

EXHIBIT 7
DATE 2/18/05
HB 733

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Attorneys for Plaintiff
Plan Trust of Touch America Holdings, Inc.

**MONTANA SECOND JUDICIAL DISTRICT COURT,
BUTTE-SILVERBOW COUNTY**

PLAN TRUST OF TOUCH
AMERICA HOLDINGS, INC.,

Plaintiff,

v.

GOLDMAN, SACHS & CO., a
Limited Partnership,

THE GOLDMAN SACHS
GROUP, INC.,

MILBANK, TWEED, HADLEY
& McCLOY, LLP,

Does 1-10, inclusive

Defendants.

) Case No. DV-04-250

) **COMPLAINT FOR:**

-) 1. Fraud, Deceit and Concealment
-) 2. Breach of Fiduciary Duty
-) 3. Professional Negligence
-) 4. Conversion
-) 5. Constructive Trust/Unjust Enrichment
-) 6. Declaratory Relief

) **JURY TRIAL DEMAND**

Plaintiff, Plan Trust of Touch America Holdings, Inc., successor in interest to Montana Power Company, a debtor in Chapter 11 in the United States Bankruptcy Court for the District of Delaware, alleges upon information and belief, based upon, *inter alia*, the investigation conducted by Plaintiff and its attorneys, except as to those allegations which pertain to the named Plaintiff, as follows:

I. INTRODUCTION

1. For nearly one hundred years, Montana Power Co. ("Montana Power") was the most successful company in Montana's history, hiring tens of thousands of employees who provided gas and electricity to Montana's citizens. An investment in Montana Power was safe and secure, providing a steady return to its shareholders and a risk-free, profitable business relationship for creditors, such as Montana based JODE CORP, Oasis Telecom and Rocky Mountain Contractors.

2. However, the steady investment returns were not enough for Montana Power's President, Chief Executive Officer and Chairman of the Board, Robert Gannon, who along with others at Montana Power wanted to cash in on the Internet bubble of the late 1990s. Gannon along with Defendants Goldman, Sachs & Co., The Goldman Sachs Group, Inc. (collectively "Goldman, Sachs"), Milbank, Tweed, Hadley & McCloy, LLP ("Milbank, Tweed") and others decided to use Montana Power's extraordinary assets to earn substantial compensation and benefits for themselves.

6. Venue is proper in this County as Defendants are located and/or perform business in this County, and a substantial part of the events, acts, omissions and transactions complained of herein occurred in this County.

7. Each Defendant has sufficient minimum contacts with Montana or otherwise purposefully avails itself of benefits from Montana or do business in Montana so as to render the exercise of jurisdiction over it by the Montana courts consistent with traditional notions of fair play and substantial justice.

8. The amount in controversy exceeds the jurisdictional minimum of this Court.

III. PARTIES

A. PLAINTIFF

9. Plaintiff is the duly appointed Plan Trust in the bankruptcy of Touch America Holdings, Inc., successor in interest to Montana Power Company (collectively "Montana Power"), pending in the United States Bankruptcy Court for the District of Delaware, Case No. 03-11915 (KJC). On September 17, 2004, the Bankruptcy court authorized the Official Committee of Unsecured Creditors, as the successor in interest to the claims of the corporation, to investigate, commence, prosecute and/or settle potential claims against the Defendants sued herein. The creditors include Montana companies such as JODE CORP, Oasis Telecom and Rocky Mountain Contractors. On October 19, 2004, the Bankruptcy Court

approved the bankruptcy plan and the Official Committee of Unsecured Creditors became the Plan Trust. The Plan Trust is filing this Complaint pursuant to that authority in order to recover damages as a result of the decisions that the Defendants made involving Montana Power/Touch America that contributed to the insolvency and eventual demise of Montana Power. Accordingly, Plaintiff, as the successor in interest to the claims of Montana Power, has the standing and the right to assert the claims asserted herein.

B. DEFENDANTS

1. Investment Bank Defendants

10. Defendant Goldman, Sachs & Co. is a leading global investment banking, broker-dealer and securities firm that, among other things, offers underwriting services to companies seeking to offer their securities to the public and merger and acquisitions services. In addition to its investment banking operations, Goldman, Sachs & Co. also offers extensive services to its institutional investor clients, has an active securities sales and trading business, and maintains a separate division to perform research on equity securities. Goldman, Sachs & Co. is a member of New York Stock Exchange and National Association of Securities Dealers.

11. Defendant The Goldman Sachs Group, Inc. is, according to its 10-K for fiscal year end 2003, "a leading global investment banking, securities and

72. On October 2, 2000, Montana Power and NorthWestern announced that they had entered into an agreement under which NorthWestern agreed to acquire Montana's Power's energy distribution and transmission business, including electric and natural gas distribution and transmission operations and other assets, for about \$1.1 billion. Montana Power represented in its 8-K filing with the SEC that the purchase needed approval of Montana Power's shareholders as well as regulatory approval, and Montana Power finally sought shareholder approval. The shareholders approved the sale. But the approval was too late; it should have been received in 1997 when Montana Power first began selling its assets as part of this plan to divest itself of the energy business.

G. THE COLLAPSE OF MONTANA POWER

73. In February of 2002, as a result of a merger and share exchange transaction, Montana Power became Touch America. All of Montana Power's assets were now converted into an investment in this telecommunications company. Gannon remained the head of Touch America.

74. In an SEC filing on July 31, 2002, Touch America announced that it would be paying \$5.4 million to four executives based upon a "change of control" agreements for the change from Montana Power to Touch America. Gannon received \$2.2 million even though he was the primary person at Montana Power

system of jurisprudence." This right is "so fundamental and sacred to the citizen . . . [that it] should be jealously guarded by the courts." *Jacob v. New York* (1942) 315 U.S. 752, 753. Article II, Section 26 of Montana's Constitution guarantees that "[t]he right of trial by jury is secured to all and shall remain inviolate." Article II, Section 16 of Montana's Constitution guarantees that "[c]ourts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character."

90. By way of the Declaratory Relief claim set forth below, Plaintiff asks this Court to declare that the arbitration clauses are unenforceable.

FIRST CLAIM FOR RELIEF
(Fraud, Deceit and Concealment)

91. Plaintiff hereby incorporates by reference each of the paragraphs set forth above as though fully set forth hereinafter.

92. Defendants, and each of them, made material representations and omissions to Montana Power, in whose shoes Plaintiff stands, which were false and misleading, including but not limited to those representations and omissions that the divestiture was occurring at the best time for Montana Power to obtain maximum value for the company and that divestiture of the energy assets and a shift to telecommunications was the best direction for the company, as described in more detail above.

93. These representations were false because Defendants knew that the market was at or near its peak and the bubble was close to bursting so that it was not the appropriate time for Montana Power to divest itself of its energy assets, and that Montana Power should remain in the energy business, which had been its core business for nearly one hundred years and which had been a profitable investment for its shareholders and a profitable business relationship for its creditors.

94. When Defendants, and each of them, made the representations and failed to disclose and suppressed information they had a duty to disclose, as set forth herein, Defendants had knowledge of the falsity of their statements and representations and knew that they were failing to disclose material facts which they had a duty to disclose.

95. Defendants made the misrepresentations and omitted the material facts with the intent to defraud Montana Power in whose shoes Plaintiff stands, its customers, employees, creditors and shareholders, and to induce Montana Power to divest its energy business so that it could earn millions of dollars in compensation and other benefits.

96. At the time these misrepresentations were made and the material facts not disclosed, and at the time that the actions herein alleged were taken, Montana Power, in whose shoes Plaintiff stands, was ignorant of the true facts. If Montana Power had known the true facts, it would not have acted as it did.