collateral;

provided, however, that if any of the GE Parties intervenes in such action, InSight shall not be liable to such GE Party for any expenses incurred by such GE Party, which for purposes of this Section 7.1(1) shall include attorneys' fees or court costs incurred by such GE Party but shall not include any damages or other losses incurred by such GE Party in connection with such litigation. InSight shall not be liable to any of the GE Parties for any losses, claims, damages, costs, expenses and obligations which are caused by the gross negligence or willful misconduct of such GE Party.

7.2 Negative Covenants of InSight. Without the prior written consent of GE Medical, which GE Medical may or may not give, in its sole and absolute discretion, InSight covenants as follows:

(a) Change in the Nature or Conduct of Business. InSight shall not engage in any business other than that of owning the shares of capital stock of the InSight Subsidiaries and otherwise acting in accordance with this Agreement and the other Restructuring Documents to which it is a party.

(b) Mergers and Acquisitions. InSight shall not, directly or indirectly, by operation of law or otherwise, merge or consolidate with or agree to merge or consolidate with, nor make any Major Acquisition or purchase or agree to purchase all or substantially all of the assets of, nor otherwise acquire, any corporation, partnership, or other business organization or division thereof.

(c) Distributions. InSight shall not make any Distributions.

(d) ERISA. InSight shall not at any time, maintain, be obligated or become obligated to contribute on behalf of its employees to, any Employee Pension Benefit Plan (as defined in Section 3(2) of ERISA).

(e) Increase in Salaries and Payment of Bonuses. InSight shall not, during any fiscal year of InSight, (i) increase the aggregate salaries of the officers, directors, and managers of InSight and the InSight Subsidiaries by an aggregate amount exceeding 20 percent of the aggregate salaries paid to such officers, directors and managers during the immediately preceding fiscal year or (ii) pay bonuses to the officers, directors, managers or employees of InSight and the InSight Subsidiaries in excess of (A) \$400,000 in the aggregate, provided that bonuses to each such officer, director, manager or employee shall not exceed 35 percent of such Person's base salary, in the event InSight's Consolidate Net Income was equal to or greater than \$2,500,000 during the immediately preceding fiscal year, or (B) \$250,000 in the aggregate, provided that bonuses to each such officer, director, manager or employee shall not exceed 20 percent of such Person's base salary, in the event InSight's Consolidated Net Income was less than \$2,500,000 during the immediately preceding fiscal year; provided, however, that the foregoing limits on the aggregate and individual amounts of bonuses shall not apply to the employees of InSight or any InSight Subsidiary (y) who are solely dedicated to an operating mobile-unit center or an operating fixed-

unit center of InSight or such InSight Subsidiary and (z) whose employee bonus plans have been approved in writing by GE Medical.

(f) Capital Expenditures. Except for capital expenditures made by InSight pursuant to transactions with the GE Parties or their Affiliates, InSight shall not make capital expenditures in excess of \$100,000 in the aggregate during any fiscal year of InSight.

(g) Leases. InSight will not create, incur, or assume any obligation for the payment of the rent or hire of Property under leases or lease agreements which would cause the aggregate amount of all payments by InSight pursuant to such leases or lease agreements to exceed \$250,000 in any fiscal year of InSight.

(h) Transactions with Affiliates. Except as specifically permitted in this Agreement, InSight shall not enter into, or be a party to, any transaction with any stockholder or Affiliate of InSight, except in the ordinary course of and pursuant to the reasonable requirements of the business of InSight and the InSight Subsidiaries and upon fair and reasonable terms fully disclosed to GE Medical and no less favorable to InSight than would be obtained in a comparable arm's-length transaction with a Person not a stockholder or Affiliate of InSight.

(i) Adverse Agreements. InSight shall not enter into any transaction that is reasonably likely to have a Material Adverse Effect on the Collateral or InSight's ability to perform its obligations hereunder.

(j) Guarantees. InSight shall not guarantee or in any way become liable, directly or indirectly, with respect to the obligations or liabilities of any Person, whether by guaranty, endorsement, agreement to purchase or repurchase, agreement to supply or advance funds or otherwise; provided, however, that the foregoing restriction shall not apply to (i) obligations existing at the time of this Agreement which are disclosed in Schedule 7.2(j) attached hereto or (ii) endorsements of negotiable instruments for collection in the ordinary course of business.

(k) Liens; Negative Pledges; Sales and Leasebacks. InSight shall not create, permit or suffer to exist, and InSight shall defend its Property against and take such other action as is necessary to remove, any Lien of any nature (whether pursuant to sale, lease, negative pledge, merger, consolidation, liquidation, dissolution or otherwise) on InSight's Property, whether now owned or hereafter acquired; provided, however, that the foregoing restrictions shall not apply to:

(i) Liens for taxes, assessments and other similar charges which are not yet due and payable or which are being contested in good faith and for which reserves adequate under GAAP have been established;

(ii) Liens of landlords, mechanics, materialmen, warehousemen, carriers, or other similar statutory Liens securing obligations that are not yet due or which are being contested in good faith and for which reserves adequate under GAAP have been established;

(iii) Liens resulting from good faith deposits to secure payments of workmen's compensation or other social security programs or to secure the performance of statutory obligations or surety and appeal bonds; and

(iv) Liens consented to by the GE Parties.

(l) Indebtedness. Except as set forth in Schedule 7.2(l) attached hereto, InSight shall not create, incur, assume or permit to exist any Indebtedness or evidence of Indebtedness, except for the Indebtedness owed to any of the GE Parties.

(m) Corporate Name. InSight shall not change its corporate name.

(n) Disposition of Property. InSight shall not make any Disposition of any of its assets, properties, rights or claims, whether now owned or hereafter acquired in an amount exceeding \$100,000 in the aggregate during any fiscal year of InSight.

(o) Capital Structure. Except as specifically permitted in this Agreement, InSight shall not (i) authorize for issuance, issue, sell or deliver any additional shares of its capital stock of any class or any securities or obligations convertible into shares of its capital stock of any class or issue or grant any option, warrant or other right to purchase any shares of its capital stock of any class or (ii) split, combine or reclassify any shares of its capital stock of any class or redeem or otherwise acquire, directly or indirectly, any shares of its capital stock of any class.

(p) Joint Ventures and Partnerships. InSight shall not form or create, or become a member of or a partner in, any joint venture or partnership.

(q) Severance Payments. InSight and the InSight Subsidiaries shall not make severance payments to their employees in connection with the transactions contemplated by the Merger Agreement, the PS Acquisition Agreement or this Agreement in excess of \$500,000 in the aggregate, which aggregate amount shall include the severance payments made in connection with the transactions contemplated by the Merger Agreement and the PS Acquisition Agreement prior to the Closing Date.

7.3 Payment of Charges. Except as otherwise provided in Section 7.4 or elsewhere in this Agreement and except as otherwise provided in the next succeeding sentence, InSight shall pay all charges, whether payable on account of the execution, delivery or performance of this Agreement and the other Restructuring Documents, the creation of any of the Liabilities hereunder by reason of any existing or hereafter enacted federal, state or other regulation or

statute or otherwise, promptly when due where the failure to so pay would have a Material Adverse Effect upon InSight. Except as provided in Section 7.4, InSight shall pay promptly when due all withholding taxes, whether relating to payment of employee wages or otherwise (collectively, the "Withholding Charges"). InSight shall indemnify the GE Parties and hold the GE Parties harmless from and against liability in connection with any and all charges (including any amount that may be asserted under sections 3505 and 6672 of the Internal Revenue Code and any comparable provisions under state or local law). In the event that InSight fails to pay any charges described in this Section 7.3 or fails to obtain promptly the discharge of such charges, InSight shall so advise the GE Parties in writing and, whether or not InSight so advises the GE Parties, the GE Parties may, in their sole and absolute discretion, without waiving or releasing any obligation or liability of InSight hereunder or any Default or Event of Default, make such payment or any part thereof, or obtain such discharge and take any other action with respect thereto that the GE Parties reasonably deem advisable; provided, however, that the GE Parties shall provide InSight with ten (10) days' prior notice before paying any charge of a type described in this Section 7.3. All amounts so paid by the GE Parties and any related expenses, including attorneys' fees, court costs and other charges, shall be payable, upon demand, by InSight to the GE Parties.

7.4 Contesting Charges. Except as otherwise provided below, InSight may dispute any charges without prior payment, even if such non-payment may cause a Lien to attach to InSight's Property, provided that InSight shall have given the GE Parties written notice of said dispute and shall be diligently contesting the same in good faith in an appropriate forum and proceeding. If such disputed charges are in excess of \$100,000 in the aggregate, at any time, InSight shall give the GE Parties such additional assurances as the GE Parties reasonably deem necessary under the circumstances. If the charge disputed is a Withholding Charge, and during the pendency of such dispute the appropriate taxing authority asserts liability against any of the GE Parties in relation to the disputed Withholding Charge, then InSight shall, if reasonably required by any of the GE Parties, immediately pay the disputed Withholding Charge liability, and thereafter shall only contest such Withholding Charge through an alternative method.

7.5 Survival of Liabilities Upon Termination of Agreement. Except as otherwise expressly provided in this Agreement, no termination or cancellation (regardless of cause or procedure) of this Agreement shall in any way affect or impair the powers, obligations, duties, rights, and Liabilities of any of the Credit Parties or any of the GE Parties that accrued and remain unperformed as of the Restructuring Termination Date.

7.6 Requests for Consent of GE Parties. Any request by InSight for the written consent of the GE Parties prior to taking any action prohibited by Section 7.2 hereof as described in such Section, shall be in writing and shall include a detailed description that is reasonably acceptable to the GE Parties of the proposed action to be taken by InSight. The GE Parties shall accept or reject, in their

sole and absolute discretion, such request within 10 Business Days following the GE Parties' receipt of InSight's request for consent; provided, however, that any failure by the GE Parties to respond to such request shall be deemed to be a rejection thereof.

ARTICLE 8
INFORMATION AND REPORTING REQUIREMENTS

Unless GE Medical shall otherwise consent in writing, InSight shall furnish to GE Medical at GE Medical's addresses provided in Section 10.12 until the Restructuring Termination Date, the following:

8.1 Financial Statements. InSight shall prepare, or cause the preparation of, and deliver to GE Medical the following financial statements that have been prepared in accordance with GAAP (the financial statements referred to in this Agreement shall be on a consolidated and consolidating basis in accordance with GAAP):

(a) Audited Year-End Financial Statements. For each fiscal year of InSight, as soon as available, but not later than 105 days after the end of InSight's fiscal year, InSight shall deliver the audited balance sheet of InSight as at the end of such fiscal year together with related statements of income, cash flows and stockholders' equity for the 12-month period then ended, setting forth in comparative form the figures as at the end of and for the previous fiscal year, in each case accompanied by an auditor's report thereon that is certified by a firm of independent certified public accountants of recognized national standing which report shall be in scope and substance reasonably satisfactory to GE Medical, and, as soon as available, but not later than 60 days after the close of InSight's fiscal year, an unaudited preliminary draft of the balance sheet of InSight as at the end of such fiscal year together with preliminary drafts of such related statements of income and retained earnings and cash flows.

(b) Quarterly Financial Statements. As soon as available, but not later than 60 days after the end of the first three (3) fiscal quarters of each fiscal year of InSight, InSight shall deliver the unaudited balance sheet of InSight as at the end of such quarterly period and the related statements of income, cash flows and stockholders' equity of InSight for the elapsed portion of the fiscal year ended with the last day of such quarterly period, setting forth in each case in comparative form the figures for the corresponding periods of the previous fiscal year, prepared in accordance with GAAP, subject only to normal year-end auditing adjustments, and in form as GE Medical may reasonably request.

(c) Officer's Certificate. Concurrently with each delivery of said annual audited financial statements, InSight shall deliver a certificate of InSight's chief financial officer stating that (i) to his knowledge such financial statements are complete and correct in all material respects and present fairly, in accordance with GAAP (except for changes that have been approved in writing by

InSight's accountants) the financial position of InSight as at the end of such fiscal year and the results of operations of InSight for such fiscal year and (ii) a review of the activities of InSight and the InSight Subsidiaries during the fiscal year has been made under his supervision with a view to determining whether InSight and the other Credit Parties have observed, performed and fulfilled in all material respects the covenant, obligation and agreement contained in this Agreement and that he is not aware of the occurrence or existence of any condition or event that constitutes a Default or an Event of Default, or, if he is aware of such condition or event, the nature thereof, when it occurred, whether it is continuing and the steps being taken by InSight or any of the other Credit Parties with respect to such event or failure.

8.2 Public Documents. Promptly after the sending or filing thereof, as the case may be, copies of any definitive proxy statements, financial statements or reports which InSight sends to its shareholders; and copies of any regular, periodic and special reports or registration statements which InSight files with the Securities and Exchange Commission or any governmental authority which may be substituted therefor or any national securities exchange.

8.3 Other Reports. From time to time and promptly upon each request, such data, certificates, reports, statements, opinions of counsel, documents or further information regarding the Collateral or the business, assets, financial condition or results of operation of InSight and the InSight Subsidiaries as GE Medical may reasonably request.

8.4 Certain Notices. InSight shall notify GE Medical in writing promptly, but in no event later than ten Business Days upon learning of (a) any litigation commenced against InSight, its officers, directors or shareholders that may have a Material Adverse Effect upon InSight, the Collateral or the GE Parties' Liens on the Collateral, whether or not the claim is considered by InSight to be covered by insurance, and InSight shall also notify GE Medical in writing promptly upon learning of any threatened litigation against InSight in which the claim against InSight exceeds \$100,000 or which might have a Material Adverse Effect on InSight, the Collateral or the GE Parties' Liens on the Collateral; (b) any Default or Event of Default known to InSight, or any event which with the passage of time or giving of notice or both would constitute a Default or Event of Default; (c) any default by InSight or any of the InSight Subsidiaries under any material agreement other than this Agreement or the other Restructuring Documents to which any of them is a party or by which any of them or any of their properties may be bound that is reasonably likely to have a Material Adverse Effect on InSight or such InSight Subsidiary; (d) any facts or circumstances which come to InSight's attention and which cause, or through the passage of time may cause, any of InSight's representations and warranties set forth in this Agreement to be untrue or misleading at any time other than facts or circumstances permitted by the terms of this Agreement or any of the Restructuring Documents or otherwise consented to by the GE Parties; (e) any penalty assessed against InSight by any federal,

state or local government agency which could have a Material Adverse Effect on InSight; (f) any notice received from any federal, state or local government agency of any violation by InSight of any federal, state or local law or regulation, the commencement of any proceedings or investigations by or before any governmental or nongovernmental body affecting InSight, or any of the InSight Subsidiaries, or any of their respective properties, assets or businesses, in which the damages claimed or the potential liability would be reasonably likely to exceed \$100,000 and which could have in the aggregate with other actions, suits and proceedings, a Material Adverse Effect on InSight or any of the InSight Subsidiaries; (g) any violation by InSight of any such law or regulation of which InSight becomes aware, which violation could result in the assessment of a penalty or the revocation of a registration or license of InSight by any federal, state or local government agency, which would have a Material Adverse Effect on InSight; and (h) any other event or condition having a Material Adverse Effect on (i) InSight, (ii) the aggregate value of the Collateral or (iii) the security interests created under the Amended AHS Agreement or the Amended Maxum Security Agreement.

ARTICLE 9
EVENTS OF DEFAULT; RIGHTS AND REMEDIES

9.1 Event of Default. The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default":

(a) InSight fails to pay within 15 days after the same becomes due any amount owed to any of the GE Parties (collectively, the "InSight Payment Obligations");

(b) Except as provided in Section 9.1(a) above, InSight shall fail or neglect to perform, keep or observe, in any material respect, any other term, provision, condition, covenant, duty or obligation contained in Section 7.2 of this Agreement which is required to be performed, kept or observed by InSight;

(c) Except as provided in Sections 9.1(a) and 9.1(b) above, InSight shall fail or neglect to perform, keep or observe, in any material respect, any other term, provision, condition, covenant, duty or obligation contained in this Agreement which is required to be performed, kept or observed by InSight and, with respect to any breach of any condition, covenant, duty or obligation contained in this Agreement, such breach shall not have been remedied to GE Parties' satisfaction within 30 days after GE Medical has delivered written notice of such breach to InSight;

(d) Any event of default or any event which upon lapse of time, notice or otherwise would constitute an event of default, under any agreement to which InSight is a party shall occur and is reasonably likely to have a Material Adverse Effect on InSight;

(e) Any representation or warranty contained in this Agreement or any statement, report, financial statement or

certificate made or delivered by InSight or any of its officers, employees or agents to the GE Parties shall be untrue, incorrect or incomplete in any material respect or shall be misleading in any material respect, in each case, as of the time when made;

(f) There occurs, in the reasonable judgment of the GE Parties, any change in the business, assets, financial condition or results of operation of InSight or any of the InSight Subsidiaries which constitutes a material adverse change from the business, assets, financial condition or results of operation of InSight and the InSight Subsidiaries as a whole existing as of the Closing Date;

(g) InSight's Property, or any material portion of it, shall be attached, seized, levied upon or subjected to a judgment Lien, execution Lien, writ or distress warrant which exceeds \$100,000 in value and which is not released or bonded off by InSight before it may be executed upon, or such Property, or any portion of it, shall come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors of InSight for a continuous period of 45 consecutive days, and the same shall not be released or otherwise cured to the satisfaction of the GE Parties within 10 days thereafter;

(h) (i) InSight or any of the InSight Subsidiaries shall (A) commence a voluntary case or involuntary case under the Bankruptcy Code, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or similar law; (B) apply for or consent to the appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator, agent or other similar official for InSight or any of the InSight Subsidiaries for any material part of InSight's or such InSight Subsidiary's respective assets, and any such application or proceeding shall not be dismissed or stayed within the next 60 consecutive days; (C) make any assignment for the benefit of creditors; (D) commence any case or proceeding for dissolution, liquidation or termination; (E) have concealed, removed or permitted to be concealed or removed, any part of its Property, with intent to hinder, delay or defraud its creditors or any of them, or made or suffered a transfer of any of its Property or the incurring of an obligation which may be fraudulent under any bankruptcy, fraudulent conveyance or other similar law; (F) admit in writing its inability to pay, or generally not be paying, its debts as they become due; or (G) take any corporate action for the purposes of effecting any of the foregoing; or

(ii) A case or other proceedings shall be commenced involuntarily against InSight or any of the InSight Subsidiaries in any court of competent jurisdiction seeking (A) relief under the federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts or (B) the appointment of a trustee, receiver, custodian, liquidator or the like of InSight or any of the InSight Subsidiaries or of all or any substantial part of the assets, domestic or foreign, of InSight or any of the InSight Subsidiaries and such case or

proceeding shall continue undismissed or unstayed for a period of 60 consecutive calendar days, or an order granting the relief requested in such case or proceeding against InSight or any of the InSight Subsidiaries (including, without limitation, an order for relief under such federal bankruptcy laws) shall be entered.

(i) Except as permitted in Section 7.4, a notice of Lien, levy or assessment with respect to all or any material portion of InSight's assets shall be filed of record by the United States, or any department, agency or instrumentality thereof, or by the Pension Benefit Guaranty Corporation or any Person succeeding to its functions under ERISA or by any state, county, municipal or other governmental agency;

(j) InSight shall cease to conduct its business substantially as now conducted, or shall be enjoined, restrained, or in any way prevented by court order from conducting all or any material part of its business affairs for a period of time in excess of 30 consecutive days;

(k) A final, unappealable judgment or order shall be entered against InSight for the payment of money which exceeds more than \$250,000 in the aggregate and each such judgment is not vacated, stayed, bonded, paid or discharged within 60 consecutive days following the entry thereof and at all times thereafter;

(l) Any material provision of the AHS Guaranty or the Maxum Guaranty for any reason ceases to be valid and binding on the obligors thereunder or any such obligor so states in writing, unless any such provision has been waived in writing by the GE Parties;

(m) An "Event of Default" under the Amended AHS Agreement or any AHS Financing Agreement shall occur and be continuing and not be waived by any of the GE Parties;

(n) An "Event of Default" under the Amended Maxum Agreement or any Maxum Financing Agreement shall occur and be continuing and not be waived by any of the GE Parties; or

(o) An "Event of Default" under the Amended Maxum Security Agreement shall occur and be continuing and not be waived by any of the GE Parties.

9.2 Default Rate of Interest; Late Fee.

(a) From and after the occurrence, and during the continuation, of an Event of Default constituting a nonmonetary Event of Default, and the delivery by GE Medical to InSight of notice thereof, the InSight Payment Obligations shall continue to bear interest at the Default Rate.

(b) In addition to the Default Rate charged under Section 9.2(a) above, from and after the occurrence of an Event of Default under Section 9.1(a) hereof, InSight shall pay to GE Medical

on demand a late charge in an amount equal to five percent of the amount of such overdue payment (unless otherwise limited by applicable law).

(c) InSight's payment of any sums based on the Default Rate pursuant to Section 9.2(a) above or any late fee pursuant to Section 9.2(b) above shall not cure a default or limit any of the rights of the GE Parties to pursue any of their remedies hereunder in connection therewith.

9.3 Remedies. Upon the occurrence of an Event of Default, the GE Parties shall have the following rights and remedies:

(a) The GE Parties shall have the right to declare all or any portion of the Liabilities of the Credit Parties owed to the GE Parties immediately due and payable, whereupon all or any portion of such Liabilities, as appropriate, shall become due and payable without presentment, demand, protest or further notice of any kind, all of which are expressly waived by the Credit Parties.

(b) The GE Parties and their respective agents and representatives shall have the right to enter upon the premises of each of the Credit Parties, and such Credit Party shall use reasonable efforts to cause the GE Parties and their respective agents and representatives to have the right to enter upon the premises of any other place or places where the Collateral is located and kept through self-help and without judicial process without first obtaining a final judgment or giving such Credit Party notice and opportunity for a hearing on the validity of the GE Parties' claims and without any obligation to pay rent to such Credit Party or such Credit Party's lessee.

(c) The GE Parties and their respective agents and representatives shall have the right to remove the Collateral to the premises of the GE Parties or any agent of the GE Parties, for such time as the GE Parties may desire, in order to collect or dispose of the Collateral.

(d) In addition to all of their other rights and remedies under this Agreement and the other Restructuring Documents and applicable law, the GE Parties shall have all of the rights and remedies of a secured party under the UCC of the state in which such rights and remedies are asserted, all of which rights and remedies shall be cumulative and none exclusive, to the fullest extent permitted by law.

(e) Until the GE Parties are able to effect a sale, lease or other disposition of the Collateral, the GE Parties shall have the right to use or operate the Collateral, or any part thereof, to the extent that the GE Parties deem appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by the GE Parties. The GE Parties shall have no obligation to any Credit Party to maintain or preserve the rights of such Credit Party as against third parties with respect to the

Collateral while the Collateral is in the possession of the GE Parties. The GE Parties may, if they so elect, seek the appointment of a receiver or keeper to take possession of the Collateral and to enforce any of the GE Parties' remedies with respect to such appointment without prior notice or hearing.

(f) The GE Parties shall have the right to sell, lease or otherwise dispose of all or any Collateral in its then existing condition, or after any further assembly, manufacturing or processing thereof, at public or private sale or sales, with such notice as may be required by law, in lots or in bulk, for cash or on credit, all as the GE Parties, acting in a commercially reasonable manner, may deem advisable and as permitted by applicable law. Such sales may be adjourned and continued from time to time with or without notice. The GE Parties and their respective agents and representatives shall have the right to conduct such sales on each of the Credit Parties' premises or elsewhere and shall have the right to use such Credit Party's premises, and InSight shall use reasonable efforts to cause any lessee of the Collateral to permit the GE Parties and their respective agents and representatives to conduct sales on lessee's premises and use such lessee's premises, without charge for such sales for such time as the GE Parties deem necessary or advisable. Each of the Credit Parties' rights under all licenses and certificates of need, to the extent transferable, and all franchise agreements shall inure to the GE Parties' benefit. The GE Parties may purchase all or any part of the Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of such purchase price, may set off the amount of such price against the Liabilities of the Credit Parties owed to the GE Parties. Except as otherwise provided by law, the proceeds realized from the sale of any Collateral may be applied by the GE Parties first to the reasonable costs, expenses, and attorneys' fees and expenses incurred by the GE Parties for collection and for acquisition, completion, protection, removal, storage, sale, and delivery of Collateral, and then to any principal and interest due on the Liabilities of the Credit Parties owed to the GE Parties, as the GE Parties, in their sole and absolute discretion, may elect. If any deficiency shall exist after the application of such proceeds, the Credit Parties shall remain liable to the GE Parties therefor.

9.4 Notice of Disposition of Collateral. Any notice required to be given by the GE Parties of a sale, lease or other disposition of the Collateral, or any other intended action by the GE Parties, which is given in accordance with Section 10.12, 15 days prior to such proposed action, or such longer period as shall be specified by applicable law, shall constitute commercially reasonable and fair notice thereof to the Credit Parties.

9.5 Right of Set-Off. Upon the occurrence and during the continuance of any Event of Default, the GE Parties are hereby authorized at any time and from time to time, to the fullest extent permitted by law, upon three Business Days prior written notice to the Credit Parties, to set-off, appropriate and apply any and all funds in the possession of any of the GE Parties, all deposits

(general or special, time or demand, provisional or final) at any time held and other Indebtedness at any time owing by any of the GE Parties to or for the credit or the account of the Credit Parties, against any and all of the Liabilities of the Credit Parties owed to the GE Parties now or hereafter existing that are then due and payable, whether by maturity or acceleration, irrespective of whether or not (a) any of the GE Parties shall have made or be entitled to make any demand under the Restructuring Documents or other applicable agreements or (b) any of the GE Parties shall have declared the principal of and interest under the Restructuring Documents and such other Liabilities due hereunder and thereunder to be due and payable and although such obligations and Liabilities, or any of them shall be contingent or unmatured. The exercise by any of the GE Parties of the aforesaid right of set-off shall be effective as of the time such GE Party restricts such Credit Party's access to any such deposits. The rights of the GE Parties under this Section 9.5 are in addition to any other rights and remedies (including, without limitation, other rights of set-off) which the GE Parties may have under the Restructuring Documents, other applicable agreements and applicable law.

9.6 Appointment of GE Parties as Credit Parties' Lawful Attorneys. Each of the Credit Parties hereby irrevocably designates, makes, constitutes and appoints each of the GE Parties and all Persons designated by such GE Party as such Credit Party's true and lawful agent and attorney-in-fact during the continuance of a Default or an Event of Default for the purposes set forth in this Section 9.6. Accordingly, upon and after the occurrence of an Event of Default, any GE Party or its agent designated by such GE Party for purposes of this Section 9.6 may, without notice to such Credit Party, and at such time or times as such GE Party or said agent in its sole and absolute discretion may determine, in such Credit Party's or such GE Party's name: (a) take control, in any manner, of any item of payment or proceeds of the Collateral, (b) prepare, file, and sign such Credit Party's name on any proof of claim or similar document in any bankruptcy, insolvency, reorganization or similar case against any Person indebted to such Credit Party, (c) prepare, file, and sign such Credit Party's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Collateral, (d) do all acts and things necessary, in such GE Party's sole and absolute discretion, to fulfill such Credit Party's obligations under this Agreement and the other Restructuring Documents, (e) endorse such Credit Party's name upon any of the items of payment or proceeds and deposit the same to the account of such GE Party on account of Liabilities, (f) endorse such Credit Party's name upon any chattel paper, document, instrument, invoice, freight bill, bill of lading or similar document or agreement relating to the Collateral and (g) use the information recorded on or contained in any data processing equipment and computer hardware and software relating to the Collateral to which such Credit Party has access.

9.7 GE Medical as GE Capital's Attorney-in-Fact. The parties hereto acknowledge that (a) GE Capital has appointed GE Medical and all Persons designated by GE Medical as GE Capital's true

and lawful agent and attorney-in-fact for the purposes of this Agreement and the other Restructuring Documents and (b) GE Medical or its agent designated by GE Medical for purposes of this Agreement may do all acts and things necessary, in GE Medical's sole and absolute discretion, to exercise and fulfill GE Capital's rights and obligations under this Agreement and the other Restructuring Documents.

ARTICLE 10
MISCELLANEOUS

10.1 Survival of Representations and Warranties of Credit Parties. All representations and warranties of the Credit Parties contained in this Agreement shall survive the execution, delivery, and acceptance of this Agreement by the parties hereto and the consummation of the transactions described herein or related hereto and shall expire on the Restructuring Termination Date.

10.2 Modification of Agreement; Sale of Interest. This Agreement may not be modified, altered or amended except by an agreement in writing signed by the Credit Parties and the GE Parties. None of the Credit Parties may sell, assign or transfer this Agreement or any of its rights, title, interests, remedies, powers or duties hereunder or thereunder, and any such attempted or purported sale, assignment or transfer shall be void and of no effect. The Credit Parties hereby consent to the participation, sale, assignment, transfer or other disposition by one or both of the GE Parties of this Agreement or of any such GE Party's rights, title, interests, remedies, powers or duties hereunder.

10.3 Expenses.

(a) Notwithstanding the provisions of paragraphs (b) or (c) of this Section 10.3, each of AHS and MHC shall reimburse to GE Medical an amount equal to 40 percent of the legal costs incurred by GE Medical in connection with the transactions contemplated by this Agreement and the other Restructuring Documents from and after July 1, 1995. Such payments shall be made by AHS and MHC within 30 days of the receipt by AHS or MHC, as the case may be, of GE Medical's invoice with respect to such legal costs, whether or not such transactions are consummated. With respect to all other costs and expenses, each party to this Agreement shall pay its own costs and expenses incidental to (i) the preparation and negotiation of this Agreement and the other Restructuring Documents and (ii) the consummation of the transactions contemplated by this Agreement and the other Restructuring Documents.

(b) Except as specifically set forth in paragraph (a) of this Section 10.3, if, upon or after the occurrence or existence of an Event of Default, any of GE Medical employs counsel for advice or other representation or incurs other professional costs and expenses in connection with:

(i) any litigation, contest, dispute, suit, case, proceeding or action (whether instituted by any GE Party, any Credit Party or any other Person) in any way relating to the Collateral, this Agreement, the other Restructuring Documents or any Credit Party's affairs, including, without limitation, any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against any Credit Party under the Bankruptcy Code or any other applicable federal or state bankruptcy, insolvency or similar law;

(ii) any attempt to enforce any rights of any of the GE Parties against any Credit Party, any other Person that may be or become obligated to any of the GE Parties by virtue of this Agreement or any of the other Restructuring Documents, including, without limitation, any attempt to enforce such rights in connection with a case commenced by or against any of the foregoing under the Bankruptcy Code or any other applicable federal or state bankruptcy, insolvency or similar law; and/or

(iii) the protection, collection, sale, liquidation or other disposition of the Collateral;

then, in any such event, the professional fees arising from such services, and all expenses, costs, charges and other fees incurred by any of the GE Parties arising in connection with or relating to any of the events or actions described in this Section 10.3 shall be payable by the Credit Parties to any of the GE Parties on demand and shall constitute Liabilities of InSight and of AHS, MHC and the MHC First-Tier Subsidiaries secured by the Collateral.

(c) Without limiting the generality of the foregoing, the expenses, costs, charges, and fees described above in this Section 10.3 may include (i) attorneys' fees, accountants' fees, appraisers' fees and any other professional costs and expenses, (ii) stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of any of the other Restructuring Documents, (iii) costs and expenses of UCC and Lien searches and reports, (iv) court costs and expenses, photocopying and duplicating expenses, (v) court reporter fees, costs and expenses, (vi) long distance telephone charges, (vii) air express and other delivery charges, (viii) telegram and telex charges, (xi) secretarial overtime charges and (x) expenses for travel, lodging and food paid or incurred in connection with the performance of such services referred to in clauses (i) through (ix) of this Section 10.3. The Credit Parties agree to save the GE Parties harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay any such professional costs, expenses, fees and taxes.

10.4 Automatic Drafting. After the occurrence and during the continuance of a Default or an Event of Default, all payments now or hereafter required to be made by the Credit Parties pursuant to this Agreement, any of the other Restructuring Documents or any other agreement between any Credit Party and any GE Party shall be made

pursuant to the Automatic Drafting Agreement between such Credit Party and such GE Party.

10.5 Waivers by GE Parties; Cumulative Remedies. The GE Parties' failure, at any time or times hereafter, to require strict performance by any Credit Party of any provision of this Agreement, shall not waive, affect or diminish any right of the GE Parties thereafter to demand strict compliance and performance therewith. Any suspension or waiver by the GE Parties of an Event of Default under this Agreement shall not suspend, waive or affect any other Event of Default by any Credit Party under this Agreement whether the same is prior or subsequent thereto and whether of the same or of a different type. None of the undertakings, agreements, warranties, covenants, and representations of the Credit Parties contained in this Agreement nor any Event of Default by the Credit Parties under this Agreement shall be deemed to have been suspended or waived by the GE Parties unless such suspension or waiver is in writing signed by the GE Parties which designates the specific suspension or waiver. The rights and remedies hereunder are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law or which the GE Parties would otherwise have.

10.6 Waivers by Credit Parties. Except as otherwise provided in this Agreement, each of the Credit Parties waives: (a) presentment, demand, and protest and notice of presentment, protest, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper, and guaranties at any time held by any of the GE Parties under or pursuant to which such Credit Party may in any way be liable, and such Credit Party hereby ratifies and confirms whatever any of the GE Parties may do in this regard; (b) notice prior to taking possession or control of the Collateral or any bond or security that might be required by any court prior to allowing the GE Parties to exercise any of their remedies; and (c) the benefit of all valuation, appraisalment, and exemption laws. If and to the extent that any obligation of each of the Credit Parties to any of the GE Parties shall be considered an obligation of guaranty or suretyship, then the following waivers shall apply:

(i) Such Credit Party agrees that no election to proceed in one form of action or against any party or on any obligation shall constitute a waiver of any GE Party's right to proceed in any other form of action for a deficiency, except to the extent such GE Party realizes payment by such action, notwithstanding the effect of such action upon such Credit Party's rights of subrogation, reimbursement or indemnity, if any, against any Person; and

(ii) Such Credit Party agrees that the GE Parties shall be under no obligation and expressly waives the right to require the GE Parties: (A) to marshall any assets in favor of such Credit Party, (B) to proceed first against any guarantor or any

Property of guarantor or against any collateral, (C) to enforce first any other guaranty obligations with respect to, or security for, the Liabilities or (D) to pursue any other remedy in the GE Parties' power that such Credit Party may or may not be able to pursue itself and that may lighten such Credit Party's burden, any right to which such Credit Party hereby expressly waives.

10.7 Severability. Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law in any jurisdiction, such provision, as to such jurisdiction, shall be ineffective only to the extent of such provision and the remaining provisions of this Agreement shall remain unaffected and in full force and effect, and such prohibition and invalidity in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.8 Parties. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the GE Parties and the Credit Parties, including any trustee or interim trustee of any Credit Party appointed pursuant to Bankruptcy Code Section 1104 or Sections 701 and 702. The GE Parties are hereby specifically authorized to assign or sell any or all of their rights and obligations under this Agreement to any party without the prior written consent of the Credit Parties.

10.9 Conflict of Terms. The provisions of any other related agreement and any schedule or exhibit thereto or to this Agreement are incorporated in this Agreement as if set forth in full by this reference. Except as otherwise provided in this Agreement by specific reference to the applicable provision of this Agreement, if any provision contained in this Agreement conflicts or is inconsistent with any provision in any other related agreement, the provision contained in this Agreement shall govern and control.

10.10 Governing Law; Consent to Jurisdiction and Venue. Except as otherwise expressly provided in any other related agreements in all respects, including all matters of construction, validity and performance, this Agreement and the Liabilities arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and performed in such state, without regard to the principles thereof regarding conflict of laws and any applicable laws of the United States of America. EACH OF THE CREDIT PARTIES CONSENTS TO PERSONAL JURISDICTION, WAIVES ANY OBJECTION AS TO JURISDICTION OR VENUE, AND AGREES NOT TO ASSERT ANY DEFENSE BASED ON LACK OF JURISDICTION OR VENUE, IN THE COUNTY OF NEW YORK, STATE OF NEW YORK. Service of process on any of the parties hereto in any action arising out of or relating to any Agreement contemplated herein shall be effective if mailed to such party at the address listed in Section 10.12. Nothing herein shall preclude the parties hereto from bringing suit or taking other legal action in any other jurisdiction.

10.11 MUTUAL WAIVER OF JURY TRIAL. BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING BROUGHT TO ENFORCE OR DEFEND ANY RIGHTS OR REMEDIES UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT.

10.12 Notice. Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by another, or whenever any of the parties desires to give or serve upon another any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be delivered (a) in person with receipt acknowledged, (b) by facsimile transmission, with receipt electronically confirmed during normal business hours of recipient, and with confirmation by mailing of, no later than one Business Day following such transmission, of a copy of such facsimile, by registered or certified mail, return receipt requested, postage prepaid or by overnight courier, (c) by registered or certified mail, return receipt requested, postage prepaid or by overnight courier or (d) by Federal Express or similar reliable overnight delivery service, addressed as follows:

A. If to GE Medical, at:

General Electric Company, acting through
GE Medical Systems
20825 Swenson Drive, Suite 100
Waukesha, Wisconsin 53186
Attention: Investment Manager
Facsimile: (414) 798-4528

with a copy to:

McDermott, Will & Emery
2049 Century Park East, 34th Floor
Los Angeles, California 90067
Attention: Ira J. Rappeport, Esq.
Facsimile: (310) 277-4730

B. If to GE Capital, at:

General Electric Capital Corporation
c/o General Electric Company, acting through
GE Medical Systems
20825 Swenson Drive, Suite 100
Waukesha, Wisconsin 53186
Attention: Finance Manager
Facsimile: (414) 798-4528

with a copy to:

McDermott, Will & Emery
2049 Century Park East, 34th Floor
Los Angeles, California 90067
Attention: Ira J. Rappeport, Esq.
Facsimile: (310) 277-4730

C. If to InSight, at:

InSight Health Services Corp.

D. If to AHS, at:

American Health Services Corp.
4440 Von Karman, Suite 320
Newport Beach, California 92660
Attention: Chief Financial Officer
Facsimile: (714) 851-4488

with a copy to:

Arent Fox Kintner Plotkin & Kahn
Washington Square
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Attention: Gerald P. McCartin, Esq.
Facsimile: (202) 857-6395

E. If to MHC, at:

Maxum Health Corp.
14850 Quorum Drive, Suite 400
Dallas, Texas 75240
Attention: Chief Executive Officer
Facsimile: (214) 960-7322

with a copy to:

Storey, Armstrong, Steger & Martin
4600 Fountain Place
1445 Ross Avenue
Dallas, Texas 75201
Attn: Stephen C. Morton, Esq.
Facsimile: (214) 855-6853

F. If to MTS Enterprises, Inc., at:

MTS Enterprises, Inc.
14850 Quorum Drive, Suite 400
Dallas, Texas 75240
Attention: Chief Executive Officer
Facsimile: (214) 960-7322

with a copy to:

Storey, Armstrong, Steger & Martin
4600 Fountain Place
1445 Ross Avenue
Dallas, Texas 75201
Attn: Stephen C. Morton, Esq.
Facsimile: (214) 855-6853

G. If to Quest Financial Services, Inc., at:

Quest Financial Services, Inc.
14850 Quorum Drive, Suite 400
Dallas, Texas 75240
Attention: Chief Executive Officer
Facsimile: (214) 960-7322

with a copy to:

Storey, Armstrong, Steger & Martin
4600 Fountain Place
1445 Ross Avenue
Dallas, Texas 75201
Attn: Stephen C. Morton, Esq.
Facsimile: (214) 855-6853

H. If to Maxum Health Services Corp., at:

Maxum Health Services Corp.
14850 Quorum Drive, Suite 400
Dallas, Texas 75240
Attention: Chief Executive Officer
Facsimile: (214) 960-7322

with a copy to:

Storey, Armstrong, Steger & Martin
4600 Fountain Place
1445 Ross Avenue
Dallas, Texas 75201
Attn: Stephen C. Morton, Esq.
Facsimile: (214) 855-6853

I. If to Maxum Health Corp., at:

Maxum Health Corp.
14850 Quorum Drive, Suite 400
Dallas, Texas 75240
Attention: Chief Executive Officer
Facsimile: (214) 960-7322

with a copy to:

Storey, Armstrong, Steger & Martin
4600 Fountain Place
1445 Ross Avenue
Dallas, Texas 75201
Attn: Stephen C. Morton, Esq.
Facsimile: (214) 855-6853

J. If to MTS Enterprises, Inc., at:

MTS Enterprises, Inc.
14850 Quorum Drive, Suite 400
Dallas, Texas 75240
Attention: Chief Executive Officer
Facsimile: (214) 960-7322

or to such other addresses or facsimile transmission number as any party may designate for itself by like notice. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Every notice, demand, request, consent, approval, declaration or other communication hereunder shall be deemed to have been duly given or served on the date on which personally delivered with receipt acknowledged or sent by facsimile with receipt electronically confirmed during normal business hours of recipient, the next Business Day after deposit with Federal Express or five Business Days after deposit in the United States mail, registered or certified. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the Persons designated above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

10.13 Indemnification. In addition to any other amounts payable by Credit Parties under this Agreement and the other Restructuring Documents, each of the Credit Parties hereby agrees to protect, indemnify, pay and hold harmless the GE Parties and their

respective directors, officers and employees from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable fees and expenses of counsel) (a) that any of the GE Parties may incur or be subject to as a consequence, directly or indirectly, of (i) consummation of the transactions contemplated hereby, (ii) any breach by such Credit Party of any warranty, covenant, term or condition in, or the occurrence of any Event of Default under, this Agreement or any other Restructuring Document, including, without limitation, all reasonable fees or expenses resulting from the settlement or defense of any claims or liabilities arising as a result of any such breach or default and (iii) involvement in any legal suit, investigation, proceeding, inquiry or action as to which any of the GE Parties is involved as a consequence, directly or indirectly, of the consummation of the transactions contemplated hereby, the holding or owning of any Collateral by any of the GE Parties, the GE Parties' execution of this Agreement and any other Restructuring Document to which any of them is a party or any other event or transaction contemplated by any of the foregoing, except for any claims, demands, liabilities, damages, losses, charges and expenses which are caused by any of the GE Parties or the gross negligence or willful misconduct of any of the GE Parties and (ii) that are related to any claims, actions or proceedings which may be asserted against any of the GE Parties in connection with the transactions contemplated by this Agreement. The obligations of the Credit Parties under this Section 10.13 shall survive the termination of this Agreement. In furtherance and not in limitation hereof, the GE Parties may accept documents that appear on their face to be in order, without responsibility for further investigation, except if any of the GE Parties has received any notice or information to the contrary.

10.14 Acquisition Loans to InSight. The GE Parties may, in their sole and absolute discretion, provide on a case-by-case basis financial accommodations to InSight to finance the acquisition of Persons that will assist InSight in meeting its business plan, subject to satisfaction of all terms and conditions customarily required for such financing, including, without limitation, prior approval of the boards of directors of the GE Parties and satisfactory completion of due diligence.

10.15 Section Titles and Table of Contents. The section titles and the Table of Contents contained in this Agreement are merely for convenience and shall be without substantive meaning or content, and are not a part of the Agreement between the parties hereto.

10.16 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, all of which taken together shall be deemed to constitute one and the same agreement.

10.17 Integration. This Agreement, together with the other Restructuring Documents, comprises the complete and integrated agreement of the parties on the subject matter hereof and supersedes

all prior agreements, written or oral, on the subject matter hereof. Each Restructuring Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

10.18 Confidentiality and Publicity.

(a) Each party hereto shall, except as required by law, treat all information regarding the other parties hereto obtained in connection with the negotiation and consummation of the transactions contemplated by this Agreement and the other Restructuring Documents as confidential and shall not use any such information in any manner other than in connection with such transactions; provided, however, that such confidentiality obligation shall not apply to information by any party (the "Disclosing Party") with respect to any other party hereto (the "Subject Party") that (i) is or becomes generally available to the public other than as a result of a disclosure by the Disclosing Party, (ii) was available to the Disclosing Party on a nonconfidential basis prior to the disclosure by the Subject Party or (iii) becomes available to the Disclosing Party on a nonconfidential basis from a person or entity (other than the Subject Party) which is not otherwise bound by a confidentiality agreement with the Subject Party.

(b) Unless otherwise required by law, none of the parties hereto shall, without the prior written consent of the other parties hereto, disclose to any Person (other than those actively and directly participating in the transactions contemplated by this Agreement and the other Restructuring Documents) of the terms, conditions or acts relating thereto (including the fact that discussions are taking place with respect to such transactions or the status thereof), or the fact that confidential information has been made available thereto. In the event that any of the parties hereto is required by law to make any disclosure otherwise prohibited under this Section 10.18, such party shall provide to the other parties hereto advance written notice of such required disclosure (including with such advance written notice the text of such required disclosure) at least two business days prior to such required disclosure.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement as of the day and year first specified above.

GE

GENERAL ELECTRIC COMPANY, acting through
Medical Systems

By: _____

GENERAL ELECTRIC CAPITAL CORPORATION
By: GENERAL ELECTRIC COMPANY,
acting through GE Medical
Systems, as Attorney-in-Fact

By: _____

INSIGHT HEALTH SERVICES CORP.

By: _____

AMERICAN HEALTH SERVICES CORP.

By: _____

MAXUM HEALTH CORP.

By: _____

MTS ENTERPRISES, INC.

By: _____

MAXUM HEALTH SERVICES CORP.

By: _____

QUEST FINANCIAL SERVICES, INC.

By: _____

PUTUSAN
Nomor: 17/PKPU/2000/PN.NIAGA/JKT.PST. Jo
No. 66/PAILIT/2000/PN.NIAGA/JKT.PST.

DEMI KEADILAN BERDASARKAN
KETUHANAN YANG MAHA ESA

Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat yang memeriksa dan mengadili permohonan Penundaan Kewajiban Pembayaran Utang (PKPU) pada tingkat pertama, menjatuhkan putusan seperti tersebut di bawah ini dalam perkara:

PT. BUANA SOLVINDO, Haryadi Satyadinata selaku Direktur mewakili Direksi, yang bertindak untuk dan atas nama Perseroan Terbatas tersebut, berkedudukan di Jakarta dan beralamat di Menara BTN Lantai 12 A, Jalan Gajah Mada No. 1 Jakarta 10130, yang dalam hal ini diwakili oleh Kuasanya ANDY KELANA, SH, LLM, MBA, STEFANUS HARYANTO, SH, LLM dan WILLIAM S. PALIJAMA, SH, para Pengacara dan Konsultan Hukum pada Kantor Firma Hukum Hanafiah Ponggawa Adnan Bangun Kelana, beralamat di Gedung BNI Lantai 24, Jalan Jenderal Sudirman Kav. 1, Jakarta 10220, berdasarkan Surat Kuasa Khusus tanggal 20 September 2000, selanjutnya disebut Pemohon PKPU;

Melawan:

P.T. BANK DAIWA PERDANIA, berkedudukan di Jakarta dan beralamat di Jalan Jenderal Sudirman Kav. 40-41, Jakarta, yang dalam hal ini diwakili oleh Kuasanya Rasjim Wiraatmadja, SH, Advokat & Pengacara beralamat di Jalan Pulau Air Raya No. 36 M, selanjutnya disebut Termohon PKPU;

Pengadilan Negeri / Niaga tersebut;

Setelah mempelajari berkas perkara ini;

Setelah mendengar para pihak dan meneliti surat-surat bukti dari perkara tersebut;

Tentang Duduk Perkaranya

Menimbang, bahwa Pemohon PKPU dengan surat permohonannya tanggal 02 Oktober 2000 yang didaftarkan, di Kepaniteraan Pengadilan Negeri/Niaga Jakarta Pusat Pada hari itu juga dengan Register Nomor: 17/PKPU/2000/PN.NIAGA.JKT.PST., telah mengajukan permohonan PKPU sebagai counter/tanggapan atas permohonan Pailit No. 66/PAILIT/2000/PN.NIAGA.JKT.PST. yang diajukan oleh Termohon PKPU/Pemohon Pailit, dengan alasan-alasan sebagai berikut:

1. Bahwa pada tanggal 11 September 2000 oleh P.T. Bank Daiwa Perdania telah didaftarkan Permohonan Pernyataan Pailit terhadap P.T. Buana Solvindo yang terdaftar di Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat di bawah No. 66/Pailit/2000/PN.NIAGA.JKT.PST.;
2. Bahwa P.T. Buana Solvindo (Pemohon PKPU) adalah suatu perusahaan nasional yang bergerak di bidang industri kimia dan masih mempunyai prospek yang cukup cerah di masa mendatang;
3. Bahwa jumlah tagihan yang telah dianggap jatuh tempo oleh P.T. Bank Daiwa Perdania sebagaimana diajukan dalam Permohonan Pailit (belum diverifikasi) adalah sebesar US\$ 9.808.689,81.;
4. Bahwa Pemohon PKPU masih melihat adanya kemungkinan perusahaan dapat

dijalankan dan mempunyai harapan dalam pengembangan usahanya apabila diberikan tenggang waktu untuk menunda pembayaran kepada para kreditur bila dilihat dari aset dan laporan keuangan serta aktivitas perusahaan,. Terlampir Neraca/Laporan Keuangan Pemohon PKPU per tanggal 31 Agustus 2000 (Bukti P-1);

5. Bahwa jumlah dan perincian kreditur dari Pemohon PKPU dapat dilihat dari Bukti P-1 dan Daftar Kreditur Pemohon PKPU yang saat ini diajukan dapat dilihat dari Bukti P-2;
6. Dengan demikian jumlah kewajiban Pemohon PKPU yang telah dan akan jatuh tempo kepada Para Kreditur dapat diperkirakan sebesar US\$ 4,619,949.17 (di luar nilai utang kepada Pemohon Pailit);
7. Sedangkan total aset yang dimiliki oleh Pemohon PKPU menurut pengakuan Pemohon PKPU adalah diperkirakan sebesar US\$ 17,651,507.49;
8. Berdasarkan hal-hal tersebut di atas maka sebenarnya Pemohon PKPU dapat Melunasi seluruh kewajibannya terhadap Para Kreditur dan karenanya mohon kepada Ketua Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat agar berkenan mengabulkan permohonan Penundaan Kewajiban Pembayaran Utang yang diajukan oleh Pemohon PKPU;
9. Bahwa Pemohon PKPU akan menyusulkan Rencana Perdamaian kepada Para Kreditur dalam waktu dekat;

Berdasarkan hal-hal tersebut Pemohon PKPU mohon agar Ketua Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat berkenan memutuskan sebagai berikut:

- I. Mengabulkan Permohonan Pemohon;
- II. Menunjuk Paul Sukran A.Gani sebagai Pengurus dan menunjuk Hakim Pengawas untuk melaksanakan tugasnya sesuai Undang-Undang No. 4 tahun 1998;

Atau apabila Majelis Hakim berpendapat lain, mohon putusan yang seadil-adilnya (ex aequo et bono);

Menimbang, bahwa Termohon PKPU mengajukan Permohonan Pailit kepada Pemohon PKPU tanggal 11 September 2000 yang didaftarkan di Kepaniteraan Pengadilan Negeri/Niaga Jakarta Pusat pada tanggal itu juga dengan Register No. 66/PAILIT/2000/PN.NIAGA.JKT.PST., dengan alasan-alasan sebagai berikut:

1. Bahwa Termohon telah memperoleh fasilitas kredit dari Pemohon yang berupa:
 - A. Fasilitas Pinjaman Aksep sebesar US\$ 2,000,000,- (dua juta dolar Amerika Serikat) sejak tanggal 20-6-1997 dan telah jatuh waktu pada tanggal 20-6-2000;

Foto copy Perjanjian Aksep No. 1293/PVAKE/97 tgl. 20 Juni 1999 yang merupakan perpanjangan dari Perjanjian Pinjaman Aksep No. 1293/PVAKE/97 tgl. 20-6-1998 dan No.1293/PVAKE/97 tgl. 20-6-1997 (P.1. s/d P.3.) dan Surat Sanggup (Promissory Note) No.1293/PVAKE/97 tgl. 20 Juni 1999, Surat Sanggup (Promissory Note) No.1293/PVAKE/97 tgl. 20-6-1998 dan Surat Sanggup (Promissory Note) No.1293/PVAKE/97 tgl. 20-6-1997 & No.1293/PVAKE/97 tgl. 27-6-1997 semuanya terlampir (P.4 s/d P.7);
 - B. Fasilitas pinjaman L/C yang jumlah seluruhnya sebesar US\$ 7,050.719.56 sebagaimana terlihat pada foto copy Surat Pernyataan Pembukaan Letter of Credit tgl. 17-12-1996, Surat Pernyataan Penyelesaian/Pembayaran L/C tanggal 17-12-

1996 (P.8 & P.9) dan;

Promissory Note L/C No.SDLCO-017082 tgl. 22-2-1999 sebesar USD.397,428.32 dan Trust Receipt tgl. 22-2-1999, P.10;

Promissory Note L/C No.SDLCO-016892 tgl. 9-2-1999 sebesar USD.189,870.80 dan Trust Receipt tgl. 25-2-1999, P.11;

Promissory Note L/C No.SDLCO-017119 tgl. 25-2-1999 sebesar USD.595,270.80 dan Trust Receipt tgl. 25-2-1999, P.12;

Promissory Note L/C No.SDLCO-016892 tgl. 9-3-1999 sebesar USD.199,500.00 dan Trust Receipt tgl. 19-3-1999, P.13;

Promissory Note L/C No.SDLCO-017205 tgl. 19-3-1999 sebesar USD.335,658.54 dan Trust Receipt tgl. 19-3-1999, P.14;

Promissory Note L/C No.SDLCO-017289 tgl. 7-4-1999 sebesar USD.329,235.12 dan Trust Receipt tgl. 7-4-1999, P.15;

Promissory Note L/C No.SDLCO-016960 tgl. 16-3-1999 sebesar USD.199,287.58 dan Trust Receipt tgl. 16-3-1999, P.16;

Promissory Note L/C No.SDLCO-016960 tgl. 15-4-1999 sebesar USD.199,108.22 dan Trust Receipt tgl. 15-4-1999, P.17;

Promissory Note L/C No.SDLCO-017316 tgl. 20-5-1999 sebesar USD.339,709.92 dan Trust Receipt tgl. 20-5-1999, P.18;

Promissory Note L/C No.SDLCO-017620 tgl. 21-6-1999 sebesar USD.378,000.00 dan Trust Receipt tgl. 21-6-1999, P.19;

Promissory Note L/C No.SDLCO-017575 tgl. 10-5-1999 sebesar USD.199,240.46 dan Trust Receipt tgl. 10-5-1999, P.20;

Promissory Note L/C No.SDLCO-017575 tgl. 18-5-1999 sebesar USD.184,300.00 dan Trust Receipt tgl. 18-5-1999, P.21;

Promissory Note L/C No.SDLCO-017413 tgl. 24-5-1999 sebesar USD.144,000.00 dan Trust Receipt tgl. 24-5-1999, P.22;

Promissory Note L/C No.SDLCO-017760 tgl. 6-7-1999 sebesar USD.538,419.57 dan Trust Receipt tgl. 6-7-1999, P.23;

Promissory Note L/C No.SDLCO-017514 tgl. 25-5-1999 sebesar USD.378,000.00 dan Trust Receipt tgl. 25-5-1999, P.24;

Promissory Note L/C No.SDLCO-017760 tgl. 13-7-1999 sebesar USD.280.580.43 dan Trust Receipt tgl. 13-7-1999, P.25;

Promissory Note L/C No.SDLCO-017413 tgl. 9-6-1999 sebesar USD.189,885.62 dan Trust Receipt tgl. 9-6-1999, P.26;

Promissory Note L/C No.SDLCO-017694 tgl. 8-7-1999 sebesar USD.409,500.00 dan Trust Receipt tgl. 8-7-1999, P.27;

Promissory Note L/C No.SDLCO-017413 tgl. 30-6-1999 sebesar USD.193,800.00 dan Trust Receipt tgl. 30-6-1999, P.28;

Promissory Note L/C No.SDLCO-017413 tgl. 19-7-1999 sebesar USD.254,600.00 dan Trust Receipt tgl. 19-7-1999, P.29;

Promissory Note L/C No.SDLCO-017845 tgl. 6-8-1999 sebesar USD.195,700.00 dan Trust Receipt tgl. 6-8-1999, P.30;

Promissory Note L/C No.SDLCO-017915 tgl. 20-8-1999 sebesar USD.380,000.00 dan Trust Receipt tgl. 20-8-1999, P.31;

Promissory Note L/C No.SDLCO-017845 tgl. 20-8-1999 sebesar USD.189,624.18 dan Trust Receipt tgl. 20-8-1999, P.32;

Promissory Note L/C No.SDLCO-017976 tgl. 20-8-1999 sebesar USD.380,000.00 dan Trust Receipt tgl. 20-8-1999, P.33;

2. Bahwa guna menjamin pengembalian pokok pinjaman maupun bunganya, pihak Termohon telah menyerahkan Hak Milik Mutlak sebagai Jaminan (Fiducia) kepada Pemohon berupa:

1. Stok barang sebanyak US\$ 3,500,000,-;
2. Tagihan-tagihan sebanyak US\$ 4,000.00,-;
Di samping itu para pemegang saham PT. Buana Solvindo/Termohon telah pula memberikan jaminan berupa:
 - Letter Of Awareness dari Mitsui Co. Ltd. Japan sebesar US\$ 2,000,000,-;
 - Letter Of Awareness dari Mitsui Bussan Solvent & Coating Co. Ltd. Japan sebesar US\$ 2,000.000,-;
 - Letter Of Awareness dari PT. Inti Mutiara Gasindo sebesar US\$ 2,000,000,-;

Foto copy Akte Pemindahan Hak Milik Mutlak Sebagai Jaminan Fiducia LA No.1293/PVAKE/97 tgl. 20-6-1999 jo. LA No.1293/PVAKE/97 tgl. 20-6-1998 jo.LA.No.1293/PVAKE/97 tgl. 20-6-1997 (P.34 s/d P.36), Surat Pernyataan Penyerahan Tagihan tgl. 8-7-1998 dan Surat Pernyataan Penyerahan Hak Milik Dengan Jalan Kepercayaan (Fiduciaire Eigendoms Overdracht) tgl. 8-7-1998 (P.37 & P.38) serta Letter Of Awareness dari Mitsui Co. Ltd.-Japan, Letter Of Awareness dari Mitsui Bussan Solvent & Coating Co Ltd-Japan dan Letter Of Awareness dari PT. Inti Mutiara Gasindo (P.39 s/d PA 1);

3. Bahwa ternyata kemudian ketika fasilitas pinjaman aksep jatuh waktu pada tanggal 20-6-2000 dan juga fasilitas-fasilitas pinjaman L/C tersebut jatuh waktu masing-masing pada tanggal: 14-7-1999, 26-7-1999, 2-8-1999, 18-8-1999, 23-8-1999, 30-8-1999, 6-9-1999, 12-10-1999, 18-10-1999, 29-10-1999, 1-11-1999, 8-12-1999, 22-12-1999, 6-12-1999, 11-1-2000, 31-1-2000, 14-2-2000, 14-2-2000 dan 14-2-2000 (Lihat Bukti P.10 s/d P.33) Termohon ternyata tidak dapat melunasi hutang tersebut walaupun kepada Termohon telah ditegur melalui surat Pemohon dan kuasa hukum Pemohon serta diberi waktu yang cukup lama agar Termohon dapat menyelesaikan secara baik-baik, akan tetapi ternyata Termohon tidak dapat juga menyelesaikan/mengembalikan pinjaman-pinjaman dimaksud kepada Pemohon;

Foto copy surat-surat teguran terlampir P.42 s/d P.48;

Sehingga akhirnya tiada lain jalan bagi Pemohon, kecuali mengajukan permohonan pailit ini;

4. Bahwa adapun jumlah pinjaman Termohon yang sudah jatuh tempo tersebut ditambah bunga pada posisi per 31 Juli 2000 ialah sebesar US\$ 2,143,406.39 (dua juta seratus empat puluh tiga ribu empat ratus enam dan tiga puluh sembilan sen dolar Amerika) untuk fasilitas

Pinjaman Aksep dan US\$ 7.665.283.42 (tujuh juta enam ratus enam puluh lima ribu dua ratus delapan puluh tiga dan empat puluh dua sen dolar Amerika) untuk fasilitas Pinjaman L/C, yang terdiri dari:

Pinjaman Aksep	US\$ 2,000,000.-
Bunga s/d 31 Juli 2000	<u>US\$ 143,406.39</u>

US\$ 2,143,406.39

Dan	
Pinjaman L/C	US\$ 7,050,719.56
Bunga s/d 31 Juli 2000	<u>US\$ 614,563.86</u>

US\$ 7,665,283.42

Lihat Perincian hutang terlampir P-49;

5. Bahwa selain kepada Pemohon, Termohon juga memiliki hutang lain yaitu kepada The Daiwa Bank Ltd.Japan, beralamat di 1-1 Otemachi 2 Chome, Chiyoda-ku,Tokyo-Japan.;

Sehingga sesuai dengan ketentuan Pasal 1 ayat (1) Perpu No. 1 Tahun 1998 jo. UU No. 4 Tahun 1998, " Debitur yang mempunyai dua atau lebih kreditur dan tidak membayar sedikitnya satu utang yang telah jatuh waktu dan dapat ditagih, dapat dinyatakan pailit dengan Putusan Pengadilan yang berwenang, baik atas permohonan sendiri, maupun atas permintaan seorang atau lebih krediturnya ";

6. Bahwa berdasarkan fakta-fakta dan bukti-bukti yang telah Pemohon uraikan dan sampaikan seperti tersebut di atas, maka syarat-syarat untuk permohonan pailit sebagaimana diatur dalam Undang-Undang Kepailitan Pasal 1 ayat 1 sebagaimana diubah dengan Perpu No. 1 Tahun 1998, telah terbukti dan terpenuhi di mana Termohon adalah debitur yang memiliki dua atau lebih kreditur dan tidak membayar sedikitnya satu hutang yang telah jatuh tempo dan dapat ditagih;

7. Bahwa sesuai dengan ketentuan Pasal 6 ayat (3) Perpu No. 1 Tahun 1998 jo. UU No. 4 Tahun 1998, " permohonan pernyataan pailit harus dikabulkan apabila terdapat fakta atau keadaan yang terbukti secara sederhana bahwa persyaratan untuk dinyatakan pailit telah terpenuhi ";

Karenanya permohonan ini harus dikabulkan dan mohon agar Termohon dinyatakan pailit dengan segala akibat hukumnya;

8. Bahwa sehubungan dengan permohonan ini dan sesuai dengan ketentuan Pasal 13 ayat (1) Perpu No. 1 Tahun 1998 jo. UU No. 4 Tahun 1998, Pemohon mohon dengan hormat agar Majelis Hakim Pengadilan Niaga mengangkat Hakim Pengawas dalam Kepailitan ini serta menunjuk Sdr. Munir Fuady, SH, M.H. LL.M, beralamat di Law Firm Fuady, Tommy, Aji Wijaya, Wisma Bumiputra, lantai 7, Suite 701, Jalan Jend. Sudirman Kav. 75, Jakarta 12910 sebagai Kurator serta menetapkan besarnya imbalan jasa Kurator yang bersangkutan;

9. Bahwa sesuai dengan ketentuan Pasal 6 ayat (5) Perpu No. 1 Tahun 1998 jo. UU No. 4 Tahun 1998, Putusan atas permohonan pernyataan pailit ini dapat dijalankan terlebih dahulu meskipun terhadap Putusan tersebut diajukan suatu upaya hukum;

Maka berdasarkan hal-hal tersebut di atas, Penggugat mohon dengan hormat kehadapan Bapak Ketua Pengadilan Negeri Niaga di Pengadilan Negeri Jakarta Pusat, sudilah kiranya berkenan memutuskan dengan putusan sebagai berikut:

1. Menerima dan mengabulkan Permohonan Pemohon secara keseluruhan;
2. Menyatakan Termohon, PT. Buana Solvindo berada dalam keadaan pailit dengan segala

akibat hukumnya;

3. Mengangkat Hakim Pengawas Untuk Kepailitan tersebut;
4. Menunjuk Sdr Munir Fuady SH. M.H. LL.M. beralamat Law Firm Fuady, Tommy, Aji Wijaya, Wisma Bumiputra, Lantai 7, Suite 701, Jalan Jend. Sudirman Kav. 75, Jakarta 12910 sebagai Kurator dalam Kepailitan;
5. Menyatakan Putusan ini dapat dilaksanakan terlebih dahulu meskipun diajukan upaya hukum Kasasi atau Peninjauan Kembali;
6. Menghukum Termohon untuk membayar seluruh biaya perkara pailit ini;

Atau apabila Majelis Hakim berpendapat lain, mohon keadilan yang seadil-adilnya (Ex aequo et bono);

Menimbang, bahwa pada hari sidang yang telah ditetapkan hadir kuasa dari kedua belah pihak, lalu mulailah pemeriksaan ini dengan membacakan surat permohonan PKPU yang isinya tetap dan tidak ada perubahan;

Menimbang, bahwa untuk mendukung dalil-dalil permohonannya, Pemohon PKPU telah melampirkan bukti bertanda P.1, P.2 dan P.3;

Menimbang, bahwa untuk mempersingkat uraian putusan ini, maka segala sesuatu yang dicatat dalam Berita Acara persidangan dianggap telah dimasukkan dan merupakan bagian dari putusan ini;

Tentang Hukumnya

Menimbang, bahwa permohonan PKPU dari Pemohon adalah seperti tersebut di atas;

Menimbang, bahwa permohonan PKPU yang diajukan oleh Pemohon adalah sebagai counter/tanggapan atas permohonan Kepailitan yang diajukan oleh Termohon PKPU/Pemohon Pailit;

Menimbang, bahwa dengan demikian pemeriksaan permohonan Kepailitan pada saat yang bersamaan dengan pemeriksaan permohonan PKPU tersebut;

Menimbang, bahwa karena pemeriksaan permohonan Pernyataan Pailit dan Permohonan Penundaan Kewajiban Pembayaran Utang (PKPU) diperiksa pada saat bersamaan, maka sesuai dengan ketentuan pasal 217 (6) UU No. 4 Tahun 1998 tentang Penetapan Perpu No. 1 Tahun 1998 tentang Perubahan Undang-Undang tentang Kepailitan yang telah menjadi Undang-Undang (Undang-Undang Kepailitan), maka permohonan Penundaan Kewajiban Pembayaran Utang (PKPU) harus diputuskan terlebih dahulu, sedangkan mengenai Permohonan Kepailitan akan ditangguhkan dan berakhir setelah PKPU selesai;

Menimbang, bahwa di dalam permohonan Penundaan Kewajiban Pembayaran Utang (PKPU) Pemohon dan Kuasa Hukumnya telah menanda tangani surat permohonannya dan telah melampirkan bukti P-1 yang berupa Neraca dari PT. Buana Solvindo per 31 Agustus 2000 dan P-2 yaitu yang berupa Daftar dan alamat para kreditur dari PT. Buana Solvindo, dan P-3 berupa Anggaran Dasar dari PT. Buana Solvindo tersebut;

Menimbang, bahwa sehingga permohonan PKPU dari Pemohon telah memenuhi persyaratan sebagaimana disebutkan dalam ketentuan pasal 213 ayat 1 Undang-Undang No. 4 Tahun 1998;

Menimbang, bahwa karena permohonan PKPU telah memenuhi persyaratan hukum

sebagaimana tersebut di atas, maka menurut ketentuan pasal 214 (2) Undang-Undang No. 4 Tahun 1998, Pengadilan harus segera mengabulkan Penundaan Kewajiban Pembayaran Utang Sementara (PKPUS) untuk waktu selama 45 (empat puluh lima) hari setelah putusan PKPUS diucapkan dan menunjuk Hakim Pengawas serta mengangkat Pengurus yang bersama-sama Debitur mengurus harta debitur tersebut;

Menimbang, bahwa segera setelah ditetapkan putusan Penundaan Sementara Kewajiban Pembayaran Utang, Pengadilan melalui Pengurus wajib memanggil debitur dan kreditur yang dikenal dengan surat tercatat atau melalui kurir, untuk datang menghadap dalam sidang yang diselenggarakan paling lambat pada hari ke 45 (empat puluh lima) terhitung setelah putusan Penundaan Kewajiban Pembayaran Utang Sementara ini ditetapkan;

Menimbang, bahwa tentang pengangkatan pengurus sebagaimana disebut di atas harus independen dan tidak memiliki benturan kepentingan dengan debitur atau kreditur serta terdaftar pada Departemen Kehakiman RI. (Vide pasal 217 E (2) dan (3);

Menimbang, bahwa di dalam permohonan PKPU, pemohon telah memohon agar Sdr. Paul Sukran A. Gani, sebagai Pengurus PKPU PT. Buana Solvindo, dan ternyata Sdr. Paul Sukran A. Gani tersebut telah memenuhi syarat untuk itu, maka permohonan Pemohon PKPU untuk menunjuk Sdr. Paul Sukran A. Gani tersebut, Majelis dapat mengabulkannya;

Menimbang, bahwa mengenai imbalan jasa pengurus akan ditentukan setelah pengurus nyata-nyata melaksanakan tugasnya sampai berakhirnya PKPU, yang besarnya akan ditetapkan berdasarkan Pedoman Surat Keputusan Menteri Kehakiman No.M.09.HT.05.10Th.1998 tanggal 22 September 1998 tentang Pedoman Imbalan Jasa Kurator dan Pengurus;

Menimbang, bahwa sedangkan mengenai ongkos perkara permohonan PKPU ini akan ditetapkan dalam amar putusan ini;

Memperhatikan pasal-pasal dari Undang-Undang Kepailitan Khususnya Pasal 217 (6), 213 (2), 214 (2), 217 E (1) (2) dan Surat Keputusan Menteri Kehakiman No. 09-HT.05.10 Tahun 1998 tanggal 22 September 1998 dan peraturan lain yang berkenaan dengan perkara ini;

Mengadili

Mengabulkan permohonan Penundaan Kewajiban Pembayaran Utang Sementara (PKPUS) dari pemohon selama 45 (empat puluh lima) hari terhitung setelah putusan ini diucapkan;

Menentukan sidang tentang PKPUS ini pada hari Jumat, tanggal 24 November 2000, Pukul: 10.00 WIB di lantai 3 Gedung Pengadilan Negeri / Niaga Jakarta Pusat, Jalan Gajah Mada No. 17 Jakarta Pusat;

Menunjuk: Erwin Mangatas Malau. SH, Hakim Niaga, sebagai Hakim Pengawas;

Mengangkat Tsar. Paul Sukran A. Gani sebagai Pengurus (harta);

Memerintahkan Pengurus untuk memanggil Debitur dan Kreditur dengan surat tercatat atau melalui kurir agar datang menghadap pada sidang tersebut di atas;

Menetapkan biaya Pengurusan dan Imbalan Jasa Pengurus akan ditentukan kemudian setelah PKPU berakhir;

Menghukum Pemohon untuk membayar biaya permohonan PKPU sejumlah Rp. 5.000.000,- (lima juta rupiah);

Demikian diputuskan dalam musyawarah Majelis Hakim Pengadilan Niaga pada Pengadilan

Negeri Jakarta Pusat pada hari: Kamis, tanggal: 5 Oktober 2000, oleh kami SYAMSUDIN MANAN SINAGA. SH. MH, sebagai Hakim Ketua TJAHJONO. SH dan NY. PUTU SUPADMI. SH, masing-masing sebagai Hakim Anggota, putusan tersebut diucapkan pada hari Selasa, tanggal: 10 Oktober 2000 oleh Majelis Hakim tersebut, dengan dibantu SRI SUNARYATI. SH Panitera Pengganti dan dihadiri oleh Kuasa Pemohon PKPU dan Kuasa Termohon PKPU;

HAKIM-HAKIM ANGGOTA

HAKIM KETUA MAJELIS

TTD.

TTD.

TJAHJONO. SH.

SYAMSUDIN M SINAGA. SH. MH

TTD.

NY. PUTU SUPADMI. SH.

PANITERA PENGGANTI,

TTD.

SRI SUNARYATI. SH.

PENETAPAN
Nomor : 17/PKPU/2000/PN.NIAGA/JKT.PST.JO.
Nomor : 66/PAILIT/2000/PN.NIAGA/JKT.PST.

DEMI KEADILAN BERDASARKAN
KETUHANAN YANG MAHA ESA

Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat yang memeriksa dan mengadili permohonan Penundaan Kewajiban Pembayaran Utang (PKPU) pada tingkat pertama, memberikan Penetapan dalam perkara;

PT. BUANA SOLVINDO, dengan Direktornya Haryadi Satyadinata, yang bertindak untuk dan atas nama Perseroan Terbatas tersebut, berkedudukan di Jakarta dan beralamat di Menara BTN Lantai 12 A, Jalan Gajah Mada No. 1 Jakarta 10130, yang dalam hal ini diwakili oleh Kuasanya ANDY KELANA, SH, LLM, MBA, STEFANUS HARYANTO, SH, LLM dan WILLIAM S. PALIJAMA, SH, para Pengacara dan Konsultan hukum pada Kantor Firma Hukum Hanafiah Ponggawa Adnan Bangun Kelana, beralamat di Gedung BNI Lantai 24, Jalan Jenderal Sudirman Kav. 1, Jakarta 10220, berdasarkan Surat Kuasa Khusus tanggal 20 September 2000, selanjutnya disebut Pemohon PKPU;

Melawan:

P.T. BANK DAIWA PERDANIA, berkedudukan di Jakarta dan beralamat di Jalan Jenderal Sudirman Kav. 40-41, Jakarta, yang dalam hal ini diwakili oleh Kuasanya Rasjim Wiraatmadja. SH, Advokat & Pengacara beralamat di Jalan Pintu Air Raya No. 36M, Jakarta, selanjutnya disebut Termohon PKPU;

Pengadilan Niaga tersebut;

Setelah mempelajari berkas perkara ini;

Setelah mendengar keterangan Debitor, Hakim Pengawas, Pengurus dan Para Kreditor;

Menimbang, bahwa sidang tanggal 24 November 2000 adalah sidang hari terakhir pemberian Penundaan Kewajiban Pembayaran Utang Sementara (PKPUS) untuk mendengar Debitor, Hakim Pengawas, Kurator, dan Para Kreditor;

Menimbang, bahwa Debitor telah mengajukan Rencana Perdamaian (Composition Plan), namun pemungutan suara/voting tentang Rencana Perdamaian belum dapat dilakukan, sehingga Debitor memohon kepada Para Kreditor agar dapat diberikan Penundaan Kewajiban Pembayaran Utang Tetap (PKPUT) selama 3 (tiga) bulan;

Menimbang, bahwa Hakim Pengawas dalam laporannya mengatakan bahwa verifikasi utang-piutang telah selesai, namun antara Debitor dengan Kreditor PT. BANK DAIWA PERDANIA dan THE DAIWA BANK masih membahas Rencana Perdamaian, sedangkan Kreditor lainnya telah setuju;

Menimbang, bahwa Hakim Pengawas juga mengadakan voting tentang pemberian Penundaan Kewajiban Pembayaran Utang Tetap pada tanggal 22 November 2000 dan hasilnya seluruh Kreditor sepakat memberikan Penundaan Kewajiban Pembayaran Utang kepada Debitor selama 3 (tiga) bulan;

Menimbang, bahwa Pengurus dalam laporannya mengatakan bahwa pada rapat tanggal 22 November 2000, seluruh (sepuluh) Kreditor secara aklamasi untuk memberikan PKPUT kepada Debitor selama 3 (tiga) bulan;

Menimbang, bahwa seluruh Kreditor hadir pada sidang tanggal 24 November 2000 dan mengatakan menyetujui pemberian PKPUT kepada Debitor selama 3 (tiga) bulan;

Tentang Hukumnya

Menimbang, bahwa sidang tanggal : 24 November 2000 dilaksanakan berdasarkan Pasal 217 ayat (1) Undang-Undang No. 4 Tahun 1998 tentang Kepailitan;

Menimbang, bahwa setelah Debitor ada mengajukan Rencana Perdamaian, namun voting tentang Rencana Perdamaian tersebut belum dapat dilaksanakan, karena beberapa hal yang akan dibahas dan perlu disepakati, maka atas permintaan Debitor, setelah diadakan voting tentang pemberian PKPUT, seluruh Kreditor sepakat untuk memberikan PKPUT kepada Debitor selama 3 (tiga) bulan;

Menimbang, bahwa karena seluruh Kreditor telah sepakat memberikan PKPUT kepada Debitor selama 3 (tiga) bulan dan waktu 3 (tiga) bulan tersebut menurut Majelis Hakim adalah wajar dan layak, sehingga cukup alasan bagi Majelis Hakim untuk mengabulkannya;

Menimbang, bahwa menurut laporan Pengurus, bahwa Debitor, PT. Buana Solvindo sampai saat ini masih berjalan / berproduksi (*going Concern*) dan produksinya meningkat mencapai 120%, maka dari tahta itu, cukup kuat alasan bagi Majelis Hakim untuk memberikan kesempatan kepada Debitor dan Para Kreditor menegosiasikan cara penyelesaian utang-piutang mereka dengan memberikan waktu PKPUT selama 3 (tiga) bulan;

Menimbang, bahwa berdasarkan Pasal 217 ayat (3) Undang-Undang No. 4 Tahun 1998 tentang Kepailitan, maksud pemberian PKPUT adalah untuk memungkinkan Debitor, Pengurus dan Para Kreditor mempertimbangkan dan menyetujui Rencana Perdamaian yang diajukan oleh Debitor;

Menimbang, bahwa sidang berikutnya pada akhir PKPUT ini adalah sebagaimana disebut pada amar Penetapan ini dan memerintahkan Pengurus untuk memanggil Debitor dan Para Kreditor agar hadir pada sidang tersebut;

Memperhatikan, Pasal 212, 215, 216, 217 Undang-Undang No. 4 Tahun 1998 Tentang Kepailitan dan peraturan perundang-undangan lainnya yang ada kaitannya dengan perkara ini;

Menetapkan

1. Memberikan Penundaan Kewajiban Pembayaran Utang Tetap (PKPUT) kepada Pemohon, PT. BUANA SOLVINDO selama 3 (tiga) bulan terhitung setelah Penetapan ini diucapkan;
2. Menetapkan sidang berikutnya RABU, tanggal : 21 Pebruari 2001;
3. Memerintahkan Pengurus untuk memanggil Debitor dan Para Kreditor agar hadir pada sidang yang telah ditetapkan;

Demikian ditetapkan dalam musyawarah Majelis Hakim Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat pada hari : Jumat, tanggal : 24 November 2000, oleh kami SYAMSUDIN MANAN SINAGA, SH. MH, sebagai Hakim Ketua, TJAHOJONO, SH dan NY. PUTU SUPADMI, SH, masing-masing sebagai Hakim Anggota, penetapan ini diucapkan dalam sidang terbuka untuk umum hari itu juga oleh Majelis Hakim tersebut, dibantu SRI SUNARYATI, SH. Panitera Pengganti dan dihadiri oleh Debitor, Hakim Pengawas, Pengurus dan Para Kreditor;