

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re	§	
	§	
BIGLER LP;	§	Case No. 09-38188
BIGLER LAND, LLC;	§	Case No. 09-38189
BIGLER PETROCHEMICAL, LP;	§	Case No. 09-38190
BIGLER PLANT SERVICES, LP;	§	Case No. 09-38192
BIGLER TERMINALS, LP	§	Case No. 09-38194
	§	
Debtors.	§	Chapter 11
	§	
	§	Jointly Administered Under
	§	Case No. 09-38188

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**SECOND AMENDED DISCLOSURE STATEMENT FOR THE DEBTORS'  
SECOND AMENDED JOINT PLAN OF LIQUIDATION UNDER  
CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE**

**DATED AUGUST 31, 2010**

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**THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT YET BEEN APPROVED BY THE COURT.**

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**DISCLAIMER**

**THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY ORDER OF THE COURT AS CONTAINING INFORMATION OF A KIND, AND IN SUFFICIENT DETAIL, TO ENABLE HOLDERS OF CLAIMS TO MAKE AN INFORMED JUDGMENT IN VOTING TO ACCEPT OR REJECT THE PLAN. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.**

**THIS DISCLOSURE STATEMENT CONTAINS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN, THE EXHIBITS ANNEXED TO THIS DISCLOSURE STATEMENT, AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, SUCH DOCUMENTS. FURTHERMORE, ALTHOUGH THE DEBTORS HAVE MADE EVERY EFFORT TO BE ACCURATE, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN THE SUBJECT OF AN AUDIT OR OTHER REVIEW BY AN ACCOUNTING FIRM. IN THE EVENT OF ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN, THIS DISCLOSURE STATEMENT, THE EXHIBITS ANNEXED TO THIS DISCLOSURE STATEMENT, OR THE FINANCIAL INFORMATION INCORPORATED HEREIN OR THEREIN BY REFERENCE, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLAIMS SHOULD READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN.**

**THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN, UNLESS SO SPECIFIED. ALTHOUGH THE DEBTORS HAVE MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY THE RECOVERY UNDER THE PLAN, THIS DISCLOSURE STATEMENT IS QUALIFIED TO THE EXTENT CERTAIN EVENTS DO OCCUR.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE NON-BANKRUPTCY LAW. PERSONS OR ENTITIES HOLDING OR TRADING IN OR OTHERWISE PURCHASING, SELLING, OR TRANSFERRING CLAIMS AGAINST THE DEBTORS SHOULD EVALUATE THIS DISCLOSURE STATEMENT IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED.**

**IN ACCORDANCE WITH THE BANKRUPTCY CODE, THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.**

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## **I. INTRODUCTION**

### **A. Overview**

Bigler LP, Bigler Land, LLC, Bigler Petrochemical, LP, Bigler Plant Services, LP, and Bigler Terminals, LP, each a debtor-in-possession (collectively, the “Debtors”), hereby submit this Second Amended Disclosure Statement (the “Disclosure Statement”) with respect to the Debtor’s Second Amended Joint Plan of Liquidation dated August 31, 2010 (the “Plan”). This Disclosure Statement is to be used in connection with the solicitation of votes on the Plan. Unless otherwise defined herein, terms used herein have the meaning ascribed to them in the Plan. In the event of any inconsistency between the Disclosure Statement and the Plan, the terms of the Plan shall govern and such inconsistency shall be resolved in favor of the Plan.

The purpose of this Disclosure Statement is to enable you, as a Creditor whose Claim is Impaired under the Plan, to make an informed decision in exercising your right to accept or reject the Plan. By order dated September [ ], 2010 (the “Disclosure Statement Approval Order”), a copy of which is attached hereto as Exhibit E, the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”) has found that this Disclosure Statement provides adequate information to enable holders of Claims that are Impaired under the Plan to make an informed judgment in exercising their right to vote for acceptance or rejection of the Plan.

### **B. Summary of the Plan**

With the assistance of their financial advisor, Parkman Whaling, LLC (“Parkman Whaling”), the Debtors marketed the sale of substantially all of their assets, consistent with the terms of their DIP Loan with Amegy Bank, National Association (“Amegy”). Based on the expressions of interest received from multiple parties, the Debtors, after consultation with Parkman Whaling, Amegy, and the Unsecured Creditors’ Committee (the “Committee”), determined that an auction would provide the greatest value for the sale of their assets.

While engaging the marketplace for potential purchasers, the Debtors, on May 11, 2010, filed a Motion for Entry of (I) An Order (A) Approving Bidding and Notice Procedures Related to Sale of Substantially All of the Debtors’ Assets; and (B) Scheduling a Hearing to Consider the Sale; and (II) An Order (A) Authorizing the Sale of Substantially All of the Debtors’ Assets; and (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases (the “Bid Procedures Motion”) (Doc. No. 309). The Bid Procedures Motion proposed an auction of the Debtors’ assets in three separate segments: (1) the Petrochemicals business, which would include the HPIB plant facility (the “Petrochemical Assets”); (2) the Terminals business (the “Terminals Assets”); and (3) the unimproved land (the “Land Assets”).

On May 28, 2010, the Bankruptcy Court entered its order approving the Bid Procedures Motion (the “Bid Procedures Order”) and the related Bid Procedures. Pursuant to the Bid Procedures, the Debtors solicited bids from potential bidders and selected the following baseline bids for the auction: Vopak Terminals North America, Inc. for the Land Assets in the amount of \$7,762,392.00; and Enterprise Products Operating, LLC for the Terminals and Petrochemicals Assets in the amount of \$32,000,000.00.

On June 16, 2010, the Debtors conducted the auction at the offices of their counsel. Over a period of approximately 11 hours, the Debtors solicited bids on the three segments identified in the Bid Procedures Motion as individual segments and in various combinations thereof. At the conclusion of the auction, after consultation with Amegy and the Committee, the Debtors selected the \$20,500,000 bid from Intercontinental Terminals Company, LLC (“ITC”) as the highest and best bid for the Land Assets and Amegy’s \$38,000,000 credit bid as the highest and best bid for the combined Petrochemical and Terminals Assets. Following the auction, the Debtors executed asset purchase agreements with ITC and Amegy.

On June 24, 2010, the Court entered an Order approving the sale of the Land Assets to ITC pursuant to the terms of the executed APA. The sale of the Land Assets closed on July 9, 2010, and the proceeds from that sale were delivered to Amegy.

The Debtors adjourned the hearing to approve the sale of the Petrochemicals and Terminals Assets to Amegy. The closing of that sale will occur as part of the Plan; the Debtors will consummate the sale of the Petrochemicals and Terminals Assets on the terms of the Amegy APA with either Amegy or its assignee under the APA.<sup>1</sup>

Amegy is presently soliciting parties that may be interested in the assignment of Amegy’s rights under the APA. Following the Auction, Amegy developed a new set of marketing materials primarily based on a proposed alternative use of the Petrochemicals plant for a purpose other than the manufacture of HPIB. Amegy and its financial advisors contacted many of the same parties that were originally approached by Parkman Whaling as well as several additional parties with this alternative use concept. The Debtors have taken, and continue to take, no position on the technical viability or commercial marketability of Amegy’s proposal. As a result of these marketing efforts, the Debtors and Amegy have entered into tri-partite confidentiality agreements with several parties. The Debtors have communicated the details of Amegy’s efforts to the Committee. Amegy’s efforts to locate a third-party assignee could benefit the estate by increasing the Gifted Amount for the benefit of Class 6 as described in Section 8.3 of the Plan.<sup>2</sup>

The Plan incorporates an agreement between Amegy and the Committee dated June 15, 2010. In return for the Committee’s support of the Plan and the sales of the Debtors’ Assets, Amegy agreed to pay the Debtors’ estates the Gifted Amount. Details on the Gifted Amount can

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<sup>1</sup> The Amegy APA, filed with the Court on June 24, 2010, is nearly identical to the Enterprise APA filed with the Court prior to the Auction. Amegy was expressly authorized by the Court to credit bid and did so based on this APA.

<sup>2</sup> Section 8.3 of the Plan provides, in pertinent part:

[I]f Amegy (or its wholly-owned subsidiary) is not the Purchaser under the Amegy APA, then Amegy shall pay, or cause to be paid, to the Liquidating Trust for the benefit of the holders of Class 6 Claims, Cash in amount equal to five percent (5%) of the Net Proceeds in excess of \$60 million but less than or equal to all amounts then due and owing by the Debtors under the Pre-Petition Credit Agreements and the DIP Facility, including but not limited to accrued but unpaid interest through the Effective Date, fees and other expenses authorized thereunder, without regard to the treatment afforded the Pre-Petition Lender Secured Claims or the DIP Facility Claim under the Plan. For example, if Net Proceeds totaled \$61 million, then Amegy would pay \$50,000.



be found in Section 8.3 of the Plan. Additionally, a wind-down reserve shall be established in an amount up to \$350,000.00 to be agreed to by Amegy, the Debtors and the Committee, to provide for the wind down of the Debtors' Estates.

Separately, the Debtors are presently soliciting interest by various parties in the non-Debtor entities. To the extent that the Debtors obtain a potential buyer or buyers for the non-Debtor entities, the Debtor will submit such sale(s) for approval by the Court.

The Plan contemplates the winding down of the Debtors' Estates and the resolution of the outstanding Claims against the Debtors pursuant to sections 1129(a) and 1123 of the Bankruptcy Code. The Plan constitutes a single plan of liquidation for all of the Debtors.

**UPON THE EFFECTIVE DATE, ALL ASSETS NOT SUBJECT TO THE SALE (INCLUDING RETAINED CAUSES OF ACTION) WILL BE TRANSFERRED TO A LIQUIDATING TRUST, AND THE LIQUIDATING TRUST WILL BE VESTED WITH THE SOLE AUTHORITY TO, AMONG OTHER THINGS, REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL CAUSES OF ACTION (INCLUDING AVOIDANCE ACTIONS), FILE CLAIM OBJECTIONS, AND SET RESERVES, AND THE DEBTORS WILL HAVE NO RESPONSIBILITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL CAUSES OF ACTION (INCLUDING AVOIDANCE ACTIONS). THE LIQUIDATING TRUST, WHICH WILL BE ADMINISTERED BY THE LIQUIDATING TRUSTEE, WILL SERVE PRIMARILY AS THE VEHICLE FOR MAKING THE DISTRIBUTIONS PROVIDED BY THE PLAN.** The Plan provides for the payment in full of Allowed Administrative Expense Claims and Allowed Priority Tax Claims. The Trust Assets will be utilized by the Liquidating Trust, in its sole discretion, to review, initiate, and/or pursue Causes of Action (including Avoidance Actions). To the extent there is Cash remaining in the Liquidating Trust after the payment of fees and costs associated with the Liquidating Trust's review, initiation, and/or pursuit of Causes of Action (including Avoidance Actions), the remaining Cash will be distributed by the Liquidating Trust pursuant to the Plan. **BASED ON THE RESULTS OF THE AUCTION, THE DEBTORS BELIEVE THAT UNSECURED CREDITORS DISTRIBUTIONS UNDER THE PLAN WILL BE LIMITED TO THE GIFTED AMOUNT, FOLLOWING THE PAYMENT OF APPLICABLE EXPENSES.** The Debtors believe that any alternative to confirmation of the Plan, such as conversion of these cases to a Chapter 7 case under the Bankruptcy Code or attempts by another party in interest to file a plan, would result in significant delays, litigation, costs, and/or impaired recoveries. Moreover, the Debtors believe that the Debtors' creditors will receive greater and earlier recoveries under the Plan than those that would be achieved pursuant to a converted Chapter 7 case or under an alternative plan. **FOR THESE REASONS THE DEBTORS URGE YOU TO RETURN YOUR BALLOT "ACCEPTING" THE PLAN.**

The Plan classifies all Claims and Interests of the Debtors into seven (7) separate Classes and three (3) unclassified groups of Claims. The following table summarizes the classification and treatment afforded under the Plan as further described in Section IV of the Disclosure Statement.<sup>3</sup> At this time, the Debtors cannot predict whether any additional Distributions will be

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<sup>3</sup> This summary contains only a brief description of the classification and treatment of Claims and Interests under the Plan. It does not describe every provision of the Plan. Accordingly, reference should be made to the entire

made based on recoveries from the Causes of Action to be pursued by the Liquidating Trustee or the Committee's agreement with Amegy.

<u>Class</u>	<u>Designation</u>	<u>Impairment</u>	<u>Entitled to Vote</u>
1	Allowed Pre-Petition Lender Secured Claim	Impaired	Yes
2	Allowed Scianna Trust Secured Claim	Impaired	Yes
3	Allowed Removables Claims	Impaired	Yes
4	Allowed Other Secured Claims	Impaired	Yes
5	Allowed Priority Non-Tax Claims	Unimpaired	No
6	Allowed General Unsecured Claims	Impaired	Yes
7	Interests	Impaired	No

The Plan treats Classes 1 through 4 and 6 as Impaired and votes will be solicited from holders of Claims in these Classes. Votes will not be solicited from holders of Claims in Class 5 or Interests in Class 7 pursuant to Bankruptcy Code section 1126(g).

Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims, and DIP Facility Claims against the Debtors are not classified for purposes of voting on, or receiving Distributions under, the Plan. Holders of such Claims are not entitled to vote on the Plan. All such Claims are instead treated separately in accordance with this Article IV and in accordance with the requirements set forth in section 1129(a)(9)(A) of the Bankruptcy Code. A more complete description of the treatment of Administrative Expense Claims and Priority Tax Claims is provided in Article IV of the Plan.

### **C. Voting and Confirmation Procedures**

Accompanying this Disclosure Statement are copies of the following documents: (1) the Plan; (2) the Disclosure Statement exhibits, including a Liquidation Analysis; (3) the Disclosure Statement Approval Order (a) approving this Disclosure Statement as containing adequate information pursuant to Section 1125 of the Bankruptcy Code, (b) approving the form of Ballot, and (c) approving the notice of and fixing the time for (i) submitting acceptances or rejections of the Plan, (ii) the hearing to consider confirmation of the Plan, and (iii) filing objections to confirmation of the Plan; and (4) for creditors in Classes 1 through 6, a Ballot for voting to accept or reject the Plan.

If you did not receive a Ballot in your Solicitation Materials and believe that you should have, please contact

BY UNITED STATES MAIL:

BMC Group, Inc.  
Attn: Bigler Voting Department

BY OVERNIGHT COURIER, FAX  
OR PERSONAL DELIVERY:

BMC Group, Inc.  
Attn: Bigler Voting Department

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Disclosure Statement (including exhibits) and the entire Plan for a complete description of the classification and treatment of Claims and Interests.

P.O. Box 3020  
Chanhassen, MN 55317-3020

18750 Lake Drive East  
Chanhassen, MN 55317  
Facsimile: 1-888-316-2354

## **1. Who May Vote**

Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims or Interests that are “impaired” and that are not deemed as a matter of law to have rejected a plan of reorganization under Section 1126(g) of the Bankruptcy Code are entitled to vote to accept or reject the Plan. Any class that is “unimpaired” is not entitled to vote to accept or reject a plan of reorganization and is conclusively presumed to have accepted the Plan. As set forth in Section 1124 of the Bankruptcy Code, a class is “impaired” if legal, equitable, or contractual rights attaching to the claims or equity interests of that class are modified or altered. Holders of Interests (Class 7) will not receive or retain any property under the Plan on account of such Interests and are, therefore, deemed to reject the Plan and are not entitled to vote.

A Claim must be “Allowed” for purposes of voting in order for such creditor to have the right to vote. Generally, for voting purposes a Claim is deemed “Allowed” absent an objection to the Claim if (i) a proof of claim was timely filed, or (ii) if no proof of claim was filed, the Claim is identified in the Debtors’ Schedules as other than “disputed,” “contingent,” or “unliquidated,” and an amount of the Claim is specified in the Schedules, in which case the Claim will be deemed allowed for the specified amount. In either case, when an objection to a Claim is filed, the creditor holding the Claim cannot vote unless the Bankruptcy Court, after notice and hearing, either overrules the objection, or allows the Claim for voting purposes. Accordingly, if you did not receive a Ballot and believe that you are entitled to vote on the Plan, you must file a motion pursuant to Federal Bankruptcy Rule 3018 with the Bankruptcy Court for the temporary allowance of your Claim for voting purposes by [\_\_\_\_], 2010, at [\_\_\_\_] p.m. Central Daylight Time, or you will not be entitled to vote to accept or reject the Plan.

**THE DEBTORS AND THE LIQUIDATING TRUSTEE RESERVE THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM FOR DISTRIBUTION PURPOSES UNDER THE PLAN.**

## **2. Voting Instructions**

All votes to accept or reject the Plan must be cast by using the Ballot enclosed with this Disclosure Statement. No votes other than ones using such Ballots will be counted, except to the extent the Court orders otherwise. The Court has fixed [\_\_\_\_], 2010 as the time and date (the “Voting Record Date”) for the determination of the holders of Claims who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. After carefully reviewing the Plan and this Disclosure Statement, including the annexed exhibits, please indicate your acceptance or rejection of the Plan on the Ballot and return such Ballot in the enclosed envelope to:

BY UNITED STATES MAIL:

BY OVERNIGHT COURIER, FAX  
OR PERSONAL DELIVERY:

BMC Group, Inc.  
Attn: Bigler Voting Department  
P.O. Box 3020  
Chanhassen, MN 55317-3020

BMC Group, Inc.  
Attn: Bigler Voting Department  
18750 Lake Drive East  
Chanhassen, MN 55317  
Facsimile: 1-888-316-2354

**BALLOTS MUST BE COMPLETED AND RECEIVED NO LATER THAN 5:00 P.M. (CENTRAL DAYLIGHT TIME) ON [\_\_\_\_], 2010 (THE “VOTING DEADLINE”). ANY BALLOT THAT IS NOT EXECUTED BY A DULY AUTHORIZED PERSON WILL NOT BE COUNTED. ANY BALLOT THAT IS EXECUTED BY THE HOLDER OF AN ALLOWED CLAIM BUT THAT DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DEEMED TO BE AN ACCEPTANCE. EXCEPT AS AGREED TO BY THE DEBTORS, ANY BALLOT THAT IS EMAILED WILL NOT BE COUNTED IN THE VOTING TO ACCEPT OR REJECT THE PLAN.**

If you have any questions about the procedure for voting your Claim or the packet of materials you received, please contact the Balloting and Claims Agent at the address indicated above or by telephone at 1-800-655-1129. If you wish to obtain additional copies of the Plan, this Disclosure Statement, or the exhibits to those documents, at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d), please contact King & Spalding LLP, 1100 Louisiana St., Suite 4000, Houston, Texas 77002, Attn: Toni Silva. Copies of these documents may also be accessed on the website: <http://www.bmcgroup.com/Bigler>.

### **3. Acceptance or Rejection of the Plan**

The Bankruptcy Code requires, as a condition to confirmation of a plan, that each class of claims against, or equity interests in, the debtors that is impaired under a proposed plan vote to accept such plan. The Bankruptcy Code defines “acceptance” of a plan by a class of claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims in that class that cast ballots for acceptance or rejection of the plan.

The Debtors will seek to confirm the Plan under Section 1129(b) of the Bankruptcy Code due to the deemed rejection of the Plan by Class 7 Interests. Section 1129(b) of the Bankruptcy Code permits the confirmation of a plan notwithstanding the rejection of the plan by one or more impaired classes of claims or equity interests. Under that Bankruptcy Code section, a plan may be confirmed if (a) the plan has been accepted by at least one impaired class of claims and (b) the Court determines that the plan does not discriminate unfairly and is “fair and equitable” with respect to the non-accepting classes.

### **4. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Court, after notice, to hold a Confirmation Hearing. Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan. Pursuant to Section 1128 of the Bankruptcy Code and Rule 3017(c) of the Bankruptcy Rules, the Court has scheduled the Confirmation

Hearing to commence on [ ], 2010 at [10:00] a.m. (Central Standard Time), or as soon thereafter as counsel may be heard, before the Honorable Jeff Bohm, at the United States Bankruptcy Court, Courtroom 600, 515 Rusk Street, Houston, Texas 77002. A notice setting forth the time and date of the Confirmation Hearing has been included along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Court without further notice, except for an announcement of such adjourned hearing date by the Court in open court at such hearing

## **5. Objections to Confirmation**

Any objection to confirmation of the Plan must be in writing, must comply with the Bankruptcy Code, Bankruptcy Rules and the Local Bankruptcy Rules, and must be filed with the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas 77002, and served upon the following parties, so as to be received no later than [ ], 2010 at [ ] p.m. (Central Daylight Time): (a) King & Spalding LLP, 1110 Louisiana Street, Houston, Texas, 77002, Attn: Mark W. Wege (counsel for the Debtors); (b) Office of the United States Trustee, 515 Rusk Street, Houston, Texas 77002, Attn: Stephen Douglas Statham (counsel for the U.S. Trustee); (c) Greenburg Traurig LLP, 1000 Louisiana, Ste. 1700 Houston, Texas 77002, Attn: Shari L. Heyen (counsel for the Committee); and (d) Porter and Hedges LLP, 1000 Main Street, 36th Floor, Houston, Texas 77002, Attn: Matthew Vaughn (counsel for Amegy Bank).

## **II. GENERAL INFORMATION**

### **A. Formation, Business, Debt Structure, and Other Pre-Petition Obligations**

Bigler was founded in 1998 by Joel Herger under the name Bigler Trading Company, Inc. as a broker of bulk liquid inorganic chemicals. Bigler expanded to become a fully integrated marketing, logistics, tank leasing, and manufacturing company. Bigler Terminals LP provides tank leasing and logistics services for chemical, petrochemical, and refined products. Bigler Petrochemical LP operated a plant which manufactured high purity isobutylene. Bigler Land LLC leases property to the other Debtors and holds title to or leasehold interests in other valuable land located in the Houston Ship Channel. Bigler Plant Services provided utilities, maintenance and other support services to the other Debtors, but for fiscal year 2009, the Debtors combined, on a financial reporting basis, the assets, liabilities and operations of Bigler Plant Services LP into Bigler Petrochemicals LP and will continue to report on that basis. Bigler LP functions as the Debtors' principal operating entity.

In addition to the five Debtors, Bigler operates two non-debtor entities. Bigler Chemical LP buys and sells basic inorganic and organic chemicals. Bigler Specialty Oils LP markets technical mineral oils, FDA white oils, and high purity hydrocarbon solvents. The Debtors determined that it was in their best interests to not file bankruptcy petitions for the non-debtor entities. These companies are essentially trading companies, both of which had positive cash flow and were solvent (excluding the effect of the Amegy liens), that would have had difficulty, if not impossibility in, operating under the constraints of Chapter 11.

Bigler's transition to a fully integrated manufacturer began with a commercial relationship with the BASF Corporation ("BASF") and the Lubrizol Corporation to become a producer of high purity isobutylene ("HPIB") and provide a total C4 processing solution to BASF and Lubrizol.<sup>4</sup> Bigler signed an agreement allowing it to use BASF's technology in the process of creating HPIB. Bigler believed that the domestic reduction in the use of methyl tertiary butyl ether ("MTBE") due to state legislation and environmental litigation would result in a decrease in demand for Isobutylene (IB) as an alternative fuel additive. Bigler's plan was to leverage this opportunity to take advantage of an instable and growing HPIB market.

In January 2007, Bigler acquired the BP Amoco Linear Alfa Olefins plant site. The purchase included roughly 70 acres of land, assignment of the BP Title V Air Permit, existing process equipment, and logistical assets including 550,000 barrels of liquid storage, a sphere, pipeline, vessel, barge, rail, and truck infrastructure. In August 2007, Bigler purchased 145 acres of green field property adjacent to the existing facility from the Albemarle Corporation. Included with the real property purchase are service agreements with Albemarle which provide Bigler access to various facility services and utilities at favorable rates.

After acquiring these properties, Bigler began construction of the HPIB processing plant. Final construction costs exceeded original expectations. Bigler has existing, pre-petition payables related to these construction costs exceeding \$40,000,000.

The long-term financing for construction of the HPIB facility came from Amegy. Bigler's term loan with Amegy has two tranches, Term Loan 1 for \$40,000,000 and Term Loan 2 for \$20,000,000. Bigler also has a \$10,000,000 revolving line of credit with Amegy. Additionally, the Debtors have additional indebtedness and owe a \$10,000,000 debt to the Stephanie Elizabeth Scianna Investment Trust and the Ashley Elizabeth Scianna Arora Investment Trust and a \$5,000,000 debt to Robert Berryman. Both Robert Berryman and Charles C. Scianna, Jr., as individuals (not in the name of the Scianna Trusts), entered into certain subordination agreements related to Amegy's Pre-Petition Credit Agreements.

## **B. Events Leading to the Commencement of the Chapter 11 Cases**

In April 2009, the HPIB plant began operations; however, the availability of feedstock for the plant's operations lagged behind expectations. In August 2009, Bigler ceased operations at the plant due to uneconomic conditions and the lack of sufficient feedstock to run the plant economically. Without sufficient liquidity or the source of adequate operating revenue, the Debtors were forced to file these Bankruptcy Cases.

## **III. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASES**

### **A. Filing and First Day Pleadings**

#### **1. Commencement of the Chapter 11 Cases**

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<sup>4</sup> HPIB is an olefinic hydrocarbon recovered from petrochemical or refinery manufacturing processes. HPIB is used in the production of alkylated phenols used as antioxidants, lube oil additives, butyl rubber and resins.



On October 30, 2009, Bigler LP, Bigler Land, LLC, Bigler Petrochemical, LP, Bigler Plant Services, LP, and Bigler Terminals, LP each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Houston Division. Their case numbers are 09-38188, 09-38189, 09-38190, 09-38192, and 09-38194, respectively. Pursuant to an order dated November 5, 2009 (Docket No. 31), the Bankruptcy Court approved the joint administration of the Debtors' cases, which are being jointly administered under case number 09-38188.

## **2. First Day Orders**

On or shortly after the petition date, the Debtors filed certain "first day" motions and applications with the Bankruptcy Court seeking certain relief to aid in the efficient administration of their cases and to facilitate the Debtors' transition to debtor-in-possession status. The Bankruptcy Court held a hearing on these first-day motions on November 5, 2009. Among other things, the Bankruptcy Court entered orders which:

- authorized the joint administration of the Debtors' estates for procedural purposes only;
- authorized the Debtors to operate their consolidated cash management system during the Chapter 11 cases in substantially the same manner as it was operated prior to the commencement of the Chapter 11 cases;
- authorized payment of certain prepetition employee salaries, wages, and benefits and reimbursement of prepetition employee business expenses and ensured that payroll and benefits to employees during the chapter 11 cases would not be disrupted;
- authorized payments to ensure continuance of existing insurance policies;
- prohibited utilities from terminating services to the Debtors and provided a means for utilities to request deposits or other adequate protection mechanisms;
- established procedures for interim compensation and reimbursement of estate professionals;
- extended the time for the Debtors to file their schedules and statements of financial affairs.

### **B. Use of Cash Collateral/Debtor-in-Possession Financing**

As part of the "first day" motions, the Debtors filed a motion seeking authorization to use cash collateral. The Debtors and Amegy reached an agreement, which the Court approved on November 5, 2009, permitting the Debtors to use cash collateral on an interim basis.

On November 17, 2009, the Debtors filed an emergency motion seeking authorization to obtain debtor-in-possession financing in the aggregate amount of up to \$10,000,000.00 subject to the terms and conditions of the Debtor-in-Possession Credit Agreement with Amegy. On November 24, 2009, the Court entered an interim agreed order permitting the Debtors to draw up to \$2,400,000.00 prior to the entry of a final order. On December 9, 2009, the Court entered the final order approving the DIP Facility. The Debtors have received five extensions of the maturity date of the DIP Facility.

Borrowings under the DIP Facility were used to fund general operations of the Debtors and the costs related to administration of these bankruptcy cases. The DIP Facility was secured by, among other things, first priority senior priming liens on substantially all of the Debtors' assets, excluding Avoidance Actions. The DIP Facility imposed numerous restrictions on the Debtors, including a provision that required the Debtors to sell substantially all of their Assets.

### **C. Retention of Debtors' Professionals**

During these Chapter 11 Cases, the Court has authorized the Debtors to retain certain professionals. On November 3, 2009, the Debtors filed an application to retain King & Spalding LLP ("K&S") as their bankruptcy counsel. No objections were filed by any parties, and the Court approved the retention of K&S on December 2, 2009.

On November 10, 2009, the Debtors filed an application to employ BMC Group, Inc. as claims, noticing, and balloting agent. No objections were filed by any parties, and the Court approved the retention of BMC on December 2, 2009. On November 10, 2009, the Debtors filed an application to retain Strategic Capital Corporation to provide the services of H. Malcolm Lovett, Jr. as the Debtors' Chief Restructuring Officer. No objections were filed by any parties, and the Court approved the retention of Lovett on December 2, 2009. On November 25, 2009, the Debtors filed an application to employ Parkman Whaling, LLC as financial advisors to the Debtors. On December 2, 2009, the Court entered an interim order authorizing the Debtors to retain Parkman Whaling. The Court entered a final order authorizing the retention of Parkman Whaling on December 21, 2009.

On January 9, 2010, the Debtors filed an application to employ Tatum LLC as a professional services firm to the Debtors. No objections were filed by any parties, and the Court approved the retention of Tatum on February 3, 2010.

In addition, the Debtors retained certain attorneys and accountants in the ordinary course of their business to provide services relating to, among other things audits, tax returns, environmental permitting, various legal services, and other matters requiring the advice and assistance of professionals.

### **D. Appointment of Committee**

On November 19, 2009, the U.S. Trustee filed its notice of appointment of official unsecured creditors committee. The members of the Committee are: BASF Corporation; Billipp/Portwest, L.P. (J.A. Billipp Company); and Intertek USA.

By orders dated January 6, 2010, the Court authorized the Committee to retain Greenburg Traurig, LLP as counsel to the Committee and Mesirow Financial Consulting, LLC as financial advisors to the Committee.

On November 20, 2009, four M&M lien claimants filed an emergency motion seeking the appointment of an official committee of M&M lien claimants. The Debtors, the Committee,



Amegy Bank, and counsel for two creditors objected to this motion and the Court denied the motion after a hearing on November 24, 2009.

#### **E. United States Trustee**

The U.S. Trustee has assigned Stephen Douglas Statham to oversee these Chapter 11 Cases.

#### **F. Rejection and Assumption of Executory Contracts and Unexpired Leases**

The Debtors reviewed certain of their executory contracts and unexpired leases to determine whether those contracts remained beneficial to their business operations. As a result of this analysis, the Debtors obtained approval from the Bankruptcy Court to reject certain of their executory contracts and unexpired leases. The Debtors rejected, among other things, several vehicle leases, a lease of office space at 6925 Portwest Drive, Houston, Texas 77024, employment agreements, leases of numerous railcars, and certain other executory contracts the Debtors determined, in their business judgment, were no longer needed by the estates. The Debtors estimate that the rejection damages arising from these previously rejected contracts to be approximately \$3,250,000.00, which is included in the high estimate of Class 6 Claims.<sup>5</sup>

The Amegy APA contemplates that numerous executory contracts and unexpired leases will be assumed and assigned to the Purchaser. At least ten (10) days prior to the Confirmation Hearing, the Debtors will file a list of such executory contracts and unexpired leases along with the proposed Cure Costs. Any party taking exception to the proposed Cure Costs may file a detailed statement setting forth its reason for objection, and the Bankruptcy Court shall determine the proper amount of the Cure Costs at the Confirmation Hearing. The fixing of the Cure Costs shall constitute the Debtors' right to assign the executory contracts and unexpired leases to the Purchaser under Bankruptcy Code sections 365(c) and (f).

**TO THE EXTENT THERE ARE ANY CONTRACTS AND LEASES REMAINING IN THE DEBTORS' ESTATES THAT HAVE NOT BEEN (I) PREVIOUSLY REJECTED (II) ASSUMED AND ASSIGNED PURSUANT TO A SALE ORDER, (III) THE SUBJECT OF A PENDING MOTION TO ASSUME AS OF THE CONFIRMATION DATE, OR (IV) ON THE ASSUMED CONTRACT LIST PURSUANT TO THE AMEGY APA, SUCH CONTRACTS AND LEASES SHALL BE REJECTED UNDER THE PLAN. PROOFS OF CLAIM FOR DAMAGES ALLEGEDLY ARISING FROM THE REJECTION PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER OF ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE TO WHICH A CLAIMANT IS A PARTY MUST BE FILED WITH THE BANKRUPTCY COURT AND SERVED ON THE DEBTORS AND THE LIQUIDATING TRUST NOT LATER THAN THIRTY (30) DAYS AFTER THE EFFECTIVE DATE. ALL PROOFS OF CLAIM FOR SUCH DAMAGES NOT TIMELY FILED AND PROPERLY SERVED AS SET FORTH**

<sup>5</sup> Prior to receiving a list of assumed contracts from Amegy, the Debtors are unable to estimate the total amount of rejection damage claims that may exist because the Debtors do not yet know which contracts will be assumed and which will be rejected. Additionally, the Debtors have not reviewed the validity of the rejection damage claims already filed.

**HEREIN SHALL BE FOREVER BARRED AND DISCHARGED AND THE HOLDER OF SUCH A CLAIM SHALL NOT BE ENTITLED TO PARTICIPATE IN ANY DISTRIBUTION UNDER THE PLAN.**

**G. The Marketing Process and Auction**

In 2010, the Debtors took the beginning steps to effectuate a sale of substantially all of their assets, pursuant to the terms of the DIP Facility. With the assistance of their financial advisor, Parkman Whaling, the Debtors, in an effort to obtain the best price for their assets, engaged the marketplace for potential purchasers.

The Bid Procedures Motion proposed an auction of the Debtors' assets in three separate segments: (1) the Petrochemical Assets; (2) the Terminals Assets; and (3) the Land Assets.

Pursuant to the Bid Procedures, the Debtors solicited bids from potential bidders and selected the following baseline bids for the auction: Vopak Terminals North America, Inc. for the Land Assets in the amount of \$7,762,392.00; and Enterprise Products Operating, LLC for the Terminals and Petrochemicals Assets in the amount of \$32,000,000.00.

On June 16, 2010, the Debtors conducted the auction at the offices of their counsel. Over a period of approximately 11 hours, the Debtors solicited bids on the three segments identified in the Bid Procedures Motion as individual segments and in various combinations thereof. At the conclusion of the auction, after consultation with Amegy and the Committee, the Debtors selected the \$20,500,000 bid from ITC as the highest and best bid for the Land Assets and Amegy's \$38,000,000 credit bid as the highest and best bid for the combined Petrochemical and Terminals Assets. Following the auction, the Debtors executed asset purchase agreements with ITC and Amegy.

On June 24, 2010, the Court entered an Order approving the sale of the Land Assets to ITC pursuant to the terms of the executed APA. The sale of the Land Assets closed on July 9, 2010, and the proceeds from that sale were delivered to Amegy.

The Debtors adjourned the hearing to approve the sale of the Petrochemicals and Terminals Assets to Amegy. The closing of that sale will occur as part of the Plan; the Debtors will consummate the sale of the Petrochemicals and Terminals Assets on the terms of the Amegy APA with either Amegy or its assignee under the APA. Amegy is presently soliciting parties that might have interest in the assignment of their rights under the APA.

**H. Dissemination of Information About the Case**

The Debtors have been actively engaged in providing information about the Debtors' businesses and proceedings in these cases to various parties-in-interest. The Debtors provided creditors extensive information about the Debtors' financial, corporate, and operational status in their schedules and in the monthly reports filed with the Bankruptcy Court throughout these cases. The Debtors also have provided regular updates to the Committee through its counsel and its financial professional. In addition, the Debtors have provided formal and informal updates to

various creditors through email, mail and various unscheduled calls over the course of these cases. Finally, BMC has made all pleadings filed in the case available on its website, <http://www.bmcgroup.com/Bigler>

## **I. Avoidance Actions**

On and after the Effective Date, the Liquidating Trustee will be a representative of the Debtors' Estates pursuant to Bankruptcy Code section 1123(b)(3) and as such will have the power to prosecute, in the name of the Liquidating Trust, the Debtors' Estates, or otherwise, any Causes of Action of the Debtors' Estates, which include all Avoidance Actions (including preference actions and fraudulent transfer actions, as described in more detail below). **UPON THE EFFECTIVE DATE, ALL OF THE DEBTORS' CAUSES OF ACTION, INCLUDING AVOIDANCE ACTIONS WILL BE TRANSFERRED TO THE LIQUIDATING TRUST, AND THE LIQUIDATING TRUSTEE WILL BE VESTED WITH THE SOLE AUTHORITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL AVOIDANCE ACTIONS.**

### **1. Preferences**

Under federal bankruptcy law, a debtor-in-possession may avoid pre-petition transfers of assets of a debtor as "preferential transfers." To constitute a preferential transfer, the transfer must be (1) of the debtor's property; (2) to or for an antecedent debt; (3) made while the debtor was insolvent; (4) made within 90 days before the filing of a bankruptcy petition or made within one year if to an "insider"<sup>6</sup>; and (5) a transfer that enables the creditor to receive more than it would receive under chapter 7 liquidation of the debtor's assets. For this purpose, the Bankruptcy Code creates a rebuttable presumption that the debtor was insolvent during the 90 days immediately before the filing of the bankruptcy petition. All payments made by the Debtors to creditors within 90 days prior to the filing of the bankruptcy petition are listed under question 3(b) of the Debtors' statements of financial affairs. A copy of the relevant portions of the Debtors' statements of financial affairs relating to payments made within 90 days prior to the filing of the bankruptcy petition are attached hereto as Exhibit B. All payments made by the Debtors to "insiders" within one year prior to the filing of the bankruptcy petition are listed under question 3(c) of the Debtors' statements of financial affairs. A copy of the relevant portions of the Debtors' statements of financial affairs relating to payments made to insiders within one year prior to the filing of the bankruptcy petition are attached hereto as Exhibit C. In

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<sup>6</sup> Section 101(31) of the Bankruptcy Code defines an "insider", in relevant part, as:

- (B) if the debtor is a corporation—
  - (i) director of the debtor;
  - (ii) officer of the debtor;
  - (iii) person in control of the debtor;
  - (iv) partnership in which the debtor is a general partner;
  - (v) general partner of the debtor; or
  - (vi) relative of a general partner, director, officer, or person in control of the debtor.

...

- (E) affiliate or insider of an affiliate as if such affiliate were the debtor.

11 U.S.C. § 101(31).

addition to those transfers listed on Exhibit C, the Debtors executed a Leasehold Deed of Trust to secure the \$10,000,000 Sim-Tex Note on or about January 22, 2009. The Sim-Tex Note was subsequently assigned to Charles Scianna and is the basis of the Scianna Trusts Secured Claims. Charles Scianna was a significant limited partner in the Debtors and was involved in the management of the company for several months. Accordingly, the Leasehold Deed of Trust to secure the Sim-Tex Note may represent a voidable preference obligation to an insider. **UPON THE EFFECTIVE DATE, THE LIQUIDATING TRUSTEE WILL BE VESTED WITH THE SOLE AUTHORITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL PREFERENCE ACTIONS.**

## **2. Fraudulent Transfers**

Fraudulent transfer law generally is designed to avoid two types of transactions: (i) conveyances that constitute “actual fraud” upon creditors, and (ii) conveyances that constitute “constructive fraud” upon creditors. In the bankruptcy context, fraudulent transfer liability arises under sections 548 and 544 of the Bankruptcy Code. Section 548 permits the debtor-in-possession to “reach back” for a period of two years to avoid fraudulent transfers made by the debtors or fraudulent obligations incurred by the debtors, and Section 544 permits the debtor-in-possession to apply applicable state fraudulent transfer law to any such action. Assuming that Texas state law were to apply, the debtor-in-possession could challenge conveyances, transfers, or obligations made or incurred by the Debtors within the past four (4) years if similar requirements are met. **UPON THE EFFECTIVE DATE, THE LIQUIDATING TRUSTEE WILL BE VESTED WITH THE SOLE AUTHORITY TO REVIEW, INITIATE, AND/OR PURSUE ANY AND ALL FRAUDULENT TRANSFER ACTIONS.**

## **IV. THE PLAN**

**THE SUMMARY OF THE PLAN SET FORTH HEREIN IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF THE PLAN. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PROVISIONS OF THE PLAN AND THE SUMMARY CONTAINED HEREIN, AND REGARDLESS OF WHETHER ANY SUCH INCONSISTENCY IS A STATEMENT OR OMISSION, THE TERMS OF THE PLAN WILL GOVERN.**

### **A. Overview of the Plan**

The Debtors have executed an asset purchase agreement (“APA”) with Amegy for the sale of substantially all of the remaining Debtors’ Assets. *See* Exhibit F. Amegy’s consideration under the APA is based on its \$38,000,000 credit bid at the auction. The APA grants Amegy the ability to assign its rights and obligations under the APA to a third-party and Amegy is actively engaged in the process of marketing its rights under the APA. The Plan contemplates the closing of the Sale to Amegy or its assignee.

Unsecured creditors will receive a pro rata share of the net proceeds of the Trust Assets, which include the Gifted Amount. All M&M Lien Claims will be deemed general unsecured claims unless the holder of such claim obtains a Final Order determining that its claim is superior

to the Pre-Petition Lender Secured Claim pursuant to the M&M Lien Priority Adversary, in which case it will receive the treatment described in the Plan for Allowed Removables Claims.<sup>7</sup> The Scianna Trusts Claim will be deemed a general unsecured claim unless the Scianna Trusts obtain a Final Order as part of the Scianna Trusts Adversary determining that their lien is superior to the liens held by the Pre-Petition Secured Lenders, in which case the Scianna Trusts will receive the treatment described in the Allowed Scianna Trusts Secured Claim Class in the Plan.

## **B. Classification, Treatment and Impairment of Claims and Interests**

The Classes of Claims and Interests set forth below classify all Claims against and Interests in the Debtors for all purposes of the Plan. The Classes do not include any Intercompany Claims, all of which will be cancelled on the Effective Date. The Plan constitutes a single plan of liquidation, for administrative convenience purposes, for all Debtors. No creditors will be prejudiced by a single plan of liquidation given the value of the successful bids at the Auction compared to the amount of Amegy's senior secured debt in Class 1. Further information on substantive consolidation can be found in Article IV(D)(2) below. A Claim or Interest shall be deemed classified in a particular Class only to the extent the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or Interest is in a particular Class only to the extent that such Claim or Interest is Allowed in that Class and has not been paid, released, or otherwise settled prior to the Effective Date. **THE TREATMENT WITH RESPECT TO EACH CLASS OF CLAIMS AND INTERESTS PROVIDED FOR IN THE PLAN SHALL BE IN FULL AND COMPLETE SATISFACTION, RELEASE AND DISCHARGE OF SUCH CLAIMS AND INTERESTS.**

The classification of Claims discussed in Article II of the Plan can be summarized as follows:

<u>Class</u>	<u>Designation</u>	<u>Impairment</u>	<u>Entitled to Vote</u>
1	Allowed Pre-Petition Lender Secured Claim	Impaired	Yes
2	Allowed Scianna Trust Secured Claim	Impaired	Yes
3	Allowed Removables Claims	Impaired	Yes
4	Allowed Other Secured Claims	Impaired	Yes
5	Allowed Priority Non-Tax Claims	Unimpaired	No

<sup>7</sup> The Debtors believe there are no valid removable claims under applicable Texas law. The entire HPIB plant was built as a single, integrated facility and the removal of any component part could not be achieved without causing material injury to the land and other improvements. Additionally, the docket sheet in the M&M Lien Priority Adversary indicates that Amegy has so far reached stipulations with a majority of defendants regarding the superiority of Amegy's liens and dismissing those parties as defendants. The parties who have not entered into such stipulations hold claims of approximately \$7.4 million. A party seeking to receive Class 3 treatment bears the burden of proof as to their removable claim. Since no party has obtained such a final order from the bankruptcy court, all M&M Lien Claims are presently classified as Class 6 claims. However, any M&M Lien Claimant who has not previously stipulated to the priority of Amegy's liens may elect to cast a vote in Class 3 instead of Class 6; provided, however, that casting such a vote will have no impact on the merits of the M&M Lien Priority Adversary or the determination of that party's ultimate classification for distribution purposes.

6	Allowed General Unsecured Claims	Impaired	Yes
7	Interests	Impaired	No

The Classes of Claims and Interests, as well as their treatment and an analysis of whether they are impaired or unimpaired, are discussed in Article III of the Plan and in more detail as follows:

**1. Class 1 - Allowed Pre-Petition Lender Secured Claim.** In complete satisfaction and discharge of the Class 1 Claim, and to the extent not previously paid: (i) on the Effective Date, the Purchaser shall close the Sale and as part of the closing, Agent shall either take title to the assets identified in the Amegy APA or Agent shall receive from the Purchaser the Cash proceeds of such Sale, less any amounts necessary to fund the Administrative and Priority Claims Reserve and the Wind-Down Reserve; (ii) on the Effective Date contemporaneously with the closing of the Sale, Agent shall receive from the Debtors all of their Net Available Cash; (iii) as soon as reasonably practicable after the Effective Date, Agent shall receive from the Liquidating Trust promptly after the sale, collection or other monetization of all or each portion of the Other Assets conveyed to the Liquidating Trust, all proceeds received from the sale, disposition, collection or other monetization of any Other Asset, less reasonable and customary out-of-pocket expenses incurred by the Liquidating Trustee in connection with such sale, disposition, collection or other monetization; and (iv) as soon as reasonably practicable after the payment of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims and Allowed Other Secured Claims, Agent shall receive from the Liquidating Trust, after any additional payment to Amegy under Section 4.6 of this Plan on account of the DIP Facility Claim, any amount of the Administrative and Priority Claims Reserve that was not used to pay such Allowed Claims; provided, however, that any and all distributions to Agent on account of the Allowed Pre-Petition Lender Secured Claim under this Plan shall only be made after satisfaction of the DIP Facility Claim as provided in Section 4.6 of this Plan. To the extent that the amounts received as provided herein are less than the amount of the Pre-Petition Lender Secured Claim, any such deficiency shall be treated as a Class 6 Allowed General Unsecured Claim; provided, however, that such deficiency claim shall not receive any distributions from the Liquidating Trust on account of the Gifted Amount.

Estimated Allowed Claims: \$ 56,155,900.00<sup>8</sup>

Estimated Recovery: 67.6%<sup>9</sup>

**2. Class 2 - Allowed Scianna Trusts Secured Claim.** If the Scianna Trusts obtain a Final Order, in connection with the Scianna Trusts Adversary or otherwise (or if the parties to the Scianna Trusts Adversary so agree), determining that the Scianna Trusts hold a Lien that is superior to the Liens held by Agent on behalf of the Pre-Petition

<sup>8</sup> The Claim amount reflects the pre-petition debt balance less cash applied as of the ITC sale closing.

<sup>9</sup> This estimated recovery is merely hypothetical and does not consider any paydown to the DIP Facility, as DIP Facility Claims are treated in other provisions of the Plan.



Lenders, then the holder of the Allowed Scianna Trusts Secured Claim shall receive one of the following treatments in full satisfaction, settlement, release and discharge of and in exchange for such Claim, the election of treatment to be made in the sole discretion of Amegy within 10 days after the entry of the Final Order in the Scianna Trusts Adversary: (i) payment of the Allowed Scianna Trusts Secured Claim in full; (ii) reconveyance of the Collateral securing the Allowed Scianna Trusts Secured Claim by quit claim deed or bill of sale on an as is, where is basis with all costs of obtaining possession of such Collateral borne by the Scianna Trusts, within 30 days of the entry of a Final Order in the Scianna Trusts Adversary; or (iii) such other treatment to which Amegy and the holder of the Allowed Scianna Trusts Secured Claim have agreed upon in writing.

If the Scianna Trusts do not obtain such a Final Order or the Bankruptcy Court determines, in connection with the Scianna Trusts Adversary or otherwise (or if the parties to the Scianna Trusts Adversary so agree), that the Scianna Trusts hold a Lien that is not superior to the Liens held by Agent on behalf of the Pre-Petition Lenders, then the holder of the Allowed Scianna Trusts Secured Claim shall have a General Unsecured Claim and receive the same treatment afforded Claims in Class 6. The Plan does not preclude the Scianna Trusts from making an election under 11 U.S.C. § 1111(b). The application of such election will be determined under applicable law including the Final Order in the Scianna Trusts Adversary.

The Debtors, Amegy or the Liquidating Trustee may (i) seek a determination under the Bankruptcy Code and the Bankruptcy Rules regarding the allowance of the Scianna Trusts Secured Claim and (ii) initiate litigation to determine the amount, extent, validity and priority of any Liens securing such Claim.

Estimated Allowed Claims: \$0.00<sup>10</sup>

Estimated Recovery: 0.00 %

**3. Class 3 - Allowed Removables Claims.** Within thirty (30) days after the later of the Allowance Date or the entry of a Final Order in the M&M Lien Priority Adversary, each holder of an Allowed Removables Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Claim,<sup>11</sup> one of the following treatments, the election of treatment to be made in the sole discretion of Amegy: (i) title to and possession of the Collateral securing its Lien by quit claim deed or bill of sale on an as is, where is basis with all costs of obtaining possession of such Collateral borne by the holder of such Allowed Removables Claim;<sup>12</sup> (ii) payment in Cash by Amegy equal to the value of the Collateral securing its Lien, as determined by

<sup>10</sup> This amount is listed as zero because the Debtors do not believe that the Scianna Trusts will prevail in the Scianna Trusts Adversary and, therefore, will be classified as holding Class 6 Claims.

<sup>11</sup> An M&M Lien Claimant may seek a determination in the M&M Lien Priority Adversary, by Court order, of the valuation of their collateral, provided that the Court also determines that such claimant holds a lien which has priority over the liens of Amegy.

<sup>12</sup> Details regarding the exact collateral subject to the alleged Removables Claims can be found in the M&M Lien Priority Adversary as well as the individual proofs of claim filed by the M&M Lien Claimants asserting Removables Claims.

the Bankruptcy Court in the M&M Lien Priority Adversary, without regard to whether there are sufficient Trust Assets to satisfy claims in Class 1 in full;<sup>13</sup> (iii) its Lien shall be treated the same as a Permitted Lien as that term is defined in the Amegy APA; or (iv) such other treatment to which Amegy and any holder of an Allowed Removables Claim have agreed upon in writing.<sup>14</sup>

Estimated Allowed Claims: \$0.00<sup>15</sup>

Estimated Recovery: 0.00 %

**4. Class 4 – Allowed Other Secured Claims.** If, prior to the Effective Date, the holder of an Allowed Other Secured Claim obtains a Final Order of the Bankruptcy Court determining that it holds a Lien which is superior to the Liens held by Agent on behalf of the Pre-Petition Lenders, then the holder of such an Allowed Other Secured Claim, if any, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Claim, one of the following treatments, the election of treatment to be made in the sole discretion of Amegy: (i) title to and possession of the Collateral securing its Lien by quit claim deed or bill of sale on an is, where is basis with all costs of obtaining possession of such Collateral borne by the holder of such Allowed Other Secured Claim; (ii) payment in Cash equal to the value of the Collateral securing its Lien; or (iii) such other treatment to which Amegy and any holder of an Allowed Other Secured Claim have agreed upon in writing.

The Debtors, Amegy or the Liquidating Trustee may (i) seek a determination under the Bankruptcy Code and the Bankruptcy Rules regarding the allowance of any Other Secured Claim and (ii) initiate litigation to determine the amount, extent, validity, and priority of any Liens securing any such Claim.

If the holder of an Allowed Other Secured Claim does not obtain a Final Order of the Bankruptcy Court determining that it holds a Lien which is superior to the Liens held by the Agent on behalf of Pre-Petition Lenders, then the holder of such an Allowed Other Secured Claim shall be deemed an Allowed General Unsecured Claim and receive the same treatment afforded Claims in Class 6.

Estimated Allowed Claims: \$ 25,000.00 to \$55,000.00

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<sup>13</sup> The Debtors do not believe that the holder of a Class 3 claim established any rights or fixed any amount of its claim as a result of placing a credit bid at the Auction. The Court is entitled to make a determination of the value of an Allowed Removables Claim regardless of the election of treatment under the Plan. In making this determination, the Debtors do not believe that the Court is bound by the amount of a credit bid made at the Auction.

<sup>14</sup> Several creditors who filed Removables Claims have asserted that the value of the Collateral securing their respective Removables Claims cannot be less than the dollar amount of the credit bid made by that creditor at the Auction. The Debtors and Amegy dispute this assertion.

<sup>15</sup> Since no party has yet established a Class 3 claim in the M&M Lien Priority Adversary, the Debtors list this amount as zero and have included all M&M Lien Claims in Class 6. There are approximately \$7.4 million in claims remaining in the M&M Lien Priority Adversary by parties that have not entered into stipulations admitting Amegy's priority.



Estimated Recovery: 100.00 %

**5. Class 5 - Allowed Priority Non-Tax Claims.** Each holder of an Allowed Priority Non-Tax Claim, if any, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Claim, one of the following treatments: (i) payment of its Allowed Priority Non-Tax Claim in full within thirty (30) days after the Effective Date; or (ii) such other treatment to which the Debtors or the Liquidating Trustee, as applicable, and any holder of an Allowed Priority Non-Tax Claim have agreed upon in writing. Cash payments of Allowed Claims in Class 5 shall be paid from the Administrative and Priority Claims Reserve.

Estimated Allowed Claims: \$8,000.00 to \$12,000.00

Estimated Recovery: 100.0%

**6. Class 6 - Allowed General Unsecured Claims.** Each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Claim, its Pro Rata share of the net proceeds from the Trust Assets. Amegy will not participate in any distributions under this Class made from the Gifted Amount. However, any deficiency claim Amegy may have arising from its Pre-Petition Secured Lender Claim will attach to the net proceeds of any other Trust Assets such as the proceeds from Causes of Action. This Class shall include the Berryman Claim and all M&M Lien Claims (but not any Removables Claims). Depending on the outcome of the Scianna Trusts Adversary, Class 6 may also include the Scianna Trusts Secured Claim.

Estimated Allowed Claims: \$75,000,000.00 to \$85,000,000.00<sup>16</sup>

Estimated Recovery: < 1%

**7. Class 7 - Interests.** On the Effective Date, all Interests of the Debtors shall be cancelled and extinguished, and the holders of Interests shall not receive or retain any Distribution on account of such Interests.

Estimated Recovery: 0.0 %

### **C. Treatment of Unclassified Claims**

The treatment of Unclassified Claims is discussed in Article IV of the Plan and in more detail as follows:

**1. Summary.** Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Priority Tax Claims, and DIP Facility Claims against the Debtors are not classified for purposes of voting on, or receiving Distributions under, this

<sup>16</sup> This estimate assumes that no claims will receive Class 2 or Class 3 treatment as a result of the Scianna Trusts Adversary and the M&M Lien Priority Adversary and that those claims will be Class 6 Claims. Additionally, this amount does not include Amegy's deficiency claim of approximately \$18 million which will participate in Class 6 for distributions made from amounts other than the Gifted Amounts.

Plan. Holders of such Claims are not entitled to vote on this Plan. All such Claims are instead treated separately in accordance with Article IV of the Plan and in accordance with the requirements set forth in section 1129(a)(9)(A) of the Bankruptcy Code.

**2. *Allowed Administrative Expense Claims other than Professional Fee Claims.*** Subject to the provisions of sections 330(a), 331, and 503(b) of the Bankruptcy Code, and the bar date provisions herein, each holder of an Allowed Administrative Expense Claim, other than holders of Professional Fee Claims, shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Claim, one of the following treatments: (i) payment of its Allowed Administrative Expense Claim in Cash upon the later of (a) the Effective Date, or (b) the date on which such Administrative Expense Claim becomes an Allowed Claim; or (ii) such other treatment to which the Debtors or the Liquidating Trustee, as applicable, and any holder of an Allowed Administrative Expense Claim have agreed upon in writing. Cash payments of Allowed Administrative Expense Claims will be paid from the Administrative and Priority Claims Reserve; provided, however, that unpaid Ordinary Course Administrative Claims as of the Effective Date shall be assumed and paid by the Purchaser in the ordinary course of business. In the event that the Administrative and Priority Claims Reserve is exhausted, any remaining Allowed Administrative Expense Claims shall be paid by Amegy.

Estimated Administrative Expense Claims: \$400,000 to \$500,000

Estimated Recovery: 100.00%

**3. *Allowance and Payment of Professional Fee Claims.*** All unpaid Professional Fee Claims incurred prior to and including the Effective Date shall be subject to final allowance or disallowance upon application to the Bankruptcy Court pursuant to sections 330 or 503(b)(4) of the Bankruptcy Code, and orders of the Bankruptcy Court authorizing interim compensation. Provided that such unpaid Professional Fees Claims have been Allowed and do not exceed the respective amounts allocated in the Cash Collateral Budget, then such unpaid Professional Fees Claims will be paid pursuant to the Administrative and Priority Claims Reserve. Any Professional Fees incurred after the Effective Date, provided that such Professional Fees and expenses solely relate to the Liquidating Trustee's duties to wind down and close the Estates and dissolve the Debtor entities, shall be paid according to the terms of the Wind-Down Budget.

**4. *Bar Date for Filing Administrative Expense Claims But Excluding Professional Fee Claims.*** All requests for payment or assertion of an Administrative Expense Claim, other than Professional Fee Claims that have not been paid, released, satisfied or otherwise settled, must be filed with the Bankruptcy Court no later than thirty (30) days after the Effective Date. Any request for payment of an Administrative Expense Claim that is not timely filed, as set forth above, will be forever disallowed and barred. In such event, Claimants will not be able to assert such Claims, in any manner whatsoever, against any Debtor, Amegy, the DIP Lender, the Liquidating Trustee, or the Liquidating Trust.

**5. *Treatment of Allowed Priority Tax Claims.*** Each holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Claim, one of the following treatments: (i) payment of its Allowed Priority Tax Claim in full within thirty (30) days after the Effective Date, with interest to accrue from the Effective Date until such payment is made, at the applicable non-bankruptcy rate in effect during the calendar month in which the Plan is confirmed; or (ii) such other treatment to which the Debtors or the Liquidating Trustee, as applicable, and any holder of an Allowed Priority Tax Claim have agreed upon in writing. Cash payments of Allowed Priority Tax Claims shall be paid from the Administrative and Priority Claims Reserve.

Estimated Allowed Priority Tax Claims: \$10,000 to \$15,000

Estimated Recovery: 100.00%

**6. *DIP Facility Claim.*** In complete satisfaction and discharge of the DIP Facility Claim: (i) on the Effective Date, the Purchaser shall close the Sale and as part of the closing, Amegy shall either take title to the assets identified in the Amegy APA or Amegy shall receive from the Purchaser the Cash proceeds of such Sale, less any amounts necessary to fund the Administrative and Priority Claims Reserve and the Wind-Down Reserve; (ii) on the Effective Date contemporaneously with the payment from the Purchaser in clause (i), Amegy shall receive from the Debtors all of their Net Available Cash; (iii) as soon as reasonably practicable after the payment of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims and Allowed Other Secured Claims, Amegy shall receive from the Liquidating Trust any amount of the Administrative and Priority Claims Reserve that was not used to pay such Allowed Claims. From and after the Effective Date, Amegy and the DIP Lender shall have no further obligations whatsoever under the DIP Facility and the Final DIP Order, all of which obligations shall be deemed satisfied and performed in full.

Estimated DIP Facility Claim: \$6,000,000 to \$8,000,000<sup>17</sup>

Estimated Recovery: tbd

## **D. Means for Implementation of the Plan**

### **1. Source of Funding**

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<sup>17</sup> At Amegy's request, the Debtors made a settlement payment on behalf of Amegy to Buckeye Texas Pipeline Company, LP, out of the DIP facility. It is the Debtors expectation that Amegy will extend the maturity date of the DIP facility to October 31, 2010, and will increase the amount available under the DIP facility to continue to fund the Debtors' operations through to the Effective Date. Additionally, the Plan contemplates that Amegy will fund the Administrative and Priority Claims Reserve, make cure payments (estimated to be \$1,250,000) and pay additional, undetermined costs through the DIP Facility. Therefore, it is likely that the final DIP Facility Claim on the Effective Date will exceed \$8,000,000.00. Regardless of the final balance of the DIP Facility Claim, all outstanding amounts will be extinguished upon the Effective Date in the consideration of the treatment afforded such claim in the Plan.

The Debtors shall sell substantially all (excluding those interests in the non-debtors) of their remaining assets to the Purchaser pursuant to, and on the terms of, the Amegy APA, free and clear of all Liens, mortgages, security interests, conditional sales or other title retention agreements, pledges, Claims, liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, judgments, demands, encumbrances (including, without limitation, claims or encumbrances (i) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the Purchasers' interests in the assets purchased pursuant to the Amegy APA or (ii) with respect to taxes, restrictions, rights of first refusal, preferential rights of purchase, non-governmental rights of consent, charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership) and other interests. Notwithstanding anything in this Disclosure Statement or the Plan, nothing herein or therein shall prejudice the rights of any parties in the Scianna Trusts Adversary and the M&M Lien Priority Adversary to assert their lien rights as prior to those of Amegy; or to retain the rights provided in Class 2 and Class 3 of this Plan.

Contemporaneously with the closing of the Sale and occurrence of the Effective Date, the Debtors and Amegy, as applicable, will fund (i) the Administrative and Priority Claims Reserve for the benefit of the Holders of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims and Allowed Other Secured Claims (and, to the extent of any surplus from such reserve after the payment of such Allowed Claims, for the benefit of Amegy, for itself and as Agent) and (ii) the Wind-Down Reserve.

On the Effective Date, Amegy shall pay, or cause to be paid, to the Liquidating Trust for the benefit of holders of Class 6 Claims, Cash in an amount equal to \$600,000. If Amegy (or its wholly-owned subsidiary) is the Purchaser under the Amegy APA on the Effective Date, Amegy will execute and deliver the Unsecured Creditors Note. Alternatively, and in lieu of the Unsecured Creditors Note, if Amegy (or its wholly-owned subsidiary) is not the Purchaser under the Amegy APA on the Effective Date, then Amegy shall pay, or cause to be paid, to the Liquidating Trust for the benefit of the holders of Class 6 Claims, Cash in amount equal to five percent (5%) of the Net Proceeds in excess of \$60 million but less than or equal to all amounts then due and owing by the Debtors under the Pre-Petition Credit Agreements and the DIP Facility, including but not limited to accrued but unpaid interest through the Effective Date, fees and other expenses authorized thereunder, without regard to the treatment afforded the Pre-Petition Lender Secured Claims or the DIP Facility Claim under the Plan. For example, if Net Proceeds totaled \$61 million, then Amegy would pay \$50,000.

## **2. Substantive Consolidation**

Pursuant to Section 105(a) of the Bankruptcy Code, the Debtors shall be deemed substantively consolidated for all purposes related to the Plan, including without limitation, for purposes of voting, confirmation and distribution, as of the Confirmation Date. Such substantive consolidation shall not (other than for purposes related to the Plan) affect the legal and corporate structures of the Reorganized Debtors. The Debtors believe that such treatment results in the following effects.

Under the Plan, the Debtors shall be deemed substantively consolidated for distribution purposes as of the Confirmation Date, and all Intercompany Claims shall be eliminated. Each Claim filed or to be filed in the Chapter 11 Cases against any of the Debtors will be deemed filed against each Debtor and will be deemed an obligation of each Debtor. The Plan does not contemplate the merger of any of the Debtors or the transfer or commingling of assets of the Debtors, except to accomplish the distributions to creditors contemplated under the Plan.

The limited substantive consolidation of the Debtors' estates for purposes of the Plan will not affect any liens or other security interests held by any secured party or their recoveries under the Plan, and is not being used offensively in order to advantage one group of creditors at the expense of another. Instead, such limited substantive consolidation is merely intended to facilitate the confirmation and consummation of the Plan. The Debtors believe that no Claims will conceivably be affected by the substantive consolidation due to Amegy's cross-collateralized senior debt under the DIP Facility and its pre-petition senior, secured debt. For these reasons, the Debtors believe that limited substantive consolidation of the Debtors' estates is appropriate.

There is no express statutory authority for substantive consolidation. The Bankruptcy Court's ability to approve the limited substantive consolidation of the Debtors' estates for purposes of the Plan derives from its general equitable powers under Section 105(a) of the Bankruptcy Code, which provides that the Bankruptcy Court may issue orders necessary to carry out the provisions of the Bankruptcy Code. See *In re DRW Property Co.* 82, 54 B.R. 489, 494 (Bankr. N.D. Tex. 1985). Some courts have also found authority for substantive consolidation in Section 1123(a)(5)(C) of the Bankruptcy Code. Section 1123(a)(5)(C) provides, in pertinent part, that "a plan [of reorganization] shall provide adequate means for the plan's implementation, such as merger or consolidation of the debtor with one or more persons." See, e.g., *In re Stone & Webster, Inc.*, 286 B.R. 532, 541 (Bankr. D. Del. 2002). There are, however, no statutorily prescribed standards for substantive consolidation. Instead, courts apply certain judicially-developed standards to determine the appropriateness of substantive consolidation on a case-by-case basis. See, e.g., *In re Owens Corning*, 419 F.3d 195, 212 (3d Cir. 2005). The Debtors believe that the limited substantive consolidation requested under the Plan is legally justified, under Section 1123(a)(5) of the Bankruptcy Code and prevailing case law, and is in the best interest of the Debtors' estates and creditors because it will promote a more expeditious and streamlined distribution and recovery process for all creditors without affecting the liens of any secured party or diminishing their recoveries under the Plan.

In the event that the Bankruptcy Court does not approve the proposed limited substantive consolidation of the Debtors' estates, the voting, confirmation and distribution procedures under the Plan will not be affected, except with respect to the Holders of General Unsecured Claims in Class 6. In the absence of substantive consolidation of the Debtors' estates, the Plan would be modified pursuant to Section 1127 of the Bankruptcy Code to divide the Holders of General Unsecured Claims in Class 6 into five subclasses, one for each Debtor against which such General Unsecured Claims have been scheduled or filed, for purposes of voting on the Plan. The treatment of General Unsecured Claims under the Plan would not be materially affected by this modification, and this modification to the Plan would have no material impact on the proposed treatment of any other Classes of Claims under the Plan.



### 3. Creation of the Liquidating Trust

Prior to the Effective Date, the Debtors will retain power and control over the Debtors' Estates. On the Effective Date, the Liquidating Trust will be established and become effective and title to the Trust Assets and Other Assets will automatically vest in the Liquidating Trust, without the need to execute any documents or instruments of transfer.<sup>18</sup> **THE TRUST ASSETS (INCLUDING WITHOUT LIMITATION ALL AVOIDANCE ACTIONS AND CAUSES OF ACTION, INCLUDING BUT NOT LIMITED TO THOSE CAUSES OF ACTION LISTED IN SECTION IV(H) HEREOF) WILL BE RESERVED, PRESERVED, ASSIGNED, TRANSFERRED, AND CONVEYED, AS THE CASE MAY BE, TO THE LIQUIDATING TRUST FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES OR INTERESTS EXCEPT TO THE EXTENT THAT SUCH LIENS AND CLAIMS ARE RETAINED UNDER THE PLAN.** The Committee shall appoint the Liquidating Trustee of the Liquidating Trust. The Liquidating Trust will assume liability for and incur the obligation to make the Distributions required to be made under the Plan.

### 4. Powers and Duties of Liquidating Trustee

#### a. Wind Down of the Estates

The Liquidating Trustee shall take all actions necessary to wind down the estates, provide for dissolution of the Debtor entities and provide for final resolution of the Cases, including the pursuit of any Claims objections and transactions related to implementation of the Plan, in accordance with the terms of the Trust Agreement and the Plan. The costs, fees, and expenses related to this activity shall be paid from (a) the Wind-Down Reserve to the extent provided for in the Wind-Down Budget, and (b) the Gifted Amount to the extent not provided for in the Wind-Down Budget. Amounts remaining in the Wind-Down Reserve after wind down of the estates shall be paid to Amegy.

#### b. Maintenance, Safekeeping and Distribution of Assets

Subject to the provisions of the Liquidating Trust Agreement and the Plan, the Liquidating Trust will take possession of the Trust Assets and will conserve, protect, collect and liquidate or otherwise convert into cash all assets that constitute part of the Trust Assets. To the end of accomplishing the purposes of the Plan and the Liquidating Trust, after the Effective Date the Liquidating Trust will make Distributions to creditors and will have the authority to pursue or not to pursue Causes of Action, file claim objections and set reserves, and the Liquidating Trustee will have the sole right, power and discretion to manage the affairs of the Liquidating Trust. As set forth in the Liquidating Trust Agreement, the Liquidating Trustee, subject to review by the Creditor Representatives, shall make Distributions in its discretion but at least annually. Section 5.7 of the Liquidating Trust Agreement provides the procedure by which the Liquidating

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<sup>18</sup> At this time, the Debtors believe that the only Other Assets are the Debtors equity interests in the non-Debtor entities. The Debtors expect that the sale of the non-Debtor entities will be completed prior to the Effective Date, with all proceeds going to Amegy. If the sale of the non-Debtor entities is not completed by the Effective Date, then the Other Assets would be transferred to the Liquidating Trust to be held pending such a sale. The costs and expenses associated with the liquidation of the Other Assets will be borne by the Wind-Down Reserve.

Trustee may establish a reserve for the payment of disputed or contingent claim, such as the claims in Classes 2 and 3. Upon the Effective Date, a reserve for the Disputed Claims in the pending Scianna Trusts Adversary and the M&M Lien Priority Adversary shall be established pending the outcome of such adversaries. On and after the Effective Date, the Liquidating Trust will be a representative of the Debtors' Estates pursuant to Bankruptcy Code section 1123(b)(3) and as such the Liquidating Trustee will have the power to prosecute, in the name of the Liquidating Trust, the Debtors' Estates, or otherwise, any claims of the Debtors' Estates, including Avoidance Actions. Additionally, the Liquidating Trust will have the power to: (i) do all acts contemplated by the Plan to be done by the Liquidating Trust, (ii) do all other acts that may be necessary or appropriate for the final Distribution of Trust Assets, including the execution and delivery of appropriate agreements or other documents of disposition, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable state law and such other terms to which the applicable entities may agree.

**c. Assumption of Liabilities**

Except as otherwise provided in the Plan, the Liquidating Trust shall assume liability for and incur the obligation to make the Distributions required to be made under the Plan and to handle all aspects of the claim contest and dispute process on and after the Effective Date, as described in Article IX of the Plan.

**d. Filing of Claims and Causes of Action**

The Liquidating Trustee shall have the exclusive right to file and prosecute any Claims and Causes of Action on behalf of the Estates following the Effective Date, including all derivative Causes of Action. The Liquidating Trustee shall have the authority to compromise, settle, or otherwise resolve all Claims and Causes of Action filed or asserted in the amount of \$75,000 or less without approval of the Bankruptcy Court or further notice to any creditor representatives of the Liquidating Trust ("Creditor Representatives").

**e. Proceeds of Litigation**

Net Proceeds, if any, of litigation conducted by the Liquidating Trust will be added to the assets of the Liquidating Trust and administered pursuant to the Liquidating Trust Agreement and distributed pursuant to Article III and Article IV of this Plan.

**f. Avoidance Actions**

On and after the Effective Date, the Debtors will not be responsible for any review of Causes of Action, including Avoidance Actions. The Liquidating Trust will have all responsibility for reviewing, analyzing and prosecuting Avoidance Actions under the Plan and the Liquidating Trust Agreement. The Liquidating Trust will have the sole authority to prosecute Avoidance Actions, which include preferences and fraudulent transfers, as defined by the Bankruptcy Code and as discussed in more detail in this Disclosure Statement. **ALL CREDITORS AND RECIPIENTS OF PAYMENTS OR TRANSFERS WITHIN 90 DAYS**

**OF THE PETITION DATE (OR WITHIN ONE YEAR FOR INSIDERS) OR WHO RECEIVED PAYMENTS OR TRANSFERS FOR LESS THAN REASONABLY EQUIVALENT VALUE WITHIN FOUR YEARS OF THE PETITION DATE, WITH ACTUAL OR CONSTRUCTIVE NOTICE OF THESE BANKRUPTCY CASES, ARE HEREBY PUT ON NOTICE THAT SUCH TRANSACTIONS WILL BE REVIEWED FOR POTENTIAL RECOVERY. THE PLAN IS NOT INTENDED AND DOES NOT WAIVE ANY OF THE DEBTORS' CHAPTER 5 CAUSES OF ACTION, AS ALL SUCH ACTIONS ARE EXPRESSLY PRESERVED FOR THE BENEFIT OF THE LIQUIDATING TRUST.**

**g. Compensation of Liquidating Trustee**

The Liquidating Trustee shall be entitled to receive compensation for services rendered and costs and expenses incurred at customary rates charged by the Liquidating Trustee for the Liquidating Trustee's services.

**h. Costs and Expenses of the Liquidating Trustee**

All costs and expenses related to the initiation, prosecution, pursuit and settlement of any Causes of Action, including but not limited to Avoidance Actions, shall be borne by and as a charge against the Trust Assets. All costs and expenses related to winding down the Estates, including Claims objections, Claims processing, the resolution of the Cases and the dissolution of the Debtor entities, shall first be a charge against the Wind-Down Reserve. If the Wind-Down Reserve is insufficient to satisfy all such costs and expenses, then the remainder of such costs and expenses shall be a charge against the Trust Assets. If an action of the Liquidating Trustee involves both the pursuit of a Cause of Action and an objection to claim, all costs and expenses related to such action shall be charged against the Trust Assets.

**i. Reliance by the Liquidating Trustee**

The Liquidating Trustee may rely, and shall be fully protected in acting or omitting to act upon any resolution, statement, certificate, instrument, opinion, report, notice, request, consent, order or other document which the Liquidating Trustee reasonably believes to be genuine and to have been signed or presented by the proper party or parties, and the Liquidating Trustee may conclusively rely on the correctness of the statements and opinions expressed therein. The Liquidating Trustee may rely upon the records of BMC (the claims agent in these Cases) in determining who holds Allowed Unsecured Claims.

**j. Valuation of Trust Assets**

As reasonably determined from time to time by the Liquidating Trustee in its good faith and reasonable judgment, valuation of the Trust Assets transferred to the Liquidating Trust shall be used consistently by the Liquidating Trustee and the Beneficiaries for all federal income tax purposes. The Liquidating Trustee, Debtors and Beneficiaries agree that (i) the value of the Causes of Action on the date of their transfer to the Liquidating Trust shall be zero dollars; and (ii) the transfer of the Causes of Action to the Liquidating Trust shall "close" the transaction for



tax purposes as to the Debtors with respect to any subsequent receipt of proceeds by the Liquidating Trust in connection with the Causes of Action or investment earnings thereon.

**k. Reporting Duties**

Forty-five (45) days after the end of each annual calendar quarter and forty-five (45) days after the Final Distribution Date, the Liquidating Trustee will file with the Court a written report showing (i) the assets and liabilities of the Debtors' Estates at the end of such quarter or upon termination and (ii) any material action taken by the Liquidating Trustee in the performance of his duties under the Liquidating Trust and under the Plan that has not been previously reported.

**5. Cancellation of Debt and Ownership Interests**

On the Effective Date, except as otherwise provided for herein, (a) the Prepetition Credit Agreements, the DIP Facility, and any other notes, bonds (with the exception of surety bonds outstanding), letters of credit, indentures, or other instruments or documents evidencing or creating any indebtedness or obligations of a Debtor that are Impaired under the Plan shall be cancelled, and (b) all Interests in the Debtors shall be deemed cancelled and extinguished without any further action of any party.

**6. Termination of Liquidating Trust**

The Liquidating Trust will terminate, subject to this Court's approval, no later than at the end of three years from the Effective Date. Upon the completion of the Liquidating Trustee's duties the Liquidating Trustee may terminate the Liquidating Trust. On the termination date of the Liquidating Trust, the Liquidating Trustee will execute and deliver any and all documents and instruments reasonably requested to evidence such transfer. Upon termination and complete satisfaction of its duties under the Liquidating Trust Agreement, the Liquidating Trustee will be forever discharged and released from all powers, duties, responsibilities, and liabilities pursuant to the Liquidating Trust other than those attributable to the gross negligence or willful misconduct of the Liquidating Trustee.

**E. Provisions Regarding Distributions**

**1. Liquidating Trustee of the Liquidating Trust**

Unless otherwise provided for in the Plan, all Distributions under the Plan shall be made by the Liquidating Trustee or his successor.

**2. Distributions of Cash**

Any Distribution of Cash made by the Liquidating Trustee pursuant to the Plan shall, at the Liquidating Trustee's option, be made by check. The Liquidating Trustee shall not be required to make aggregate distributions of less than \$50 to any holder of an Allowed Claim, unless the Liquidating Trustee elects to do so.

### **3. Sources of Cash for Plan Distributions**

Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Liquidating Trust to make Distributions pursuant to the Plan shall be obtained from the Trust Assets (which include the Gifted Amounts), net of applicable costs. The Wind-Down Reserve, which shall be funded on the Effective Date, shall not be used to make Distributions to Classes of Creditors, as described in Article III, but shall be used only for the costs of the wind down of the estates, the costs of dissolution of the Debtor entities and the costs related to the final resolution of the Cases, including claims objections and transactions related to implementation of the Plan. Amounts remaining in the Wind-Down Reserve after wind down of the estates shall be paid to Amegy. The Administrative and Priority Claims Reserve shall be funded on the Effective Date for distributions as provided by the Plan.

### **4. No Interest or Penalties on Claims**

Unless otherwise specifically provided in the Plan, the Confirmation Order or other order of the Bankruptcy Court, or required by applicable bankruptcy law, postpetition interest shall not accrue or be paid on any unsecured Claims, and no holder of an unsecured Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the Final Distribution Date when and if such Disputed Claim becomes an Allowed Claim.

### **5. Delivery of Distributions**

Except as otherwise agreed to by the holder of an Allowed Claim and the Liquidating Trust, the Liquidating Trust shall make Distributions to such Claimants as provided in the Plan at the address reflected in the books and records of Debtors or as otherwise reflected on any Proof of Claim, proof of Interest, or notice of address or change of address filed in these Chapter 11 Cases.

If any Distribution is returned as undeliverable, no further Distributions to that holder shall be made unless and until the Liquidating Trust receives notice of the holder's then-current address, at which time all outstanding Distributions shall be made to such Claimant. Undeliverable Distributions made through the Liquidating Trust shall be returned to the Liquidating Trust until such Distributions are claimed. The Liquidating Trustee shall establish a segregated account to serve as the Unclaimed Distribution Reserve, and all undeliverable and unclaimed Distributions shall be deposited therein, for the benefit of all similarly situated Persons until such time as a Distribution becomes deliverable or is claimed.

Any undeliverable or unclaimed Distribution under the Plan that does not become deliverable on or before six months after the applicable Distribution Date shall be deemed to have been forfeited and waived, and the Person otherwise entitled thereto shall be forever barred and enjoined from asserting that Claim and all other Claims against, or seeking to recover its Distribution from, the Debtors, any Estate, the Liquidating Trustee, the Liquidating Trust, or their respective property. After six months following the applicable Distribution Date, the

Liquidating Trustee shall withdraw any amounts remaining in the Unclaimed Distribution Reserve for Distribution in accordance with the Plan.

## **6. Withholding and Reporting Requirements**

In connection with the Plan and all Distributions thereunder, the Liquidating Trust shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions thereunder shall be subject to those requirements. The Liquidating Trust shall be authorized to take all actions necessary or appropriate to comply with those withholding and reporting requirements. Notwithstanding any other provision of the Plan, the holders of Claims or Interests of the Debtors shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority, including income, withholding and other tax obligations, on account of the provisions of the Plan. Neither the Debtors nor the Liquidating Trust shall have any liability to either the holder of a Claim or Interest or any Governmental Authority with respect to any such tax or similar obligation owed by such holder.

## **7. Duty to File Tax Returns**

The Liquidating Trust shall be obligated to file all applicable state and federal tax returns on behalf of the Estates.

## **8. Setoffs**

The Liquidating Trust may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy laws, but shall not be required to, set off against any Claim, the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, or claims of any nature whatsoever that the Liquidating Trust or the Debtors may have against the holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trust of any such Claim that the Debtors or the Liquidating Trust may have against such holder.

## **F. Procedures for Treating and Resolving Disputed Claims**

### **1. Objections to Claims**

The Debtors and the Liquidating Trustee shall have the exclusive authority to object to Claims or Interests provided for under the Plan. Subject to the preceding sentence, all objections may be litigated to Final Order; provided, however, that the Liquidating Trustee shall have the authority to compromise, settle or otherwise resolve all objections to any Claim filed in the amount of \$75,000 or less without approval of the Bankruptcy Court or further notice. For all Claims in excess of \$75,000, the Liquidating Trustee shall provide 10 days written notice of any proposed settlement to counsel for the Creditor Representatives. If no objection is submitted to the Liquidating Trustee within 10 days of the date of such notice, the Liquidating Trustee may proceed with such settlement and may settle such Claim without approval of any other person or entity. If the Creditor Representatives object to any proposed settlement, the Liquidating Trustee

shall bring the matter before the Bankruptcy Court for final resolution after notice and hearing. Unless otherwise ordered by the Bankruptcy Court, the Liquidating Trustee shall file and serve all objections to Claims on the later of (i) 120 days after the later of the Effective Date and (ii) 60 days after the date on which a proof of claim is filed with the Bankruptcy Court provided, however this deadline may be extended by the Bankruptcy Court upon motion of the Debtors or the Liquidating Trustee, with or without notice or hearing.

**AT THIS TIME, GIVEN THE AMOUNT AVAILABLE FOR DISTRIBUTION COMPARED TO AMEGY'S SENIOR SECURED CLAIMS, THE DEBTORS HAVE NOT ANALYZED WHICH CLAIMS MAY BE OBJECTIONABLE.**

## **2. Amendments to Claims; Claims filed after the Confirmation Date**

All Proofs of Claim, and the assertion of any Claim, must be filed and occur by the applicable Bar Date or such Claim shall otherwise be barred. Moreover, any Proofs of Claim filed after the Bar Date shall be deemed Disallowed in full and expunged without any action by the Debtors or the Liquidating Trust, unless the Claimant obtains an order of the Bankruptcy Court authorizing a late filing. Nothing herein shall affect, amend or modify any Bar Date in these Chapter 11 Cases.

## **3. No Distributions until Claim is an Allowed Claim**

Notwithstanding any other provision of the Plan, no payment or Distribution shall be made with respect to any Claim to the extent it is a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. If any Disputed Priority Tax Claim becomes an Allowed Claim, it shall accrue interest at the non-bankruptcy rate in effect during the month in which the Plan is confirmed.

## **4. Estimation of Unliquidated or Contingent Claims**

Pursuant to Bankruptcy Code Section 502(e), before the Effective Date, any Claimant or the Debtors may seek the estimation of any unliquidated Claim or contingent Claim. After the Effective Date, only the Liquidating Trustee may seek the estimation of any unliquidated Claim or contingent Claim. To the extent an unliquidated Claim or a contingent Claim is estimated by Final Order of the Bankruptcy Court, it shall receive the treatment for the particular type of Claim set forth in this Article III of the Plan in the amount estimated by the Bankruptcy Court. If a Claimant fails to seek estimation of its Claim at any time prior to the Effective Date, such Claim shall be treated as a Disallowed Claim without further Order of the Bankruptcy Court at the Final Distribution Date. Any unliquidated Claim or contingent Claim shall be treated as a Disputed Claim until and unless it becomes an Allowed Claim pursuant to a Final Order of the Bankruptcy Court. This paragraph shall not affect any continued pursuit of the Scianna Trusts Adversary.

## **5. Voting**

Holders of Disputed Claims shall not be entitled to vote with respect to the Plan unless such Claims are estimated, for voting purposes, by order of the Bankruptcy Court. The holder of any Claim that is not a Disputed Claims is entitled to vote on the Plan.

**G. Conditions Precedent to the Effective Date**

**1. Conditions Precedent to Effective Date**

The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in accordance with Article VII of the Plan:

- a. The Confirmation Order confirming this Plan shall have been entered and become a Final Order in form and substance reasonably acceptable to the Debtors, Amegy, and the Committee;
- b. The Sale shall have closed pursuant to the terms of the Amegy APA;
- c. If the Purchaser closes the Sale pursuant to a Sale Order other than the Confirmation Order, the Bankruptcy Court shall have entered the Sale Order in form and substance reasonably acceptable to the Debtors, the Purchaser and Amegy, and such order shall have become a Final Order; and
- d. All other Plan Documents and agreements necessary to implement this Plan on the Effective Date shall be reasonably acceptable to the Debtors and have been executed and delivered and all other actions required to be taken in connection with the Effective Date shall have occurred.

**2. Waiver of Conditions**

Under Article VII, each of the conditions set forth above may be waived in whole or in part by the Debtors, without any other notice to parties in interest or the Bankruptcy Court and without a hearing.

**3. Notice of Effective Date**

Within ten (10) days after the occurrence of the Effective Date, the Liquidating Trustee shall file with the Bankruptcy Court and cause to be mailed to all holders of Claims and Interests a notice of (i) the Effective Date; (ii) the Bar Date for the filing of Administrative Expense Claims; and (iii) any other matters deemed appropriate by the Debtors.

**H. Preservation of Causes of Action**

**ALL CAUSES OF ACTION AND POTENTIAL CAUSES OF ACTION HELD BY ANY OF THE DEBTORS AS OF THE EFFECTIVE DATE, WHETHER OR NOT**

PREVIOUSLY ASSERTED, ARE PRESERVED UNDER THE PLAN FOR THE BENEFIT OF THE LIQUIDATING TRUST, INCLUDING BUT NOT LIMITED TO CAUSES OF ACTION HELD BY THE DEBTORS AGAINST ENGLOBAL ENGINEERING, INC., AS ASSERTED IN LITIGATION STYLED *BIGLER L.P. F/K/A BIGLER TRADING CO. V. ENGLOBAL ENGINEERING, INC.*, PENDING IN THE 234<sup>TH</sup> HARRIS COUNTY DISTRICT COURT, CASE NUMBER 09-15676.

WITHOUT LIMITING THE FOREGOING, THE DEBTORS AND THE LIQUIDATING TRUST ARE RETAINING ALL CAUSES OF ACTION AND POTENTIAL CAUSES OF ACTION HELD BY ANY OF THE DEBTORS, WHETHER OR NOT PREVIOUSLY ASSERTED, AGAINST ALL *FORMER* OFFICERS AND DIRECTORS OF ANY OF THE DEBTORS, INCLUDING BUT NOT LIMITED TO BREACHES OF FIDUCIARY DUTIES. THE DEBTORS ARE NOT CURRENTLY AWARE OF ANY CLAIMS AGAINST OFFICER AND DIRECTORS. HOWEVER, THE DEBTORS HAVE NOT CONDUCTED AN INVESTIGATION TO DETERMINE WHETHER ANY SUCH CLAIMS MAY EXIST.

THE DEBTORS AND THE LIQUIDATING TRUST ARE RETAINING ALL AVOIDANCE ACTIONS, AS THAT TERM IS DEFINED IN THE PLAN.

THE DEBTORS AND THE LIQUIDATING TRUST ARE RETAINING ALL CAUSES OF ACTION AGAINST CHARLES SCIANNA, INCLUDING BUT NOT LIMITED TO THOSE THAT MAY EXIST UNDER OR AS A RESULT OF THAT CERTAIN AGREEMENT BETWEEN GENERAL PARTNER AND SCIANNA DATED AS OF AUGUST 26, 2009 (THE "EVALUATION AGREEMENT"). THE PARTIES TO THE EVALUATION AGREEMENT WERE BIGLER MANAGEMENT, INC. ("BMI") AS THE GENERAL PARTNER OF BIGLER, LP, SCIANNA, AND JOEL HERGER. PURSUANT TO THE TERMS OF THE EVALUATION AGREEMENT, SCIANNA WAS GRANTED THE RIGHT TO CONDUCT AN EVALUATION OF BIGLER LP'S FINANCIAL SITUATION. DURING THE PERIOD OF THIS EVALUATION, BMI AND HERGER AGREED, AMONG OTHER THINGS, THAT ALL ACTIONS OF BMI AS THE GENERAL PARTNER WOULD FIRST HAVE TO BE REVIEWED AND APPROVED IN WRITING BY SCIANNA, THAT SCIANNA WOULD BE ALLOWED TO ATTEND ALL MEETINGS AND CONFERENCES WITH CREDITORS, SUPPLIERS, AND CONTRACTORS, AND THAT SCIANNA WOULD HAVE FULL ACCESS TO THE BOOKS AND RECORDS OF THE DEBTORS.

THE DEBTORS HAVE NOT CONDUCTED ANY INVESTIGATION INTO POSSIBLE CAUSES OF ACTION RELATED TO SCIANNA'S ACTIONS IN CONNECTION WITH THE EVALUATION AGREEMENT OR ANY OTHER ACTIONS. ACCORDINGLY, THE DEBTORS ARE, AT THIS TIME, UNABLE TO ASCERTAIN WHETHER ANY SUCH CAUSES OF ACTION ACTUALLY EXIST. THUS, UNDER THE PLAN, THE DEBTORS ARE RETAINING ALL *POTENTIAL* CAUSES OF ACTION AGAINST SCIANNA ARISING FROM THE EVALUATION AGREEMENT AND ANY OTHER ACTION, INCLUDING BUT NOT LIMITED TO BREACH OF FIDUCIARY DUTY, EQUITABLE SUBORDINATION, AND ANY



**OTHER CAUSE OF ACTION RELATED TO SCIANNA'S CONTROL OVER THE DEBTORS' OPERATIONS.**

**ADDITIONALLY, THE DEBTORS AND THE LIQUIDATING TRUST RESERVE ANY CLAIMS RELATED TO ANY CIRCUMSTANCES ARISING FROM THE FOURTH AMENDMENT TO THE BIGLER LP PARTNERSHIP AGREEMENT WHICH MAY HAVE BENEFITTED CERTAIN THIRD PARTIES AND HARMED OTHERS. ANY ISSUES MAY HAVE BEEN ADDRESSED PURSUANT TO THE FIFTH AMENDMENT TO THE PARTNERSHIP AGREEMENT WHICH WAS APPROVED BY THE BANKRUPTCY COURT.**

**THE DEBTORS AND THE LIQUIDATING TRUST ARE ALSO RETAINING ALL CAUSES OF ACTION AGAINST ANTHONY ANNUNZIATO. IN APRIL 2008, ANNUNZIATO MADE A \$10 MILLION BRIDGE LOAN TO JOEL HERGER. THESE FUNDS WERE USED TO PURCHASE CLASS D SHARES IN THE BIGLER LP PARTNERSHIP AND THOSE SHARES WERE PLEDGED AS COLLATERAL FOR THE ANNUNZIATO LOAN. IN DECEMBER 2008, ANNUNIZATO MADE AN ADDITIONAL \$10 MILLION BRIDGE LOAN IN THE SAME INDIRECT MANNER TO BIGLER LP. ANNUNZIATO ALSO HOLDS A \$10 MILLION PARTICIPATION IN AMEGY'S PRE-PETITION SECURED DEBT. ON SEPTEMBER 30, 2009, ANNUNZIATO SENT HERGER A LETTER VOLUNTARILY TERMINATING THE \$20 MILLION BRIDGE LOANS AND DISCLAIMING ANY RIGHTS IN THE SHARES OF BIGLER LP WHICH HAD BEEN PLEDGED AS COLLATERAL FOR THESE LOANS. ON OCTOBER 23, 2009, ANNUNZIATO WITHDREW FROM THE PARTNERSHIP AND ABANDONED ALL HIS SHARES IN BIGLER LP. ANY ISSUES RELATED TO THESE ACTIONS MAY HAVE BEEN ADDRESSED PURSUANT TO THE FIFTH AMENDMENT TO THE PARTNERSHIP AGREEMENT, WHICH WAS APPROVED BY THE BANKRUPTCY COURT. THE DEBTORS HAVE NOT CONDUCTED ANY INVESTIGATION INTO POSSIBLE CAUSES OF ACTION RELATED TO ANNUNZIATO'S ACTIONS. ACCORDINGLY, THE DEBTORS ARE, AT THIS TIME, UNABLE TO ASCERTAIN WHETHER ANY SUCH CAUSES OF ACTION ACTUALLY EXIST. THUS, UNDER THE PLAN, THE DEBTORS AND THE LIQUIDATING TRUST ARE RETAINING ALL *POTENTIAL* CAUSES OF ACTION AGAINST ANNUNZIATO.**

**THE DEBTORS HAVE RETAINED SPECIAL LITIGATION COUNSEL TO INVESTIGATE POTENTIAL CLAIMS AGAINST BASF CORPORATION ARISING OUT OF ITS FAILURE TO SUPPLY FEEDSTOCK TO THE DEBTORS FOR ITS HPIB PLANT AND CERTAIN REPRESENTATIONS WHICH WERE MADE BOTH TO THE DEBTORS AND TO THIRD PARTIES, INCLUDING SUPPLIERS OF THE DEBTORS. THE DEBTORS ARE PRESERVING ANY AND ALL CAUSES OF ACTION OR POTENTIAL CAUSES OF ACTION AGAINST BASF INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR FRAUD, MISREPRESENTATION, FRAUDULENT INDUCEMENT, AND TORTIOUS INTERFERENCE.**

**THE LIQUIDATING TRUST AND THE LIQUIDATING TRUSTEE SHALL CONTINUE TO ANALYZE ALL POTENTIAL CAUSES OF ACTION AND TAKE APPROPRIATE ACTION, INCLUDING BUT NOT LIMITED TO FILING A LAWSUIT IN THE APPROPRIATE VENUE. BY FILING THIS VERSION OF THE DISCLOSURE STATEMENT AND THE PLAN, THE DEBTORS AND THE LIQUIDATING TRUST DO NOT WAIVE ANY CAUSES OF ACTION OR POTENTIAL CAUSES OF ACTION.**

**THE VALUE OF ANY RETAINED CAUSES OF ACTION AGAINST THIRD PARTIES IS INHERENTLY UNCERTAIN. ACCORDINGLY, ANY ATTEMPT BY THE DEBTORS TO PLACE A VALUE ON SUCH CLAIMS WOULD BE SO SPECULATIVE AS TO HAVE NO MERIT. HOWEVER, THE DEBTORS HAVE DISCLOSED, IN EXHIBITS B AND C, PAYMENTS MADE TO CREDITORS WITHIN 90 DAYS OF THE PETITION DATE AND PAYMENTS TO INSIDERS WITHIN ONE YEAR PRIOR TO THE PETITION DATE.**

**V. CERTAIN EFFECTS OF CONFIRMATION**

**A. Release by Debtors of Certain Parties**

**ON THE EFFECTIVE DATE, THE INDIVIDUALS DESCRIBED IN THE FOLLOWING SENTENCE SHALL BE FOREVER IRREVOCABLY AND UNCONDITIONALLY RELEASED AND DISCHARGED FROM ANY AND ALL CLAIMS, ACTIONS, SUITS, DEBTS, ACCOUNTS, CAUSES OF ACTION, AGREEMENTS, PROMISES, DAMAGES, JUDGMENTS, DEMANDS AND LIABILITIES WHICH THE DEBTORS MAY HAVE AGAINST THEM, WHETHER HELD DIRECTLY, INDIRECTLY, OR DERIVATIVELY, WHICH ARE IN ANY WAY RELATED TO THE DEBTORS, AND ARISE FROM FACTS, CIRCUMSTANCES, EVENTS OR CONDITIONS OCCURRING OR OTHERWISE EXISTING PRIOR TO THE EFFECTIVE DATE. THE PERSONS RELEASED HEREBY ARE ALL THE DEBTORS' REPRESENTATIVES, INCLUDING ALL PERSONS WHO HAVE SERVED AS DIRECTORS OR OFFICERS OR PERSONS SERVING IN SIMILAR CAPACITIES OF ANY OF THE DEBTORS ON AND AFTER THE PETITION DATE, INCLUDING BUT NOT LIMITED TO H. MALCOLM LOVETT, JR., JOEL HERGER, SETH BARON, SMITH HOWLAND, R.B. HERRSCHER, AND JONATHAN CRAIG, AS WELL AS THE DEBTORS' REPRESENTATIVES INCLUDING BUT NOT LIMITED TO STRATEGIC CAPTIAL CORPORATION, KING & SPALDING LLP, AND PARKMAN WHALING LLC. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE INJUNCTIONS, RELEASES, AND EXCULPATIONS CONTAINED IN THIS PLAN SHALL NOT PREJUDICE OR OTHERWISE IMPAIR AND ANY ALL CLAIMS THAT AMEGY, FOR ITSELF AND AS AGENT ON BEHALF OF THE PRE-PETITION LENDERS, MAY POSSESS AGAINST JOEL HERGER ON MR. HERGER'S GUARANTEE CLAIM, OR WITH RESPECT TO ANY AND ALL CLAIMS ARISING UNDER THE PRE-PETITION CREDIT AGREEMENT AND THE DIP FACILITY AS AGAINST THE NON-DEBTOR ENTITIES.**

**THE CONSIDERATION RECEIVED IN EXCHANGE FOR THESE RELEASES INCLUDES, BUT IS NOT LIMITED TO, THE EXTENSIVE PARTICIPATION OF**



OFFICERS AND DIRECTORS IN THE MARKETING, SALES, AND AUCTION PROCESSES, FOR WHICH THESE PARTIES RECEIVED NO SPECIAL COMPENSATION AND WHICH RESULT IN A BENEFIT TO THE ESTATE BY INCREASING THE VALUED RECEIVED FOR THE DEBTORS' ASSETS. MOREOVER, THE DEBTORS ARE NOT AWARE OF ANY VALID CLAIMS AGAINST SUCH PARTIES.

**B. Injunction**

THE PLAN PROPOSES AN INJUNCTION. PROVIDED THAT THE EFFECTIVE DATE OCCURS, THE ENTRY OF THE CONFIRMATION ORDER SHALL BE DEEMED TO PERMANENTLY ENJOIN ALL PERSONS THAT HAVE HELD, CURRENTLY HOLD OR MAY HOLD A CLAIM AGAINST, OR BE OWED OBLIGATIONS BY, THE ESTATES, OR WHO HAVE HELD, CURRENTLY HOLD OR MAY HOLD AN INTEREST IN ANY DEBTOR, FROM TAKING ANY OF THE FOLLOWING ACTIONS ON ACCOUNT OF SUCH CLAIM OR INTEREST: (I) COMMENCING, CONDUCTING, OR CONTINUING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY SUIT, ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST ANY DEBTOR, THE PURCHASER, THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE REPRESENTATIVES; (II) ENFORCING, LEVYING, ATTACHING, COLLECTING, OR OTHERWISE RECOVERING IN ANY MANNER OR BY ANY MEANS, DIRECTLY OR INDIRECTLY, ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST ANY DEBTOR, THE PURCHASER, THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE REPRESENTATIVES, OR; (III) CREATING, PERFECTING OR ENFORCING IN ANY MANNER, DIRECTLY OR INDIRECTLY, ANY LIEN, CHARGE, ENCUMBRANCE OR OTHER LIEN OF ANY KIND AGAINST ANY DEBTOR, THEIR PROPERTY (INCLUDING ANY PROPERTY CONVEYED PURSUANT TO THIS PLAN OR THE AMEGY APA), THE PURCHASER, THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE REPRESENTATIVES, OR; (IV) ASSERTING ANY RIGHT OF SUBROGATION OR RECOUPMENT OF ANY KIND, DIRECTLY OR INDIRECTLY, AGAINST ANY DEBT, LIABILITY OR OBLIGATION DUE TO ANY DEBTOR, THE PURCHASER, THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE REPRESENTATIVES, OR; AND (V) PROCEEDING IN ANY MANNER, DIRECTLY OR INDIRECTLY, IN ANY PLACE WHATSOEVER AGAINST ANY DEBTOR, THE PURCHASER, THE LIQUIDATING TRUST OR ANY OF THEIR RESPECTIVE REPRESENTATIVES.

**C. No Liability for Solicitation or Participation**

Pursuant to bankruptcy code section 1125, persons that solicit acceptances or rejections of the plan in good faith and in compliance with the applicable provisions of the bankruptcy code, shall not be liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the plan.

**D. Release of Liens**

Except as otherwise specifically provided in the Plan or the Confirmation Order, all Liens, security interests, deeds of trust, or mortgages against any Debtor or property of the Estates shall and shall be deemed to be released, terminated, and nullified as of the Effective Date. Pursuant to Bankruptcy Code section 1142(b), the Debtors are authorized to execute and file any release of Lien, in their sole business judgment, to assist in consummation of the Plan if the holder of such Lien fails to execute such a release of Lien. Notwithstanding this provision, the priority of any lien rights of any Class 2 or Class 3 creditor shall only be determined by order of the Bankruptcy Court, including any order resolving the Scianna Trusts Adversary and/or the M&M Lien Priority Adversary.

#### **E. Pre-petition Lawsuits**

On the Effective Date, all lawsuits, litigation, administrative actions or other proceedings, judicial or administrative, relating to pre-petition events or conduct of the Debtors, in connection with the assertion of a Claim, shall be dismissed as to the Debtors, excluding any claim asserted by the Debtors against a third party. Such dismissal shall be with prejudice to the assertion of such Claim in any manner other than as prescribed by the Plan. In no event shall, however, any litigation *by* the Debtors as plaintiffs be dismissed.

#### **F. Miscellaneous Plan Provisions**

##### **1. Modification of Plan**

The Debtors reserve the right to modify the Plan either before or after Confirmation, to the fullest extent permitted under Bankruptcy Code section 1127 and Bankruptcy Rule 3019. The filing of any Plan or any version of the Disclosure Statement, or modification to the Plan or Disclosure Statement, shall not be construed to be a waiver of any rights of the Debtors, including any waiver of Causes of Action. After the Confirmation Date and prior to the substantial consummation of the Plan, any party in interest in these Chapter 11 Cases may, so long as the treatment of holders of Claims or Interests under the Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

##### **2. Revocation, Withdrawal or Non-Consummation**

The Debtors reserve the right to revoke or withdraw the Plan as to any or all of the Debtors prior to the Confirmation Date and to file subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan as to any or all of the Debtors, or if confirmation or consummation as to any or all of the Debtors does not occur, then, with respect to such Debtors, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), rejection of executory contracts or leases affected by the Plan, and any

document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtors or any other Person, (ii) prejudice in any manner the rights of such Debtors or any other Person, or (iii) constitute an admission of any sort by the Debtors or any other Person.

### **3. Retention of Jurisdiction**

Pursuant to Bankruptcy Code sections 105(a) and 1142, and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over any matter arising under the Bankruptcy Code, or arising out of, in or related to these Chapter 11 Cases or the Plan after Confirmation and after the Effective Date, and any other matter or proceeding that is within the Bankruptcy Court's jurisdiction pursuant to 28 U.S.C. section 1334 or 28 U.S.C. section 157, to the fullest extent permitted by law, including without limitation, jurisdiction to:

a. allow, disallow, determine, liquidate, classify, estimate, or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Expense Claim or Priority Claim and the resolution of any objections to the allowance or priority of Claims or Interests;

b. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

c. resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which any Debtor may be liable and to hear, determine, and, if necessary, liquidate any Claims arising therefrom;

d. ensure that Distributions to holders of Allowed Claims are accomplished by the Liquidating Trust pursuant to the provisions of the Plan and the Liquidating Trust Agreement;

e. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including all Causes of Action and objections or estimations to Claims or Interests, and grant or deny any applications involving a Debtor that may be pending on the Effective Date, or that, pursuant to the Plan, may be instituted by (i) the Liquidating Trustee or the Liquidating Trust, or (ii) any other Person or Entity after the Effective Date; provided, however, that (a) the Liquidating Trustee and the Liquidating Trust shall reserve, the right to prosecute the Causes of Action in all proper jurisdictions;

f. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

g. resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan or any contract, instrument, release, or other agreement or document that is executed or created pursuant to the Plan, or any entity's rights arising from or obligations incurred in connection with the Plan or such documents;

h. approve any modification of the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code or approve any modification of the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan;

i. hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 330, 331, 503(b), 1103, and 1129(c)(9) of the Bankruptcy Code, which shall be payable by the Liquidating Trust only upon allowance thereof pursuant to the order of the Bankruptcy Court, provided, however, that the fees and expenses of the Liquidating Trust, incurred after the Effective Date, including counsel fees, may be paid by the Liquidating Trust in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

j. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with consummation, implementation, or enforcement of the Plan or the Confirmation Order, except as otherwise provided in the Plan;

k. hear and determine Causes of Action by or on behalf of the Debtors or the Liquidating Trust;

l. hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

m. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked, or vacated, or Distributions pursuant to the Plan are enjoined or stayed;

n. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement, or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;

o. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases;

p. hear and determine all matters related to (i) the property of the Liquidating Trust from and after the Confirmation Date, (ii) the activities of the Liquidating Trustee, and (iii) resolve any issues that arise in connection with the administration of and distributions from the Liquidating Trust;

q. hear and determine disputes with respect to compensation of the Debtors' professional advisors;

r. hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under the Bankruptcy Code; and

s. enter an order closing the Chapter 11 Cases.

#### **4. Limited Role of Committee on and after Effective Date**

The Committee shall cease operating and dissolve 60 days after the Effective Date without further order of the Bankruptcy Court. Upon termination of the Committee, other than with respect to its duty to maintain the confidentiality of protected, confidential or commercially sensitive information concerning the debtors in accordance with applicable agreements, orders of the Bankruptcy Court or the Committee's by-laws (which duty shall continue), its members and their Representatives shall be deemed released of all of their duties, responsibilities and obligations in connection with the Chapter 11 Cases and the retention and employment of the Committee's Professionals shall terminate without further order of the Bankruptcy Court. Prior to the Confirmation Hearing, the Committee shall designate, by notice filed with the Court, any Creditor Representatives to serve as advisors to the Liquidating Trust. All costs and expenses incurred by the Committee after the Effective Date and prior to its termination, including its professionals' fees, shall be paid from the Gifted Amount.

## **VI. CONFIRMATION AND CONSUMATION OF THE PLAN**

### **A. General Information**

All creditors whose Claims are impaired by the Plan (except those parties holding Interests or who are unimpaired) may cast their votes for or against the Plan. As a condition to confirmation of the Plan, the Bankruptcy Code requires that one Class of Impaired Claims votes to accept the Plan. Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a Class of Impaired Claims as acceptance by holders of at least two thirds of the dollar amount of the class and by more than one half in number of Claims. Holders of Claims who fail to vote are not counted as either accepting or rejecting a plan. Voting is accomplished by completing, dating, signing and returning the Ballot by the Voting Deadline. Ballots will be distributed to all creditors entitled to vote on the Plan and is part of the Solicitation Package accompanying the Disclosure Statement. The Ballot indicates (i) where the Ballot is to be filed and (ii) the deadline

by which creditors must return their Ballots. See Article I of this Disclosure Statement for a more detailed explanation of who will receive Ballots and voting procedures.

## **B. Solicitation of Acceptances**

This Disclosure Statement has been approved by the Bankruptcy Court as containing “adequate information” to permit creditors and equity interest holders to make an informed decision whether to accept or reject the Plan. Under the Bankruptcy Code, your acceptance of the Plan may not be solicited unless you receive a copy of this Disclosure Statement prior to, or concurrently with, such solicitation.

## **C. Considerations Relevant To Acceptance Of The Plan**

The Debtors’ recommendation that all Creditors should vote to accept the Plan is premised upon the Debtors’ view that the Plan is preferable to other alternatives, such as conversion of the Bankruptcy Cases to a chapter 7 bankruptcy case which would likely be more time-consuming, more expensive, and likely result in lower Distributions to creditors. It appears unlikely to the Debtors that an alternate plan of reorganization or liquidation can be proposed that would provide for payments in an amount equal or greater than the amounts proposed under the Plan. If the Plan is not accepted, it is likely that the interests of all creditors will be further diminished.

# **VII. FEASIBILITY OF THE PLAN AND BEST INTERESTS TEST**

## **A. Feasibility of the Plan**

The Bankruptcy Code requires that, for the Plan to be confirmed, the Debtors must demonstrate that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors. The Plan contemplates the winding down of the Debtors’ Estates; therefore, no subsequent liquidation or reorganization will ensue after the Effective Date. The Debtors believe that they will be able to timely perform all obligations described in the Plan and, therefore, that the Plan is feasible.

**HOLDERS OF CLAIMS AND INTERESTS ARE ADVISED TO REVIEW CAREFULLY THE RISK FACTORS INCLUDED IN ARTICLE IX OF THIS DISCLOSURE STATEMENT THAT MAY AFFECT THE FINANCIAL FEASIBILITY OF THE PLAN.**

## **B. Best Interest of Creditors Test**

In certain circumstances, to be confirmed, the Plan must pass the “Best Interest Of Creditors Test” incorporated in section 1129(a)(7) of the Bankruptcy Code. The test applies to individual creditors and Interest holders (stockholders) that are both (i) in Impaired Classes under the Plan, and (ii) do not vote to accept the Plan. Section 1129(a)(7) of the Bankruptcy Code requires that such Creditors and Interest holders receive or retain an amount under the Plan not less than the amount that such holders would receive or retain if the Debtors were to be liquidated under chapter 7 of the Bankruptcy Code.



In a typical chapter 7 case, a trustee is elected or appointed to liquidate the debtor's assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Secured creditors generally are paid first from the sales proceeds of properties securing their liens. If any assets are remaining in the bankruptcy estates after the satisfaction of secured creditors' claims from their collateral, Administrative Claims generally are next to receive payment. Unsecured creditors are paid from any remaining sales proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, equity interest holders receive the balance that remains, if any, after all creditors are paid.

### **C. Application of Best Interests Test to the Liquidation Analysis and Valuation of the Debtors and Non-Debtors**

The Debtors' financial advisor has prepared an analysis of projected liquidation recoveries, annexed hereto as Exhibit D (the "Liquidation Analysis"). The Debtors believe that the Plan in every respect provides for recoveries greater than those that would be realized in a Chapter 7 liquidation, and that the Plan thus satisfies the "best interests" test of section 1129(a) of the Bankruptcy Code.

The total liquidation value of the Debtors is estimated in the range of \$14,055,100 to \$17,326,300.<sup>19</sup> As of June 30, 2010, Bigler Chemical, LP had net working capital of \$2,539,784.00 and \$1,144,952.00 in cash, and, as of the same date, Bigler Specialty Oils, LP had net working capital of \$3,128,742.00 and \$385,576.00 in cash. The Debtors expect the total consideration to be received for both non-Debtor entities to range from \$6,000,000.00 to \$11,000,000.00.<sup>20</sup>

The Liquidation Analysis was based on several different sources, including actual liquidation offers received by the Debtors. According to the Liquidation Analysis, (a) recoveries by Amegy bank on its DIP Loan would be 100% and on its first priority secured debt would be in the range of 15-21%; (b) recoveries by all other secured creditors would be zero; and (c) recoveries by all unsecured creditors and other claimants, including all alleged M&M Lien claimants, would be zero. Since the Liquidation Analysis shows that only the DIP claim and the Class 1 claim would receive any distribution, the Plan necessarily satisfies the "best interests" test since each creditor will receive an amount that is not less than it would receive in a Chapter 7 liquidation (i.e., it is impossible to receive less than zero). Unsecured creditors will receive a distribution under the Plan as a result of the Gifted Amount but would receive no distribution in a Chapter 7 liquidation. Similarly, subordinate secured creditors would also receive no distribution on behalf of their claims.

<sup>19</sup> The Liquidation Analysis includes the asset value of the two non-debtor entities. The Debtors have not separately valued their interests in the non-Debtors.

<sup>20</sup> The low end value equals, approximately, the expected liquidation value of the non-Debtor assets, on which Amegy holds a valid, perfected, first priority lien and security interest.

Additionally, creditors will receive a better recovery through the Plan because the professionals proposing the Plan have been working in these Bankruptcy Cases since their inception and are familiar with the background and progress of these bankruptcy cases. On the other hand, conversion of these Bankruptcy Cases to a chapter 7 liquidation proceeding will require the appointment of a trustee, who will likely will need additional time to become familiar with the Bankruptcy Cases, and a statutory fee will be paid to the chapter 7 trustee. While gaining familiarity with these cases, a chapter 7 trustee will expend time payable by the remaining cash on hand in the Debtors' Estates, thereby reducing the potential distribution to creditors. Under the Plan, Distributions will be made as soon as practicable after the later of the Effective Date or the Allowance Date, whereas conversion of this case to a chapter 7 liquidation proceeding will substantially delay distributions and reduce the amount of distributions currently available to creditors. Thus, the Debtors believe that the Plan satisfies the "best interests" test.

Any analysis of recoveries is inherently speculative. The Liquidation Analysis necessarily contains estimates of the net proceeds that would be received from a sale of assets. Claims estimates are based solely upon the financial advisor's review of Scheduled Claims and the Debtors' books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected amounts set forth in the Liquidation Analysis. Accordingly, the estimate of Allowed Claims in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any distribution to be made on account of Allowed Claims under the Plan.

**THE LIQUIDATION ANALYSIS IS PROVIDED FOR ILLUSTRATIVE PURPOSES ONLY, AND DOES NOT CONSTITUTE A PROMISE OR GUARANTEE OF AMOUNTS TO BE DISTRIBUTED UNDER THE PLAN. ACTUAL AMOUNTS AVAILABLE FOR DISTRIBUTION AND RECEIPTS ARE LIKELY TO DIFFER, AND MAY DIFFER MATERIALLY, AS A RESULT OF A VARIETY OF FACTORS, MOST OF WHICH ARE BEYOND THE CONTROL OF THE DEBTORS.**

#### **VIII. ALTERNATIVES TO CONFIRMATION AND CONSUMATION OF THE PLAN**

The Debtors believe that the Plan affords holders of Claims the potential for the greatest return and, therefore, is in the best interests of such holders. If the Plan is not confirmed, however, the theoretical alternatives include: (a) an alternative plan or plans of liquidation; or (b) conversion of these Bankruptcy Cases to a chapter 7 bankruptcy case. The Debtors believe that the Plan provides a substantially greater return to holders of Claims than would an alternative plan of liquidation or conversion of these Bankruptcy Cases under chapter 7 of the Bankruptcy Code.

#### **IX. CERTAIN RISK FACTORS TO CONSIDER**

The following disclosures are not intended to be inclusive and should be read in connection with the other disclosures contained in this Disclosure Statement and the exhibits attached hereto. You should carefully consider the risks described below in addition to the other information contained in this document. It is recommended that you consult your legal, financial, and tax advisors regarding the risks associated with the Plan and the Distributions you may receive thereunder.

### **A. Claims Estimation**

There can be no assurance that the estimated Claim amounts assumed for the purposes of preparing the Plan are correct. The actual amount of Allowed Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated for the purpose of preparing the Plan.

### **B. Certain Risks of Nonconfirmation**

There can be no assurance that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A rejecting Creditor or holder of an Interest might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court were to determine that the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it were to find that any of the statutory requirements for confirmation had not been met. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization.

## **X. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES**

### **A. General**

The following discussion is a summary of certain U.S. federal income tax consequences of the Plan to the Debtors and to holders of Claims. This discussion is based on the Internal Revenue Code of 1986, as amended (the "IRC"), Treasury Regulations promulgated and proposed thereunder, judicial decisions and published administrative rules and pronouncements of the Internal Revenue Service ("IRS") as in effect on the date hereof. Due to the complexity of certain aspects of the Plan, the lack of applicable legal precedent, the possibility of changes in the law, the differences in the nature of the claims (including claims within the same class), the holders' status and method of accounting (including holders within the same class) and the potential for disputes as to legal and factual matters with the IRS, the tax consequences described herein are subject to significant uncertainties. No legal opinions have been requested from counsel with respect to any of the tax aspects of the Plan and no rulings have been or will be requested from the IRS with respect to the any of the issues discussed below. Furthermore, legislative, judicial or administrative changes may occur, perhaps with retroactive effect, which could affect the accuracy of the statements and conclusions set forth below as well as the tax consequences to the Debtors and the holders of Claims.

This summary does not apply to

(i) holders of Claims that are not United States persons (as defined in the IRC) or that are otherwise subject to special treatment under U.S. federal income tax law (including, for example, banks, governmental authorities or agencies, financial institutions, insurance companies, pass-through entities, tax-exempt organizations, brokers and dealers in securities, mutual funds, small business investment companies, regulated investment companies, investors that hold the instruments as part of a straddle or hedging, constructive sale, integrated or conversion transactions for U.S. federal income tax purposes or investors whose functional currency is not the U.S. dollar), or

(ii) holders of Claims or Interests that are not entitled to vote on the Plan, including holders whose Claims are entitled to reinstatement or payment in full in cash under the Plan or holders whose Claims or Interests are to be extinguished without any distribution.

The following discussion assumes that holders of Claims hold their instruments as “capital assets” within the meaning of IRC Section 1221, and that holders of Claims hold only claims in a single class. Holders of multiples classes of Claims should consult their own tax advisors as to the effect such ownership may have on the federal income tax consequences described below. Moreover, this summary does not purport to cover all aspects of U.S. federal income taxation that may apply to the Debtors and holders of Claims based upon their particular circumstances. Additionally, this summary does not discuss any tax consequences that may arise under state, local, or foreign tax law.

If a partnership holds Claims, the tax treatment of the partners will generally depend upon the status of the partners and the activities of the partnership. Partners in partnerships that hold Claims should consult their tax advisors.

The following summary is not a substitute for careful tax planning and advice based upon the personal circumstances of each holder of a Claim or Interest. Each such holder is urged to consult with such holder’s tax advisors regarding the U.S. federal, state, local and foreign tax consequences to such holder that result from the Plan.

## **B. Consequences to the Debtors and Holders of Interests in Debtors**

The Debtors (other than Bigler Land, LLC) are classified as partnerships for U.S. federal income tax purposes. Consequently, the partnership Debtors are not taxpayers for U.S. federal income tax purposes, and instead each such Debtor’s items of income gain, loss and deduction are allocated to its partners and reported on their federal income tax returns. Bigler Land, LLC is a disregarded entity of Bigler LP and thus all of its assets, liabilities and tax items are treated as assets, liabilities and tax items of Bigler LP. The tax consequences to holders of Interests in the Debtors resulting from the implementation of the Plan are complex and will depend, in large part, on the tax situation of each individual Interest holder. Accordingly, holders of Interests in the Debtors are urged to consult their own tax advisors regarding the tax consequences resulting from the implementation of the Plan.

The Debtors will recognize gain or loss to the extent that (i) the Debtors sell assets to pay Claims, or (ii) the Debtors convey assets (other than cash) to the Liquidating Trust to satisfy

Claims. Any such gain or loss would be equal to the difference between the Debtor's basis in the assets sold or conveyed and the amount realized on such sale or conveyance, which will be deemed to be (i) the fair market value of such assets to the extent transferred to satisfy recourse indebtedness, and (ii) in the case of nonrecourse debt, the amount of the nonrecourse Claim secured by such assets. The character of such gains and losses as ordinary or capital will depend on the nature of the asset conveyed and the Debtor's holding period for such asset. Such gains and losses will be allocated to the holders of Interests in the Debtor in the manner provided in the applicable partnership agreement and in accordance with applicable Treasury Regulations under the IRC.

In addition, a Debtor will recognize cancellation of debt income ("COD income") to the extent a Creditor's recourse Claims against the Debtor are satisfied for less than their face amount. This COD income will be ordinary income for federal income tax purposes. The partnership agreements for those Debtors that are classified as partnerships for federal income tax purposes do not specifically address the manner in which such COD income is to be allocated among the holders of Interests in the Debtors. In the absence of a specific allocation provision, the partnership Debtors currently intend, based on certain published IRS rulings, applicable Treasury Regulations under IRC Section 704(b), and other authority, to allocate any such COD income recognized by them solely to the Debtor's general partner, to the extent such general partner bears the ultimate risk of loss as to the recourse Claim to which the COD income is attributable. To the extent a Debtor recognizes COD income that is attributable to the discharge of a nonrecourse Claim, and not in connection with a conveyance of the property securing the nonrecourse Claim to the Creditor, such COD income will be allocated in accordance with the terms of the Debtor's partnership agreement and applicable federal income tax law.

To the extent COD income is required to be allocated to an Interest holder, certain relief provisions may apply. In particular, to the extent the Interest holder is insolvent or is itself a party to a partner-level bankruptcy proceeding under Title 11 immediately prior to the realization of COD income, such Interest holder can exclude its allocable share of such COD income from the holder's taxable income, although the holder will be required to reduce certain of its tax attributes in the manner required under IRC Section 108(b). If the Interest holder is an upper-tier entity that is classified as a partnership for tax purposes, the COD income exclusionary rules apply at the partner level. Alternatively, if a special election is made by the Debtor and if certain other requirements are met, COD income recognized in 2010 may be deferred and amortized into income ratably over the five-year period beginning in 2014 and ending in 2018, although the IRC Section 108 exclusions may not be claimed when such deferred income is ultimately required to be included in taxable income. Further, the deferral may be accelerated upon the occurrence of certain events. Each Interest holder is urged to consult its own tax advisor regarding the possible application of such relief provisions in the event any COD income is allocated to such Interest holder.

The transfer of the Debtors' assets to the Liquidating Trust and the extinguishment of the holders' Interests in the Debtors should be treated as effecting a termination of the Debtors for federal income tax purposes. Accordingly, holders of Interests in the Debtor who are properly regarded as continuing partners of a Debtor through the date of such termination will be allocated their respective portions of the Debtor's items of income, gain, loss and deduction for the final partnership taxable year ending on the date of such termination. Holders of Interests

who are properly treated as having abandoned their Interests in a Debtor for federal income tax purposes will be allocated a share of the Debtor's taxable income, gain, loss and deduction for the taxable period ending on the date of such abandonment, with such share being determined under an appropriate allocation method in accordance with the partnership agreement and applicable federal income tax law.

A holder of an Interest that has not previously abandoned or otherwise disposed of its Interest will recognize a loss on the extinguishment of its Interest pursuant to the Plan equal to its adjusted basis in its Interest, after taking into account any allocable items of income, gain, loss and deduction from the Debtors' final partnership taxable year for federal income tax purposes. An Interest holder's tax basis in its Interest is increased by the amount of cash and the adjusted basis of any property contributed by the holder to the Debtor and by the holder's allocable share of partnership income and gain, including any COD income allocated to such holder, and decreased by the amount of cash and the adjusted basis of any property distributed to such holder by the Debtor and such holder's share of partnership loss and deduction. In addition, an increase in an Interest holder's allocable share of partnership liabilities under IRC Section 752 is treated as a contribution of money to the partnership, and a decrease in such holder's allocable share of liabilities (such as when partnership liabilities are satisfied, assumed, or discharged) is treated as a distribution of money to such holder. Any loss recognized by a holder on the worthlessness, abandonment, or extinguishment of an Interest may be an ordinary loss if there is neither an actual distribution nor a deemed distribution of money to such holder under IRC Section 752(b) as a result of a reduction in such holder's share of partnership liabilities that takes place in anticipation of, or in connection with, such worthlessness, abandonment or extinguishment.

To the extent a Debtor has items of loss or deduction from prior periods that were suspended as a result of the basis limitation under IRC Section 704(d), the at-risk rules of IRC Section 465 or the passive activity loss rules of IRC Section 469, these items of loss or deduction may become available as a result of the extinguishment of the holder's Interest and the transfer of the Debtor's assets to the Liquidating Trust. The tax rules related to the limitation on utilization of losses by owners of pass-through entities such as the Debtors are extremely complex and depend on the individual tax situation of the owner. Accordingly, each Interest holder is urged to consult its own tax advisor regarding the application of these rules.

### **C. Federal Income Tax Treatment of the Liquidating Trust**

Pursuant to the Plan, the Debtors will transfer certain assets to the Liquidating Trust, which will become obligated to make distributions to holders of Claims in accordance with the Plan. The Plan provides, and this discussion assumes, that the Liquidating Trust will be treated for federal income tax purposes as a "liquidating trust," as defined in Treasury Regulation Section 301.7701-4(d), and will therefore be taxed as a grantor trust. The transfer of assets to the Liquidating Trust in accordance with the Plan will be treated for federal income tax purposes as a deemed transfer of assets to the holders of Claims, followed by a deemed transfer of such assets by such holders to the Liquidating Trust. The holders of Claims, as the beneficiaries of the Liquidating Trust, will be treated for federal income tax purposes as the grantors and deemed owners thereof. Accordingly, because a grantor trust is treated as a pass-through entity for federal income tax purposes, no tax should be imposed on the Liquidating Trust itself or on the income earned or gain recognized by the Liquidating Trust. Instead, the beneficiaries will be



taxed on their allocable shares of such net income or gain in each taxable year (determined in accordance with the Liquidating Trust Agreement), whether or not they receive any distributions from the Liquidating Trust in such taxable year.

Although the Liquidating Trust has been structured with the intention of complying with guidelines established by the IRS in Rev. Proc. 94-45, 1994-2 C.B. 684, for the formation of liquidating trusts, it is possible that the IRS could require a different characterization of the Liquidating Trust, which could result in different and possibly greater tax liability to the Liquidating Trust and/or the holders of Allowed Claims. No ruling has been or will be requested from the IRS concerning the tax status of the Liquidating Trust and there can be no assurance the IRS will not assert an alternative characterization of the Liquidating Trust. If the Liquidating Trust were determined by the IRS to be taxable not as a liquidating trust, as described in Treasury Regulation Section 301.7701-4(d), the taxation of the Liquidating Trust and the transfer of assets by the Debtors to the Liquidating Trust could be materially different than is described herein and could have a material adverse effect on the holders of Allowed Claims.

The Liquidating Trustee will file tax returns with the IRS for the Liquidating Trust as a grantor trust in accordance with Treasury Regulation Section 1.671-4(a). The Liquidating Trustee will also send to each beneficiary of the Liquidating Trust a separate statement setting forth the beneficiary's allocable share of items of income, gain, loss, deduction or credit and will instruct the beneficiary to report such items on such beneficiary's federal income tax return.

#### **D. Consequences to Holders of Claims**

The federal income tax consequences of the Plan to a holder of a Claim will depend upon several factors, including but not limited to: (i) the origin of the holder's Claim, (ii) whether the holder is a nonresident of the United States for tax purposes or otherwise falls into any of the special classes of taxpayers excluded from this discussion as noted above, (iii) whether the holder reports income on the accrual or cash basis method, (iv) whether the holder has taken a bad debt deduction or worthless security deduction with respect to its Claim and (v) whether the holder receives distributions under the Plan in more than one taxable year.

Holders are strongly advised to consult their own tax advisors with respect to the tax treatment under the Plan of their particular Claims.

##### **1. Gain or Loss Recognized by Holders of Claims**

Generally, a holder of an Allowed Claim will recognize gain or loss equal to the difference between the amount realized by such holder and such holder's adjusted tax basis in the Allowed Claim. The amount realized is equal to the sum of the cash and the fair market value of any other consideration received under the Plan in respect of a holder's Claim, including, to the extent such holder is a beneficiary of the Creditors' Trust, the fair market value of each such holder's proportionate share of the assets transferred to the Creditors' Trust on behalf of and for the benefit of such holder (to the extent that such cash or other property is not allocable to any portion of the Allowed Claim representing accrued but unpaid interest (as discussed below)).

The transfer of the Trust Assets to the Liquidating Trust by the Debtors should be treated for federal income tax purposes as a transfer of such Trust Assets directly to the holders of Allowed Claims to the extent they are beneficiaries of the Liquidating Trust, followed by a deemed transfer of such Trust Assets by such beneficiaries to the Liquidating Trust. As a result of such treatment, such holders of Allowed Claims will be required to take into account the fair market value of their pro rata share, if any, of the proceeds of the Trust Assets transferred on their behalf to the Liquidating Trust in determining the amount of gain realized and required to be recognized upon consummation of the Plan on the Effective Date. In addition, since a holder's share of the assets held in the Trust may change depending upon the resolution of Disputed Claims, the holder may be prevented from recognizing any loss in connection with consummation of the Plan until all such Disputed Claims have been resolved. The Liquidating Trustee will provide the holders of Allowed Claims with valuations of the assets transferred to the Liquidating Trust on behalf of and for the benefit of such holders and such valuations should be used consistently by the Liquidating Trust and such holders for all federal income tax purposes.

## **2. Distributions in Discharge of Accrued but Unpaid Interest**

Pursuant to the Plan, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Allowed Claims, with any excess allocated to any allowed accrued but unpaid interest. However, there can be no assurance that the IRS will respect such allocation for federal income tax purposes. Holders of Allowed Claims that have not previously included in their taxable income any accrued but unpaid interest on such Claims may be treated as receiving taxable interest to the extent the consideration they receive under the Plan is allocable to accrued but unpaid interest. Holders that have previously included in their taxable income any accrued but unpaid interest on such Allowed Claims may be entitled to recognize a deductible loss, to the extent that such accrued but unpaid interest is not satisfied under the Plan.

## **3. Character of Creditor's Gain or Loss; Tax Basis; Holding Period**

The character of any gain or loss as capital or ordinary and, in the case of capital gain or loss, as long-term or short-term, recognized by a holder of Allowed Claims under the Plan will be determined by a number of factors, including, but not limited to, the status of the holder, the nature of the allowed claim in such holder's hands, the purpose and circumstances of its acquisition, the holder's holding period of the Allowed Claim, the extent to which the holder previously claimed a deduction for the worthlessness of all or a portion of the Allowed Claim, and the extent to which the holder acquired the Allowed Claim at a market discount. The holder's aggregate tax basis for any property received under the Plan will generally equal the fair market value of the property realized in the exchange, less any amount allocable to interest as described in the preceding paragraph. The holding period for any property received under the Plan will generally begin on the day following the receipt of such property.

## **4. Prior Bad Debt or Loss Deduction**

Under certain circumstances, a holder of a Claim may recognize ordinary income to the extent that such holder is deemed on the Effective Date to have received consideration for such

Claim that represents a recovery of a prior bad debt or loss deduction, regardless of whether gain or loss would have otherwise been realized or recognized by such holder on consummation of the Plan. Holders of Claims who have taken a bad debt or loss deduction with respect to their Claims should consult their own tax advisors as to the effect of such deduction in light of their particular circumstances.

#### **E. Backup Withholding**

Under the backup withholding rules, a holder of Claims may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan unless that holder (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact or (b) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax, but merely an advance payment that may be refunded to the extent it results in an overpayment of tax.

Debtors intend to withhold all amounts required by law to be withheld from payments of interest and will comply with all applicable reporting requirements of the IRC.

#### **IRS CIRCULAR 230 NOTICE**

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, HOLDERS OF CLAIMS OR INTERESTS ARE HEREBY NOTIFIED THAT: (1) ANY DISCUSSION OF FEDERAL INCOME TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER OF A CLAIM OR INTEREST FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER THE IRC ON SUCH HOLDERS, (2) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE CONFIRMATION OF THE PLAN TO WHICH THE TRANSACTIONS DESCRIBED IN THIS DISCLOSURE STATEMENT ARE ANCILLARY, AND (3) HOLDERS OF CLAIMS OR INTERESTS SHOULD SEEK ADVICE BASED UPON THEIR PARTICULAR CIRCUMSTANCES FROM THEIR OWN TAX ADVISOR.**

#### **XI. CONCLUSION AND RECOMMENDATION**

Based on the foregoing analysis of the Debtors, their assets, and the Plan, the Debtors believe that the best interests of all parties would be served through confirmation of the Plan. **FOR THESE REASONS, THE DEBTORS URGE ALL CREDITORS TO VOTE TO “ACCEPT” THE PLAN.**

Dated: August 31, 2010

**BIGLER, LP**

By: Bigler Management, Inc, its General Partner

By:  \_\_\_\_\_

Name: Joel Herger

Title: President

**BIGLER LAND, LLC**

By:  \_\_\_\_\_

Name: H. Malcolm Lovett, Jr.

Title: Chief Restructuring Officer

**BIGLER PETROCHEMICAL, LP**

By:  \_\_\_\_\_

Name: H. Malcolm Lovett, Jr.

Title: Chief Restructuring Officer

[signatures continue]

**BIGLER PLANT SERVICES, LP**

By: 

Name: H. Malcolm Lovett, Jr.

Title: Chief Restructuring Officer

**BIGLER TERMINALS, LP**

By: 

Name: H. Malcolm Lovett, Jr.

Title: Chief Restructuring Officer

**EXHIBITS TO DISCLOSURE STATEMENT**

EXHIBIT A	Debtors' First Amended Joint Plan of Liquidation Under Chapter 11 of the United States Bankruptcy Code
EXHIBIT B	Debtors' Statement of Financial Affairs Question 3(b) – Payments to Creditors Within 90 Days Prior to the Petition Date
EXHIBIT C	Debtors' Statement of Financial Affairs Question 3(c) – Payments to Insiders Within One Year Prior to the Petition Date
EXHIBIT D	Liquidation Analysis
EXHIBIT E	Disclosure Statement Approval Order
EXHIBIT F	Amegy Asset Purchase Agreement
EXHIBIT G	Liquidating Trust Agreement