FILING VERSION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

In re	)	**Chapter 11**
	)	
FREEDOM INDUSTRIES, INC.	)	
	)	**Case No. 14-20017-RGP**
	)	
Debtor.	)	
	)	

DISCLOSURE STATEMENT TO ACCOMPANY PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE PROPOSED BY FREEDOM INDUSTRIES, INC. DATED APRIL 30, 2015

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IMPORTANT NOTICE

This Disclosure Statement[1] and its related documents are the only documents authorized by the Bankruptcy Court to be used in connection with the solicitation of votes to accept the Plan. No representations have been authorized by the Bankruptcy Court concerning the Debtor, its business operations or the value of its assets, except as explicitly set forth in this Disclosure Statement.

Unless specifically defined herein, please refer to the Plan (or, where indicated, certain motions filed with the Bankruptcy Court) for definitions of the capitalized terms used in this Disclosure Statement.

The Debtor reserves the right to file an amended Plan and Disclosure Statement from time to time. The Debtor urges you to read this Disclosure Statement carefully for a discussion of voting instructions, recovery information, classification of claims, the history of the Debtor and the Case and a summary and analysis of the Plan.

The Plan and this Disclosure Statement have not been prepared in accordance with federal or state securities laws or other applicable non-bankruptcy law. This Disclosure Statement has been approved by the Bankruptcy Court as containing "adequate information"; however, such approval does not constitute endorsement of the Plan or Disclosure Statement by the Bankruptcy Court and none of the United States Securities and Exchange Commission, any state securities commission or similar public, governmental or regulatory authority has approved this Disclosure Statement, or the Plan, or has passed on the accuracy or adequacy of the statements in this Disclosure Statement. Persons trading in or otherwise purchasing, selling or transferring securities, if any, of the Debtor should evaluate the Plan in light of the purposes for which it was prepared.

This Disclosure Statement contains only a summary of the Plan. This Disclosure Statement is not intended to replace a careful and detailed review of the Plan, only to aid and supplement such review. This Disclosure Statement is qualified in its entirety by reference to the Plan, and the exhibits attached thereto, if any, and the agreements and documents described therein. If there is a conflict between the Plan and this Disclosure Statement, the provisions of the Plan will govern. You are encouraged to review the full text of the Plan and to read carefully the entire Disclosure Statement, including all exhibits, before deciding how to vote with respect to the Plan.

Except as expressly otherwise indicated, the statements in this Disclosure Statement are made as of April 30, 2015, and the delivery of this Disclosure Statement will not, under any circumstances, imply that the information contained in this Disclosure Statement is correct at any time after April 30, 2015. Any estimates of claims or interests in this Disclosure Statement may vary from the final amounts of claims or interests allowed by the Bankruptcy Court. In addition, the treatment of creditors under the Plan described herein is subject to change as such treatment continues to be negotiated.

YOU SHOULD NOT CONSTRUE THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. YOU SHOULD, THEREFORE, CONSULT WITH YOUR OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISORS AS TO

[1] Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by Freedom Industries, Inc. Dated April, [ ], 2015 (the "Plan").

ANY SUCH MATTERS IN CONNECTION WITH THE PLAN, THE SOLICITATION OF VOTES ON THE PLAN AND THE TRANSACTIONS CONTEMPLATED BY THE PLAN.

As to contested matters, adversary proceedings and other actions or threatened actions, this Disclosure Statement is not, and is in no event to be construed as, an admission or stipulation as to any fact or allegation.

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UNITED STATES BANKRUPTCY COURT
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DISCLOSURE STATEMENT TO ACCOMPANY PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE PROPOSED BY FREEDOM INDUSTRIES, INC. DATED APRIL 30, 2015

I. OVERVIEW OF THE DISCLOSURE STATEMENT

PURPOSE OF DISCLOSURE STATEMENT

The debtor and debtor-in-possession in the above-captioned case, Freedom Industries, Inc. ("Freedom" or "Debtor"), prepared this Disclosure Statement to accompany and in connection with its solicitation of acceptances of the Plan of Liquidation Under Chapter 11 of the Bankruptcy Code Proposed by Freedom Industries, Inc. dated April 30, 2015, filed in the Debtor's chapter 11 case under the Bankruptcy Code. Upon order of the Bankruptcy Court entered [Month/Day], the Bankruptcy Court approved a consolidated hearing on approval of the Disclosure Statement and confirmation of the Plan.

A copy of the Plan is attached to this Disclosure Statement and incorporated into this Disclosure Statement by reference as Exhibit A. Unless otherwise specifically noted, all capitalized terms utilized herein shall have the meanings ascribed to such terms as set forth in the Plan.

You should read this Disclosure Statement and the Plan in their entirety before voting on the Plan. No statements or information concerning the Debtor, its affiliates or any other entity described in this Disclosure Statement or the Plan, particularly, but not limited to, the Debtor's profits, financial condition, assets or liabilities are authorized by the Debtor other than as set forth in this Disclosure Statement or Exhibits hereto.

The financial information set forth in this Disclosure Statement has not been audited by independent certified public accountants, nor has it necessarily been prepared in accordance with generally accepted accounting principles, except as specifically set forth herein. For that reason, and as a result of the complexity of the financial affairs of the Debtor (and its subsidiaries and/or affiliates, to the extent applicable), the Debtor is not able to represent and warrant that the information set forth in this Disclosure Statement is without any inaccuracy. To the extent possible, however, the information has been prepared from the Debtor's Schedules and other information available to the Debtor, and every reasonable effort has been made to ensure that all information in this Disclosure Statement has been fairly presented.

PROCEDURAL INFORMATION

Voting

Each holder of a Claim or Equity Interest of a Class that is "Impaired" under the Plan, but is not deemed to have rejected the Plan, will receive this Disclosure Statement, the Plan, the Disclosure Statement Order, notice of the Confirmation Hearing and a ballot for accepting or rejecting the Plan. Any holder of a Claim or Equity Interest whose legal, contractual or equitable rights are altered, modified or changed by the proposed treatment under the Plan, or whose treatment under the Plan is not provided for in section 1124 of the Bankruptcy Code, is considered "Impaired." Each holder of a Claim or Equity Interest of a Class that is deemed to accept or reject the Plan will receive the Disclosure Statement Order, notice of the Confirmation Hearing and a notice of non-voting status in the form approved by the Bankruptcy Court, but will not receive a ballot and will not be eligible to vote on the Plan. Holders of Claims or Equity Interests of a Class deemed to accept or reject the Plan will not receive copies of the Plan or the Disclosure Statement, but may obtain copies of these documents by mailing a written request for such materials to the parties identified below.

Which Classes of Claims are Entitled to Vote on the Plan?

Classes of Claims entitled to vote on the Plan are as follows:

- Claims in Classes 1, 2, 3, 4 and 5 are Impaired and entitled to vote on the Plan (each a "Voting Class" and together the "Voting Classes").
- Equity Interests in Class 6 will not receive a distribution under the Plan, are deemed to have rejected the Plan and will not be entitled to vote on the Plan.

For a description of the Classes of Claims and Equity Interests and their respective treatment under the Plan, see Section II and Section V.B below.

You may only vote on the Plan with respect to a Claim or Equity Interest if that Claim belongs to a Voting Class under the Plan. All holders of Equity Interests are deemed to have rejected the Plan and will not be entitled to vote. The Bankruptcy Court has fixed [Month/Day], 2015, as the voting record date. To be eligible to vote on the Plan, persons with Claims that belong to the Voting Classes must have held them on the voting record date.

Under the Bankruptcy Code, the Plan will be deemed accepted by an Impaired Class of Claims if the Debtor receives votes accepting the Plan representing at least:

- two-thirds of the total dollar amount of the allowed Claims in Classes that vote; and
- more than one-half of the total number of allowed Claims in the Class that cast a vote.

The Disclosure Statement Order will set forth which Claims are "allowed" for purposes of voting and designate the form of ballot to be used by each Voting Class. For more information on voting procedures, please consult the Disclosure Statement Order.

All properly completed ballots received by the Debtor on or before [Month/Day]**, 2015 at 5:00 p.m. (EDST)** (the "Voting Deadline"), will be counted in determining whether each Impaired Class entitled to vote on the Plan has accepted the Plan. Any ballots received after the Voting Deadline will not

be counted. All ballots must contain an original signature to be counted. No ballots received by facsimile will be accepted.

Voting on the Plan

When does the vote need to be received? The deadline for the receipt by the Debtor of properly completed ballots is [Month/Day], 2015 **at 5:00 p.m. (EDST)**.

Which Classes may vote? Persons may vote to accept or reject the Plan only with respect to Allowed Claims that belong to a Class that is Impaired under the Plan and is not deemed to have rejected the Plan- i.e. Classes 1, 2, 3, 4 and 5.

Which members of the Impaired Classes may vote? The *voting record* date for determining which members of Impaired Classes may vote on the Plan is [Month/Day]**, 2015**.Persons may vote on the Plan only with respect to Claims that were held on the voting record date.

How do I vote on the Plan? For a vote to be counted, the Debtor must receive an original signed copy of the ballot form approved by the Bankruptcy Court. Faxed copies and votes sent on other forms will not be accepted.

Who should I contact if I have questions or need a ballot? You may contact the Debtor at the address or phone number listed below.

This Disclosure Statement and the Plan and attachments thereto are the only materials that you should use in determining how to vote on the Plan. The Debtor submits that approval of the Plan provides the greatest return to holders of Claims in the Voting Classes. The Debtor in preparing the Plan and Disclosure Statement, has consulted with the Committee. **The Plan reflects substantial input from the Committee and the Committee supports the Plan.**

Voting Recommendations

The Debtor submits that the Plan presents the best opportunity for holders of Claims to maximize their respective recoveries. **The Debtor and Committee encourages holders of Impaired Claims to vote to *accept* the Plan.**

The ballots have been specifically designed for the purpose of soliciting votes on the Plan from each Class entitled to vote. If you hold Claims in more than one Class, you must use a separate ballot for voting with respect to each Class of Claims that you hold.

Please complete and sign your ballot and return it in the enclosed pre-addressed envelope to the office of the bankruptcy counsel to the Debtor. All correspondence in connection with voting on the Plan should be directed to the following address:

By mail or overnight delivery:
McGuireWoods LLP
Attn: Susan Harding
625 Liberty Avenue, 23rd Floor
Pittsburgh, PA 15212
(412) 667-6000

The Debtor will prepare and file with the Bankruptcy Court a certification of the results of the voting on the Plan on a Class-by-Class basis.

Additional copies of the ballots, this Disclosure Statement and the Plan are available upon request made to the Debtor at the address and telephone number above.

Your Vote Is Important

Your vote on the Plan is important because:

- Under the Bankruptcy Code, a chapter 11 plan can only be confirmed if certain majorities in dollar amount and number of claims (as described above) of each Voting Class under the plan vote to accept the plan, unless the "cram down" provisions of the Bankruptcy Code are used.
- Under the Bankruptcy Code, only the votes of those holders of claims or interests who actually submit votes on a plan are counted in determining whether the specified majorities of votes in favor of the plan have been received.
- If you are eligible to vote with respect to a Claim and do not deliver a properly completed ballot relating to that Claim by the Voting Deadline, you will be deemed to have abstained from voting with respect to that Claim and your eligibility to vote with respect to that Claim will *not* be considered in determining the number and dollar amount of ballots needed to make up the specified majority of that Claim's Class for the purpose of approving the Plan.

All pleadings and other documents referred to in this Disclosure Statement as being on file with the Bankruptcy Court are available for inspection and review during normal business hours at the Office of the Clerk of the United States Bankruptcy Court for the Southern District of West Virginia, U.S. Bankruptcy Court Robert C. Byrd U.S. Courthouse 300 Virginia Street, Room 3200, Charleston, West Virginia 25301 or on-line at the Bankruptcy Court's website: http://www.wvsb.uscourts.gov.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN AND OTHER DOCUMENTS RELATING TO THE PLAN. THE DEBTOR SUBMITS THAT THOSE SUMMARIES PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, THESE SUMMARIES ARE QUALIFIED BY THE COMPLETE TEXT OF SUCH DOCUMENTS. IF ANY INCONSISTENCIES EXIST BETWEEN THE TERMS AND PROVISIONS OF THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR OTHER DOCUMENTS DESCRIBED HEREIN, THE TERMS AND PROVISIONS OF THE PLAN AND OTHER DOCUMENTS ARE CONTROLLING. EACH HOLDER OF AN IMPAIRED CLAIM SHOULD REVIEW THE ENTIRE PLAN AND ALL RELATED DOCUMENTS AND SEEK THE ADVICE OF ITS OWN COUNSEL AND FINANCIAL CONSULTANT BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. ANY CHANGES TO THESE DOCUMENTS WILL BE DESCRIBED AT THE HEARING ON THE CONFIRMATION OF THE PLAN.

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON BY ANY PERSON OR ENTITY FOR ANY PURPOSE OTHER THAN BY HOLDERS OF IMPAIRED CLAIMS OR INTERESTS ENTITLED TO VOTE ON THE PLAN IN DETERMINING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT WILL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR

BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON HOLDERS OF CLAIMS OR EQUITY INTERESTS.

EXCEPT TO THE EXTENT OTHERWISE SPECIFICALLY NOTED HEREIN, THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS GENERALLY INTENDED TO DESCRIBE FACTS AND CIRCUMSTANCES ONLY AS OF THE DATE OF THE PLAN, AND NEITHER THE DELIVERY OF THIS DISCLOSURE STATEMENT NOR THE CONFIRMATION OF THE PLAN WILL CREATE ANY IMPLICATION, UNDER ANY CIRCUMSTANCES, THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS CORRECT AT ANY TIME AFTER THE DATE OF THE PLAN OR THAT THE DEBTOR WILL BE UNDER ANY OBLIGATION TO UPDATE SUCH INFORMATION IN THE FUTURE.

THE DEBTOR SUBMITS THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTEREST OF EVERY CREDITOR AND RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN. THE COMMITTEE SUPPORTS THE CONCLUSIONS REACHED BY THE DEBTOR.

Confirmation Hearing

The Bankruptcy Court will hold the Confirmation Hearing at the following time and place:

Confirmation Hearing/Approval of Disclosure Statement
Date and Time: Commencing at _____ (_____ time), on [Month/Day], 2015.
Place: U.S. Bankruptcy Court Robert C. Byrd U.S. Courthouse 300 Virginia Street, Charleston, West Virginia 25301.
Judge: Ronald G. Pearson, United States Bankruptcy Judge, Southern District of West Virginia.
The hearing on approval of the Disclosure Statement and the Confirmation Hearing may be adjourned from time to time on announcement in the Bankruptcy Court on the scheduled date for the hearing. No further notice will be required to adjourn the hearing.

At the Disclosure Statement Approval and Confirmation Hearing, the Bankruptcy Court will:

- determine on a final basis whether the Disclosure Statement contains adequate information;
- determine whether sufficient majorities in number and dollar amount, as applicable, from each Voting Class have delivered properly executed votes accepting the Plan to approve the Plan;
- hear and determine objections, if any, to the Plan and to confirmation of the Plan that have not been previously disposed of;
- determine whether the Plan meets the confirmation requirements of the Bankruptcy Code; and
- determine whether to confirm the Plan.

Any objection to confirmation of the Plan must be in writing and filed and served as required by the Bankruptcy Court under the order approving this Disclosure Statement. That order requires any objections to the confirmation of the Plan to be served so as to be received on or before 4:00 p.m. (EDST) on [Month/Day]**, 2015**, by (i) Counsel for the Debtor: MCGUIREWOODS LLP, 625 Liberty Avenue, 23rd Floor, Pittsburgh, PA 15222, Attn: Mark E. Freedlander, Esquire and BARTH & THOMPSON, P.O. Box 129, Charleston, West Virginia 25321, Attn: Stephen Thompson, Esquire, ; (ii) Counsel for the Committee: FROST BROWN TODD, LLC, 3300 Great American Tower, 301 East 4th Street, Cincinnati, OH 45202 Attn: Ronald Gold; and (iii) Office of the United States Trustee, 300 Virginia Street East, Room 2025, Charleston, WV 25301, Attn: David Bissett.

II. SUMMARY AND OVERVIEW OF THE PLAN

The following table briefly summarizes the classifications and treatment of Claims and Equity Interests under the Plan.

Class	Type of Claim or Equity Interest	Treatment	Estimated Recovery	Impairment	Voting
N/A	Administrative Expense Claims	All requests for the allowance and payment of an Administrative Expense Claim must be filed as a motion with the Bankruptcy Court and served upon the Debtor, the Committee and other parties-in-interest, in accordance with the Bankruptcy Code and the Bankruptcy Rules, no later than the first Business Day that is 30 days after the Confirmation Date or such other date as approved by order of the Bankruptcy Court. Holders of alleged Administrative Expense Claims must satisfy the burden regarding allowance and payment of Administrative Expense Claims applicable in this district. The failure to file and serve such a motion for allowance and payment of an Administrative Expense Claim timely and properly shall result in the Administrative Expense Claim being forever barred and discharged. For the avoidance of doubt, an Administrative Expense Claim asserted through a proof of claim filed in the Case is invalid unless a timely motion for	100%	Unimpaired	No

Class	Type of Claim or Equity Interest	Treatment	Estimated Recovery	Impairment	Voting
		allowance and payment of an Administrative Expense Claim is filed.			
N/A	Professional Fee Compensation and Reimbursement Claims	(a) Within ten (10) days after the Confirmation Date, all Professionals shall provide the CRO an accounting of any accrued and unpaid fees owed to the Professional through the Confirmation Date and shall provide an estimate of fees expected to be incurred through the Effective Date. The CRO shall hold an amount reasonably estimated by the CRO as necessary to pay all accrued and unpaid fees and expenses owed to Professionals through the Effective Date in the Professional Fee Escrow Account. The CRO shall maintain and control the Professional Fee Escrow Account, and distribute proceeds thereof in accordance with the Plan and Final Orders of the Bankruptcy Court or other court of competent jurisdiction. (b) All Professionals or other Persons seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 327, 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code shall file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred no later than twenty (20)	100%	Unimpaired	No

Class	Type of Claim or Equity Interest	Treatment	Estimated Recovery	Impairment	Voting
		days after the Effective Date. (c) Subject to reduction for the Professional Fee Contribution Amount, Professionals shall be paid in full by the CRO from the Professional Fee Escrow Account all amounts due and unpaid that are allowed by Final Order of the Bankruptcy Court or another court of competent jurisdiction as soon as practicable following entry of such Final Order. (d) Any funds remaining in the Professional Fee Escrow Account after payment of all unpaid Claims of Professionals allowed by a Final Order shall be paid by the CRO to the Spill Claim Plan Administrator for such purposes as determined by the Spill Claim Plan Administrator.			
N/A	U.S. Trustee Fees	All fees payable in the Case under 28 U.S.C. §1930, as agreed by the CRO or as determined by the Bankruptcy Court, will, if not previously paid by the Debtor, be paid in Cash on the Effective Date or as soon thereafter as is practicable by the Spill Claim Plan Administrator, and will continue to be paid by the Spill Claim Plan Administrator as required under 28 U.S.C. §1930 until such time as an order is entered by the Bankruptcy Court closing the Case.	100%	Unimpaired	No
Class 1	IRS Secured Claims	In full and complete satisfaction of the Class 1 Secured Claim of the IRS, on the Effective Date, the unpaid principal and interest components of the Class 1 Secured Claim of the IRS will be deemed an Allowed Claim and	100% of Allowed Class 1 Claims	Impaired	Yes

Class	Type of Claim or Equity Interest	Treatment	Estimated Recovery	Impairment	Voting
		the IRS will be paid in Cash the unpaid principal and interest portions of this Claim estimated to total approximately $500,000. In consideration of the allowance and payment of this Claim on the Effective Date, the IRS will waive all penalty amounts associated with this Claim upon receipt of payment in respect of the IRS Class 1 Secured Claim.			
Class 2	Priority Tax Claims	Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, holders of Allowed Priority Tax Claims, if any, shall be paid in Cash by the CRO on the Effective Date, or if any such Claim is Disputed, then the Spill Claim Plan Administrator will pay the full amount of any such Allowed Priority Tax Claim as soon as reasonably practicable following allowance of any or all such portion(s) of a Disputed Priority Tax Claim. In the event that any Priority Tax Claim is Disputed as of the Effective Date the CRO and the Spill Claim Plan Administrator will agree to an amount to be held by the Spill Claim Plan Administrator in its Disputed Claim Reserve, and on the Effective Date the CRO will pay such amount to the Spill Claim Plan Administrator.	100%	Impaired	Yes
Class 3	General Unsecured Claims	On the Effective Date, the GC Plan Administrator shall be paid $500,000 for the benefit of holders of Allowed Class 3 General Unsecured Claims. After establishing reserves in an amount sufficient to address costs of administration and Disputed	6.67% Initial recovery	Impaired	Yes

Class	Type of Claim or Equity Interest	Treatment	Estimated Recovery	Impairment	Voting
		Class 3 General Unsecured Claims, the GC Plan Administrator will make a pro rata distribution to holders of Allowed Class 3 Claims as soon as reasonably practicable after the Effective Date in accordance with the Plan. In addition to receipt of $500,000 on the Effective Date, the GC Plan Administrator, for the benefit of the holders of Allowed Class 3 Claims, will participate with the Spill Claim Plan Administrator in receipt of fifty (50%) percent of net recoveries from Causes of Action not otherwise released under the Plan, after reimbursement of all fees and expenses associated with such Causes of Action, up to a maximum recovery by the GC Plan Administrator on behalf of holders of Class 3 Claims of $7,000,000. The GC Plan Administrator will distribute proceeds of Causes of Action on a pro rata basis to holders of Allowed Class 3 Claims in accordance with the Plan as soon as reasonably practicable following receipt of such proceeds by the GC Plan Administrator upon the Effective Date, the Debtor and the Estate will waive and release Preference Actions against holders of General Unsecured Claims.			
Class 4	Convenience Class Spill Claim	On the Effective Date, the Spill Claim Plan Administrator shall be paid $500,000 for the benefit of the holders of Class 4 Convenience Class Spill Claims. On or as soon as practicable following the Effective Date, the Spill Claim Plan Administrator	N/A	Impaired	Yes

Class	Type of Claim or Equity Interest	Treatment	Estimated Recovery	Impairment	Voting
		will pay each holder of a Class 4 Convenience Class Spill Claim their pro rata share of $500,000. The Spill Claim Plan Administrator will use his or her best efforts to make distributions to the holders of Allowed Class 4 Convenience Class Spill Claims as soon as practicable after the Effective Date in accordance with the Plan. The Spill Claim Plan Administrator has the authority to compromise and settle Class 4 Convenience Class Spill Claims and to make distributions to holders of Allowed Class 4 Convenience Class Spill Claims without Bankruptcy Court authority. The Spill Claim Plan Administrator will file a notice with the Bankruptcy Court: (a) identifying the date of distribution to holders of Allowed Class 4 Convenience Class Spill Claims; and (b) listing the claim number and amount of the distribution (the "Class 4 Convenience Spill Claim Distribution Notice"). The Spill Claim Plan Administrator will file the Class 4 Convenience Spill Claim Distribution Notice on or before fifteen (15) days after the distribution date.			
Class 5	Spill Claims	On the Effective Date, the Spill Claim Plan Administrator shall be paid $2,199,318 for the benefit of the holders of Allowed Class 5 Spill Claims. The Spill Claim Plan Administrator, in consultation with the Spill Claim Oversight Committee, and subject to Bankruptcy Court approval will determine the manner in which to utilize and/or distribute	N/A	Impaired	Yes

Class	Type of Claim or Equity Interest	Treatment	Estimated Recovery	Impairment	Voting
		the $2,199,318 for the benefit of the holders of Allowed Class 5 Spill Claims. The Spill Claim Plan Administrator, for the benefit of the holders of Allowed Class 5 Spill Claims, shall receive the balance of the Professional Fee Escrow Account and the balance of the DEP Dedicated Fund, if any, after payment of all Allowed Claims of Professionals in accordance with Section 2.2 of the Plan and the payment of all obligations required under the DEP Consent Order and the VRP Agreement. The Spill Claim Plan Administrator shall utilize excess proceeds of the Professional Fee Escrow Account, if any, and the excess proceeds of the DEP Dedicated Fund, if any, as determined in the reasoned judgment of the Spill Claim Plan Administrator, after consultation with the Spill Claim Oversight Committee and subject to Bankruptcy Court approval as required by the Plan. The Spill Claim Plan Administrator, for the benefit of the holders of Allowed Class 5 Spill Claims, will participate with the GC Plan Administrator in receipt of fifty percent (50%) of net recoveries from Causes of Action not otherwise released under the Plan, after reimbursement of all fees and expenses associated with such Causes of Action, until such time as the GC Plan Administrator receives the sum of $7,000,000 from proceeds of Causes of Action at which time the Spill Claim Plan Administrator shall receive for the benefit of the holders of			

Class	Type of Claim or Equity Interest	Treatment	Estimated Recovery	Impairment	Voting
		Allowed Class 5 Spill Claims, one hundred percent (100%) of all additional proceeds from Causes of Action. The Spill Claim Plan Administrator, in consultation with the Spill Claim Oversight Committee, will distribute proceeds of Causes of Action as soon as practicable following receipt of the same subject to Bankruptcy Court approval. The Spill Claim Plan Administrator or its designee shall also receive, for the benefit of holders of Allowed Class 5 Spill Claims, and in accordance with Section 4.6 of the Plan, all equity interests in the Debtor on the Effective Date.			
Class 6	Equity Interests	On the Effective Date, all Equity Interests in the Debtor shall be deemed cancelled without further action by the Debtor, and 100% of new equity interests in the Debtor shall be issued to the Spill Claim Plan Administrator or its designee for the benefit of the holders of Class 5 Spill Claims on the Effective Date. No holder of a Class 6 Equity Interest in the Debtor shall receive or retain any property or interest in property on account of such Equity Interest.	0%	Impaired	No (deemed to reject)

III. OVERVIEW OF CHAPTER 11

Chapter 11 is the primary business reorganization chapter of the Bankruptcy Code. Under chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize its business and affairs for itself, its creditors and its equity interest holders. In addition to permitting the rehabilitation of a debtor, another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated equity interest holders with respect to distributions of the value of a debtor's assets. In this respect, section 1129(a)(11) of the Bankruptcy Code contemplates circumstances where there is a liquidation of all or a substantial portion of a debtor's assets for the benefit of its creditors in an orderly and organized fashion through a plan of liquidation.

The commencement of a chapter 11 case creates a bankruptcy estate that is comprised of all of the legal and equitable interests of a debtor as of the Petition Date of the chapter 11 case. The Bankruptcy Code provides that a debtor may continue to operate its business and affairs and remain in possession of its property as a "debtor-in-possession."

Pursuant to section 1123(a)(5), a debtor is permitted to distribute its property to those Persons with an interest in such property. Also, pursuant to section 1129(a)(11) of the Bankruptcy Code, a plan may provide for the liquidation of the debtor through a "plan of liquidation." The consummation of a plan of reorganization or plan of liquidation, as the case may be, is the fundamental objective of a chapter 11 case. A plan of liquidation sets forth the means for liquidating a debtor's remaining assets, if any, and satisfying claims against and interests in a debtor. Confirmation of a plan of liquidation by a bankruptcy court binds the debtor, any issuer of securities under the plan, any person acquiring property under the plan, and any creditor or equity interest holder of a debtor.

Certain holders of claims against and interests in a debtor are permitted to vote to accept or reject the plan. Prior to soliciting acceptances of the proposed plan, however, section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding the plan. The Debtor is submitting this Disclosure Statement to holders of claims against and equity interests in the Debtor to satisfy the requirements of section 1125 of the Bankruptcy Code.

IV. BACKGROUND

A. Background of the Debtor

1. General Background

Prior to the Petition Date, the Debtor was engaged principally in the business of producing specialty chemicals for the mining, steel, and cement industries. The Debtor was a leading supplier of freeze conditioning agents, dust control palliatives, flotation reagents, water treatment polymers, and other specialty chemicals.

The Debtor's corporate office is located in Charleston, West Virginia, and as of the Petition Date it operated two production facilities located in (a) Nitro, West Virginia (the "Nitro Facility") and (b) Charleston, West Virginia (the "Etowah River Terminal"). On the Petition Date, the Debtor owned the Etowah River Terminal and related real property and leased the Nitro Facility from an unaffiliated third party.

2. Pre-Bankruptcy Change of Ownership

For years prior to December 6, 2013 (the "Transaction Date"), Freedom Industries, Inc. was owned by three (3) individuals, each of whom owned one-third of the outstanding shares in the Debtor: 1) Dennis P. Farrell ("Farrell"); 2) Charles E. Herzing ("Herzing"); and, 3) William E. Tis ("Tis" and, collectively with Farrell and Herzing, the "Former Ds and Os").

Freedom was the sole parent of two subsidiaries: Poca Blending, LLC ("Poca") and Crete Technologies, LLC ("Crete") (collectively with Poca, the "Former Subsidiaries"). Farrell, Herzing and Tis were Freedom's President, Vice President and Secretary, respectively, and Gary Southern

("Southern")[2] served on the board and acted as a consultant to Freedom. Freedom's pre-Transaction Date board of directors had five members: Farrell, Herzing, Tis, Southern and Kevin Skiles ("Skiles"). Southern resigned as a director of Freedom on or about October 10, 2013.

Etowah River Terminal, LLC ("Etowah"), the entity responsible for operating the Etowah River Terminal, after its purchase from Pennzoil-Quaker State Company, was likewise owned by Farrell, Herzing and Tis prior to the Transaction Date.

On December 6, 2013, the Former Ds and Os executed and closed on: (i) that certain Share Purchase Agreement (the "SPA") by and among Chemstream Holdings, Inc. ("CHI")[3] (as purchaser), Freedom, the Former Ds and Os and Charles E. Herzing, as Sellers' Representative dated December 6, 2013, (ii) a Membership Unit Purchase Agreement ("Membership Purchase Agreement") by and among CHI (as purchaser), Etowah River Terminal, LLC, Farrell, Tis, and Herzing, and (iii) associated documents (collectively, the "Sale Transaction"). Pursuant to the Sale Transaction, the Former Ds and Os of Freedom, *inter alia*, transferred all right, title, and interest in Freedom and the Former Subsidiaries and Etowah to CHI. On the Transaction Date, prior to closing, the directors of Freedom were: Farrell, Herzing, Tis and Kevin Skiles.

The Sale Transaction resulted in the Former Ds and Os selling shares of Freedom to CHI. The consideration paid by CHI pursuant to the SPA was $8,850,000.00 and was distributed at closing as follows: (1) $2,000,000.00 (the "Non-Tax Holdback Amount") was paid into escrow as a non-exhaustive source for the payment and discharge of any indemnification obligations of the Former Shareholders to CHI; (2) $1,000,000.00 (the "Tax Holdback Amount" and, together with the Non-Tax Holdback Amount, the "Holdback Amounts") was paid into escrow as a non-exclusive source for the payment and discharge of certain tax obligations of Freedom; (3) approximately $3,850,000.00 paid to satisfy indebtedness allegedly owed by Freedom, as follows: (i) $2,311,370.36 to First Bank of Charleston, Inc.; (ii) $132,865.04 to Farrell; (iii) $716,947.03 to Tis; (iv) $500,692.90 to Herzing; and, (v) $207,643.14 to Ford Motor Credit; (4) $230,203.60 to Kevin Skiles in exchange for cancellation of certain alleged equity rights; (5) $817,484.66 was paid to Freedom and then paid by Freedom to two employees for certain bonuses they were allegedly due (the "Bonus Payments") (discussed below); (6) transaction expenses in the amount of $38,500.00 paid to Bowles Rice, LLP (as counsel to the Former Ds and Os in the Sale Transaction); and (7) the remainder paid in equal amounts to the Former Ds and Os.[4] Since these amounts were paid by CHI, in its capacity as the purchaser, other than the Bonus Payments, the flow of funds relating to the Sale Transaction are not reflected on the Debtor's Statement of Financial Affairs.

The Bonus Payments were paid by Freedom on December 11, 2013, as follows: (1) $544,281.25 was paid to Doug Simmons[5]; (2) $273,203.42 was paid to Skiles[6]. See, Statement of Financial Affairs, Question 3b.

[2] The exact roles of Southern and the timeframes within which roles were served remains subject to dispute, as a federal grand jury indictment of Southern filed in the District Court on December 17, 2014 at Criminal No. 2:14-00264 accuses Southern, among other matters, of misrepresenting the roles Southern served at Freedom. More information regarding the allegations against Southern is available at http://www.justice.gov/usao-sdwv/chemical-spill.

[3] CHI is ultimately owned by J. Clifford Forrest.

[4] Subject to certain pre- and post-closing adjustments.

[5] At the time of the Sale Transaction, Doug Simmons was the senior vice president of sales and marketing of Freedom.

[6] At the time of the Sale Transaction, Kevin Skiles was the senior vice president of research and technology of Freedom.

The consideration paid by CHI pursuant to the Membership Purchase Agreement was $6,150,000.00, which was distributed at the December 6, 2013 closing to the Former Ds and Os according to their ownership interests in Etowah River Terminal, LLC. [7]

Total consideration paid by CHI in respect of the Sale Transaction, including working capital adjustments to the benefit of Former Ds and Os, was approximately $17.837 Million.

Pursuant to an escrow agreement (the "Escrow Agreement") executed by and among CHI, Herzing (as Seller Representative) and Somerset Trust Company as part of the Sale Transaction, Somerset Trust Company ("Escrow Agent") was appointed as escrow agent. The Holdback Amounts were paid to the Escrow Agent at closing pursuant to and in accordance with the terms of the Sale Transaction and the Escrow Agreement. Given the nature of the Sale Transaction, where ownership interests rather than assets were sold, the entities subject to the sale of ownership interests were not parties to the Escrow Agreement. The CRO has, therefore, determined that the Escrow Agreement and any rights in or to the proceeds held in accordance with the Escrow Agreement are not property of the Estate.

At the time of the Sale Transaction, the Former Ds and Os alleged that certain claims of the IRS were invalid and/or inaccurate. The Tax Holdback Amount was delivered to the Escrow Agent to be used to satisfy tax liens against Freedom or its Former Subsidiaries. The Escrow Agreement establishes certain procedures by which CHI may request disbursement of all or a portion of the Tax Holdback Amount to satisfy applicable tax liens. Freedom is not a party to the Escrow Agreement and has no contractual right to demand that the Tax Holdback Amount be paid to the IRS in respect of the tax lien of the IRS. Since the Petition Date, however, the Debtor has requested of CHI and CHI has, in fact, made requests to the Escrow Agent that certain portions of the Tax Holdback Amount be paid to the Debtor to reimburse it for installment payments made to the IRS. Approximately $188,000 has been paid to the IRS from the Petition Date, and Freedom has been reimbursed in kind from the Tax Holdback under the Escrow Agreement.

In connection with the Sale Transaction on December 6, 2013, the Former Ds and Os and Skiles resigned their positions as officers, directors and/or members of Freedom, Etowah and the Former Subsidiaries. Gary Southern became the President and Treasurer of Freedom. As of the Petition Date, Gary Southern was President of Freedom and Terry Cline was Chief Financial Officer of Freedom. Also, in connection with closing on the Sale Transaction: (i) Farrell executed an employment agreement with Freedom to provide primarily marketing services, (ii) Tis executed a consulting agreement with Freedom to provide general management services, (iii) Useful Solutions, Inc., a company owned and/or controlled by Herzing, executed a consulting agreement with Freedom to provide general management services, (iv) Kevin Skiles executed an employment agreement with Freedom to provide primarily strategic planning services and (v) Steven (Doug) Simmons executed an employment agreement with Freedom to provide primarily sales expertise. Neither Tis nor Useful Solutions, Inc. actually performed services nor received consideration under their respective consulting agreements. As of the date of this Disclosure Statement, none of the individuals or entities subject to employment agreements or consulting contracts are employed by or are consultants to the Debtor. In fact, the Debtor has no employees at this time.

On December 31, 2013, the Former Subsidiaries and Etowah were all merged into Freedom for simplicity of tax reporting purposes. Thus, as of the Petition Date, the Debtor was the sole surviving entity from those subject to the Sale Transaction. CHI is the parent of the Debtor, and J. Clifford Forrest is the sole director of the Debtor.

[7] Subject to certain pre- and post-closing adjustments.

B. January 9, 2014 Chemical Spill and Response Thereto

1. MCHM and Storage Tank Number 396

As part of its business operations, Freedom stored a substance primarily consisting of methylcyclohexanemethanol ("MCHM") in tank number 396 ("Storage Tank Number 396") at the Etowah River Terminal. Storage Tank Number 396 was located adjacent to the Elk River, upstream from an intake operated by West Virginia American Water Company ("WVAWC"). Both the West Virginia Department of Environmental Protection ("WVDEP") and the United States Environmental Protection Agency ("EPA") have determined that MCHM is not a hazardous waste, stating as much in correspondence.

On February 12, 2014, the WVDEP issued a Minor Permit Modification for Disposal of Special Waste (the "Permit") to Disposal Service, Inc. ("Disposal Service"). The Permit was in response to the Debtor's and Disposal Service's request to dispose of water removed from the Debtor's containment tanks at Disposal Service's Hurricane, West Virginia facility. In the Permit, the WVDEP states as follows:

> The West Virginia Department of Environmental Protection, Office of Solid Waste, has reviewed information submitted by the Disposal Service, Inc. Based upon this information, the WVDEP believes that this waste is not hazardous waste under the Resource Conservation and Recovery Act. Consequently, a minor permit modification is granted for the disposal of this waste at the Disposal Service, Inc.

2. January 9, 2014 Incident and Subsequent Environmental Remediation

(a) January 9, 2014 Incident

On January 9, 2014 it was discovered that Storage Tank Number 396 leaked MCHM and that a quantity of MCHM reached the Elk River (the "Incident"). Several days thereafter, it was determined and reported to regulatory authorities that the MCHM that leaked also contained polypropylene polystone ("PPH").[8] Facts surrounding the Incident, including the cause of the leak, are subject to pending investigations by various regulatory and other governmental authorities.[9] As a result of the Incident, the following federal and state authorities met with Freedom regarding the Incident, or investigated and/or are continuing to investigate the Debtor and/or the Incident:

i. WVDEP;
ii. EPA;
iii. West Virginia National Guard;
iv. United States Fish and Wildlife Service;
v. Occupational Health Safety Administration;
vi. Chemical Safety Board;
vii. United States Attorney's Office;

[8] All references to MCHM below shall also include PPH.

[9] The facts and circumstances relating to the Incident as described herein are intended for explanatory purposes only and shall not prejudice the rights, claims, or defenses of any party in interest, including, without limitation, the rights of any purported holder of a claim arising from or related to the Incident, and correspondingly, all rights, claims, and defenses of the Debtor, its Estate and the Plan Administrators (on and after the Effective Date) of such rights, claims and defenses, and other parties in interest are preserved.

viii. West Virginia Attorney General's Office;
ix. United States Coast Guard;
x. Office of the Mayor of Charleston, West Virginia;
xi. Office of the Governor of West Virginia;
xii. Federal Bureau of Investigations; and
xiii. Office of the United States Trustee.

(collectively, the "Governmental Agencies").

The MCHM that leaked into the Elk River flowed into WVAWC's downstream intake pipe. Subsequently, West Virginia Governor Earl Ray Tomblin issued a "do not use" order (the "Do Not Use Order") for the roughly 300,000 residents of Charleston, WV and the surrounding communities.

Freedom promptly commenced emergency response measures to contain the spill. Beginning on January 9, 2014, officials from the WVDEP and Diversified Services ("Diversified"), a pre-Petition Date environmental remediation contractor to Freedom, were on site addressing remediation matters. Work being performed by Diversified was supplemented with services provided by Clean Harbors, Inc. ("Clean Harbors"), which primarily handled emergency remediation of the Elk River.

On January 10, 2014, WVDEP issued Order No. 8028 that required, *inter alia*, that Freedom, within twenty-four hours, begin removal of all material from all above ground storage tanks at Etowah River Terminal and store the material in an off-site area with secondary containment. Freedom immediately undertook efforts to commence compliance with Order No. 8028.

On January 14, 2014, WVDEP instructed the Debtor to focus its efforts on the ongoing containment and remediation of the spilled material and amended Order No. 8028 to provide that, *inter alia*, "[a]s soon as possible, but no later than fourteen (14) days from the effective date of the Order, Freedom Industries shall begin removal of all material from all above ground storage tanks and store the material in an off-site area which provides adequate secondary containment in accordance with 47 CSR 58, Section 4.8a.

On January 24, 2014, the WVDEP, following extensive negotiations with the Debtor and its environmental counsel, issued Consent Order No. 8034, that required, *inter alia*, on or before March 15, 2014, the Debtor must remove all material from all above ground storage tanks at the Etowah River Terminal by either selling the materials to customers, returning the materials to the original vendor, or storing the materials at an off-site area which provides adequate secondary containment in accordance with 47 CSR 58, Section 4.8a.

(b) **Emergency Environmental Measures**

Immediately following the Incident, Freedom's representatives began meetings with representatives from the various Governmental Agencies. These meetings occurred daily for approximately the first month after the Incident.

Several groundwater monitoring wells were installed in areas affected by the Incident immediately after the Incident. Each of these wells were used to evaluate and sample the potential impact to deeper groundwater from the release of MCHM at the Etowah River Terminal. These wells continue in place as of the date of this Disclosure Statement.

In the weeks immediately following the Incident, subject to oversight by WVDEP, Diversified performed two primary duties. First, Diversified loaded and transported chemicals and other materials

from the Etowah River Terminal in accordance with Order No. 8034 to off-site locations. Second, Diversified began digging several onsite containment trenches that were designed to capture any storm or ground water that ran through the Etowah River Terminal to ensure that such water did not flow into the Elk River.

On or about January 19, 2014, the Debtor engaged Civil & Environmental Consultants, Inc. ("CEC") to act as special environmental consultant. CEC's primary responsibility was management and oversight of the environmental remediation efforts including, without limitation, the undertakings by Diversified and liaison with the WVDEP.

CEC oversaw completion of three containment trenches at the Etowah River Terminal: a "lower trench," that is located adjacent to the Elk River, and two "upper trenches," that are located in a higher elevation than the lower trench, and were designed to capture storm and ground water prior to runoff into the lower trench.

CEC additionally oversaw the testing, sampling, and profiling of the water captured in the trenches. This testing occurred at least once, and often several times per week, in the weeks following the Incident. The testing of water captured in the trenches was (i) to determine whether the water being captured was potable, in accordance with applicable environmental regulations, and (ii) to determine whether chemicals were detectable in the water flowing through the Etowah River Terminal. The Debtor understands that generally, water is considered potable if there is less than one thousand (1,000) parts per billion of a given chemical in the water. A given chemical is not detectable in water if there is less than one hundred twenty (120) parts per billion of the chemical in a given sample. WVDEP has insisted since the Incident that the water captured in the trenches contain undetectable levels of MCHM.

The process of removing chemicals from the Etowah River Terminal began promptly following the Incident. The chemicals were removed in one of two ways: 1) they were sold in the ordinary course to customers in the early stages of the Debtor's bankruptcy proceeding; or, 2) they were moved by Diversified, at the direction of the Debtor and CEC, to the Debtor's Nitro Facility until they could be sold to customers in the ordinary course or otherwise disposed of in accordance with Order No. 8034. The entirety of these actions occurred with full knowledge and oversight by WVDEP.

By approximately March 15, 2014, emergency response activities were largely successful in removing all stored MCHM from the Etowah River Terminal. In addition, approximately six (6) to eight (8) inches of soil was removed from the former MCHM loading and handling area and replaced with clean gravel obtained from an offsite source.

(c) **Environmental Remediation**

i. Current Status

Since the completion of demolition work on the Etowah River Terminal site (as described below), it has been the goal of the CRO to finalize remediation efforts at the Etowah River Terminal under WVDEP's Voluntary Remediation Program (the "VRP"). Under the VRP, an applicant is entitled to negotiate a final remediation plan with WVDEP, the implementation of which is overseen by an agreed upon third party. The Debtor's VRP application was filed with WVDEP on or about January 6, 2015. Public notice was given of the Debtor's VRP application. The Debtor received notice dated February 28, 2015 that the application into the VRP was satisfactory subject to minor corrections. Thereafter, the Debtor and WVDEP executed a VRP Agreement dated March 30, 2015. The ultimate goal of a VRP participant is to receive a "certificate of completion" from WVDEP. As the CRO understands the VRP, it is typical for an applicant to be accepted into the VRP prior to the majority of testing and remediation

work being undertaken. Traditionally, an applicant is subject to the VRP for an extended period of time because remediation work, testing, preparation of reports and corresponding review by WVDEP occur incrementally over time. Given the atypical circumstances of Freedom, however, the CRO undertook substantial water, soil and other testing in advance of the Debtor's acceptance into the VRP. The CRO likewise caused substantial soil and other remediation work to be completed prior to the Debtor's acceptance into the VRP. The CRO also caused substantial reporting that otherwise would be completed in the context of the VRP to be prepared prior to the Debtor's acceptance into the VRP. Accordingly, the CRO submits that the Debtor's path to obtaining a certificate of completion from WVDEP is relatively short and well defined relative to a more traditional progression through the VRP.

The CRO has caused agents of the Debtor to remove approximately 600 cubic yards of soil from the Etowah River Terminal to date. This soil has been removed from the areas where MCHM was either stored or handled (collectively, the "MCHM Footprint"). As required under the VRP, the Debtor submitted a risk-based assessment to WVDEP. The CRO understands that WVDEP is required to respond to this assessment by May 31, 2015. The nature and extent of the response by WVDEP is unknown at this time. As part of the VRP process, the Debtor and WVDEP continue to engage in discussions and negotiations regarding among other items, the nature and extent of additional remediation and testing required with respect to the Etowah River Terminal. The CRO and WVDEP have engaged in discussions and negotiations regarding the extent to which additional soil is properly removed from the site. The CRO expects that a determination relating to this remediation obligation will be made by WVDEP based upon additional water testing that the CRO has agreed to cause to be performed. This additional water testing will occur from within the contained portion of the MCHM Footprint and from within a new retention trench that the CRO contemplates constructing (subject, however, to approval by WVDEP) due west of the existing lower retention trench just above the bank of the Elk River. In the event that the results of the additional water tests are acceptable to WVDEP, the CRO believes that no further soil removal obligation should exist. In this event, the CRO contemplates that certain existing trenches will be filed and pumps from the site removed. In the event that results of the additional water tests are not acceptable to WVDEP, the CRO expects that some combination of additional soil removal and/or filling of certain upper areas of the site with clean clay may be required. If additional soil removal is required, the CRO does not reasonably expect that the scope of such soil removal will exceed an additional approximately 200 cubic yards of soil from within the MCHM Footprint. In an effort to be as prepared as possible, the CRO has obtained quotes to cover the cost of additional soil removal and disposition as well as the cost of obtaining the potential clay fill. Whether additional soil removal and/or clay fill of certain specified areas are required, the CRO will continue with efforts to sell the Etowah River Terminal to an unrelated third party, subject to certain environmental-related conditions precedent, the major conditions of which are understood by the CRO to include that the Debtor will no longer be subject to water collection and disposition obligations.

The initial proposed purchaser of the Etowah River Terminal requires that the vast majority of the site be paved for its contemplated operations. Accordingly, the Debtor in this instance, would propose to WVDEP that the MCHM Footprint be capped as part of the Debtor's final remediation steps under the VRP. The CRO submits that the greatest risks to the Debtor's remediation efforts are: (1) that the ongoing cost of water collection and disposition will cause the Debtor to run out of money before the CRO is able to implement the steps towards completion of remaining remediation obligations, and (2) that the Debtor and WVDEP are unable to agree upon a reasonable conclusion to the Debtor's remediation and/or testing obligations under the VRP. The CRO and the licensed remediation specialist under the VRP believe that the Etowah River Terminal has been remediated to a satisfactory level under the Debtor's risk-based assessment. The CRO remains hopeful that in the weeks that follow, but prior to the Confirmation Date, definitive arrangements with WVDEP under the VRP can occur with respect to final site remediation and follow-up testing obligations of the Debtor under the VRP.

ii. Post-Incident Description of Events

By March 15, 2014, in accordance with Order No. 8034: (i) all chemicals had been removed from the Etowah River Terminal; and (ii) all water being captured was well below the threshold of what is considered safe for consumption. The containment trenches were capturing all storm and ground water flowing through the Etowah Terminal site and nothing was flowing into the Elk River.

Beginning on or about March 30, 2014, environmental remediation measures shifted from stabilization of the site to cleanup of the site. Cleanup of the site is subject to a Tank Decommissioning Plan dated March 7, 2014 (the "Decommissioning Plan") and a Remediation Plan dated March 17, 2014 (the "Remediation Plan"). The Decommissioning Plan and the Remediation Plan were prepared by CEC and approved by the WVDEP.

The requirements of the Decommissioning Plan were required to be completed prior to undertaking the actions called for in the Remediation Plan. Generally, the Decommissioning Plan required the decommissioning, demolition, and removal of the tanks located at the Etowah River Terminal and established a process for the same. The Debtor was required to clean out the tanks and prepare them for demolition. All asbestos materials were then to be removed pursuant to applicable regulations. Following asbestos removal, the tanks were to be demolished and removed. The Decommissioning Plan required that the contractor performing the demolition provide and comply with a storm water management plan, as well as take certain dust control and safety measures. Asbestos abatement has occurred at the Etowah River Terminal, and the Debtor's Bankruptcy Court approved demolition contractor, Independence Excavating, Inc. has completed demolition and cleanup efforts for all tanks at the Etowah River Terminal on or about October 5, 2014.

The CRO instructed CEC and Diversified to reduce staff to better reflect the then-current state of the remediation (i.e., cleanup versus emergency stabilization). This significantly reduced the costs incurred by the Debtor relating to remediation.

The CRO proposed and negotiated a water management program acceptable to WVDEP. The water management program essentially called for the continued capture of water flowing through the Etowah River Terminal site in the containment trenches. The water is then pumped into one of several water storage tankers currently on site. All collected water is tested, documented with manifests, and then shipped to a commercial facility willing to accept the water. Since the appointment of the CRO, in excess of 2.5 million gallons of water have been captured and shipped from the Etowah River Terminal site. With oversight by WVDEP on or about November 21, 2014, the CRO caused a diversion trench to be finalized and implemented such that water previously flowing from the adjacent Yeager Airport property and through the Etowah River Terminal site was diverted in a manner whereby this water never actually comes into contact with soil at the Etowah River Terminal site. This action has reduced the costs of water collection and disposition by approximately 60% to date, and it is projected that the diversion trench has saved the Debtor no less than $250,000 in water collection and transportation costs.

On June 12 and June 13, 2014, a series of rain storms involving drenching rain occurred in Charleston, WV. At the time, CEC, with the consent of the WVDEP, was testing the maximum capacity of the lower trench at the Etowah River Terminal. WVDEP asserts that some storm water ultimately escaped the lower trench and flowed into the Elk River. It is unclear whether this water originated at the Etowah River Terminal, or instead, flowed from the adjacent Yeager Airport. Despite protocols being in place for 24-hour monitoring of the site as between Diversified and a nighttime security detail, a representative of WVDEP detected the June 12 overflow, arriving at the site in the late afternoon. Although an orderly transition of the site from Diversified to the security detail had occurred daily, on the afternoon of June 12, while the CRO was attending to a family matter, employees of the Debtor,

representatives of CEC, and Diversified all left the site, and no agents or employees of Freedom were monitoring the site when the WVDEP representative arrived. Given the heavy rainfall, a second overflow incident occurred on June 13. On June 17, 2014, the CRO filed an environmental status report with the Court [Docket No. 413] explaining these occurrences and certain corrective actions that were subsequently taken at the direction of the CRO. By memo dated June 20, 2014, the Court directed the U.S. Trustee to investigate matters occurring on June 12 and 13. The CRO actively cooperated with the U.S. Trustee in its investigation.

As a result of the events of June 12 and 13, the CRO, with consent of WVDEP, modified water retention trenches, water pumping approach and site monitoring staffing and protocol.

WVAWC was immediately notified of the potential that runoff water had escaped the lower trench and flowed into the Elk River. WVAWC tested samples of the water that had come from the downstream intake pipe. Those samples revealed no presence of MCHM (i.e., "undetectable" levels).

In response to the mid-June, 2014 incidents, the WVDEP strongly urged the Debtor to terminate CEC as environmental consultant. The Debtor did so and on July 2, 2014, the Debtor filed an application to employ ARCADIS US, Inc. ("ARCADIS") as replacement environmental consultant, which the Court approved on July 2, 2014. ARCADIS has since been overseeing remediation efforts at the Etowah River Terminal. On July 10, 2014, the CRO also released the Debtor's facilities manager. In late July, 2014, the CRO terminated the services of Diversified and a new remediation company, SPSI West, Inc. ("SPSI"), has been transitioned into the process at the direction and under the oversight of ARCADIS.

In mid-June 2014 the Debtor, through Diversified, began the process of cleaning all of the tanks so that they could be demolished. The CRO met with approximately sixteen (16) demolition firms to discuss their interest in submitting a proposal to perform the demolition operations set forth in the Decommissioning Plan. Ultimately, the CRO received four (4) proposals, two of which required the Debtor to pay several hundred thousand dollars for the demolition operations. The CRO negotiated with the remaining two demolition firms and, ultimately, executed an agreement (the "Demolition Agreement") with Independence Contracting, Inc. ("Independence"), pursuant to which Independence agreed to demolish the tanks at the Etowah River Terminal. Pursuant to the Demolition Agreement, Independence has paid the Debtor Twenty-Five Thousand ($25,000.00) Dollars in exchange for title to all scrap metals removed from the site as part of the demolition.

On May 30, 2014, the Debtor filed a motion for order authorizing an agreement for demolition operations in furtherance of WVDEP Consent Order No. 8034 [Docket No. 366 (the "Demolition Motion"). The Demolition Motion was approved by an order of the Bankruptcy Court entered on June 6, 2014 [Docket No. 385]. Prior to the commencement of actual demolition work, an expansive asbestos abatement process was undertaken with the consent of WVDEP. Although the Etowah River Terminal did not have significant asbestos containing materials, there were a variety of gaskets and other items that did contain asbestos. A thorough and precautionary inspection and abatement program were undertaken in an abundance of caution. Actual demolition work on the Etowah River Terminal began on July 15, 2014 and was completed in two phases. Phase 1 removed all tanks north of tank 402. Phase 1 was complete by the first week of July 2014. Phase 2 was delayed until the CRO was able to negotiate an acceptable and cost effective manner in which to continue to capture and store water on site. WVDEP required and the CRO on behalf of the Debtor located double lined baker tanks that the Debtor brought onto the site for water containment purposes. Prior to the commencement of the second phase of demolition, which primarily related to four storage tanks that contained water collected on the site, the Debtor was required to remove approximately 130,000 gallons of water from tanks 402, 403, 404 and 405. By September 15, 2014, the Debtor removed all remaining water from the tanks, and over the next 10 days completed cleaning these tanks. Phase 2 demolition was thereafter completed by the first week of

October 2014 in a manner that ensured subsequent remediation costs are minimized. As part of this process, strict adherence to the Evidence Preservation Order occurred, thus requiring significant cooperation and coordination by the CRO and Independence with various regulatory authorities and other parties in interest.

(d) **Costs of Environmental Remediation**

In the weeks following the Incident, the Debtor's representatives were required to meet with various officials from no less than 12 regulatory agencies on a daily basis. These meetings involved dozens of tours of the Etowah River Terminal site to discuss a variety of concerns raised by WVDEP and the appropriate methods to address those concerns. Over time, the frequency and length of the meetings was reduced. By March 30, 2014, the Debtor engaged in two or three "official" meetings per week with the WVDEP to discuss the ongoing remediation, however, since the Incident, representatives of WVDEP visit the Etowah River Terminal site on a daily basis including weekends.

The Debtor's special environmental counsel, Babst, Calland, Clements & Zomnir, P.C. ("Babst") has served as a liaison among WVDEP, the Debtor, and CEC (and now ARCADIS). Throughout the case, Babst has primarily overseen meetings with WVDEP, assisted with tours of the site, and negotiated with WVDEP regarding the appropriate ways to address WVDEP's concerns relating to remediation.

Through the end of March, 2015, the Debtor has disposed of in excess of 2.5 million gallons of water and continues to capture and dispose of an additional average of approximately 90,000 gallons of water each week. The water is shipped pursuant to several long-term contracts with commercial facilities to ensure that there is ample coverage to dispose of the water. Of late, in many instances, the Debtor is able to ship water to the Charleston Sanitary Board at a cost of $0.07 per gallon compared to $.50 per gallon with other alternatives. As described in Section 2(c)(i) above, the Debtor expects, in the relatively near future, to be able to cease collection and shipment of water.

The Debtor has committed substantial resources to the aforementioned emergency response and then remediation measures. The Debtor incurred approximately Three Million Four Hundred Thousand ($3,400,000.00) Dollars relating to the emergency measures taken from the Petition Date through March 30, 2014. Since appointment, the CRO has prepared budgets for all costs expected to be incurred by the Estate, including, primarily, costs associated with remediation, testing, water collection and disposition. Many costs associated with environmental clean-up are not easily projected by the CRO. This is true for two primary reasons. First, a large component of environmental-related expenditures is water collection and disposition. The CRO, however, has no reasonable means to predict water flow through the site largely generated as a result of precipitation in the greater Charleston area. The second element of environmental-related expenditures that is out of the control of the CRO is requests by WVDEP. The CRO has gone to great lengths in the environmental clean-up process to comply with as many requests or demands of regulatory authorities relating to the clean-up process as is practicable given the limited resources of the Debtor. Costs associated with such compliance have not proven to be predictable. Since appointment of the CRO approximately $1,700,000 has been expended on water collection and disposition, and approximately $5,374,000 has been expended on site remediation related matters. Accordingly, since the Petition Date, no less than approximately $10,470,000 has been expended on matters relating directly to cleanup resulting from the Incident.

Through the end of February 2015, approximately $600,000 has been incurred by the Debtor for fees and expenses of special environmental counsel. This amount does not include the additional counsel costs incurred in responding to coordinating with and otherwise addressing requests and inquiries from regulatory authorities other than the WVDEP, or counsel fees in connection with matters implicating the intersection between bankruptcy law and environmental and other regulatory matters.

C. Impact of the Incident on Debtor's Pre-Petition Business Operations

Within hours after the Incident, regulatory officials and media representatives inundated the Etowah Terminal. In the days following the Incident, officials from more than a dozen civil and criminal regulatory agencies were on site. In some instances, the demands of one regulatory agency were in direct conflict with the demands of another.

As early as the morning of January 10, 2014, class action lawsuits seeking damages, began to be filed. Freedom's vendors and customers quickly became aware of the overwhelming number of lawsuits being filed against Freedom. This caused significant anxiety among Freedom's primary vendors and customers regarding Freedom's ability to continue operating its business. Vendors began restricting credit terms, demanding payments on outstanding invoices, and, in some instances, threatened to terminate their relationships with Freedom. Likewise, customers began seeking assurances that Freedom would be able to perform pursuant to various supply contracts. Freedom struggled to provide such assurances, particularly in light of the increasing number of regulatory demands and class action lawsuits filed against Freedom in the days subsequent to the Incident.

As a result of tightening credit, reduced customer-orders, and rapidly escalating emergency response expenses, Freedom quickly began suffering from liquidity constraints. It quickly became clear that Freedom's public reputation had been damaged so significantly that obtaining traditional financing, particularly in the expedited timeframe in which Freedom believed was required to survive, would be impossible.

D. Filing of Bankruptcy Petition

Freedom determined that the most efficient and equitable way to address the significant issues faced as a result of the Incident was the consolidation of as many issues and interests as possible through a chapter 11 bankruptcy process. Bankruptcy Counsel was engaged shortly before the Petition Date, and preparations began for an orderly yet expedited bankruptcy filing. On January 17, 2014, Debtor filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* in the Bankruptcy Court.

E. Debtor's Attempt to Reorganize in Chapter 11

The Debtor filed for bankruptcy protection with an initial intention to reorganize its business and affairs. Accordingly, the first few weeks of the Debtor's bankruptcy proceeding involved actions in furtherance of that intention. As discussed in more detail below, the Debtor believed that there were three critical pieces to its reorganization: 1) obtaining financing sufficient to both overcome the liquidity issues it was experiencing and fund ongoing environmental cleanup; 2) using appropriate bankruptcy mechanisms at its disposal to stabilize its relationships with vendors and customers during its "busy season" so that the Debtor could use its inventory to generate cash to fund a plan of reorganization; and 3) finding the most efficient and effective way to address the multitude of class action lawsuits filed against the Debtor as well as addressing other claims related to the Incident that were not embodied in the class action lawsuits.

1. Post-Petition Financing

In furtherance of its intention to reorganize, on the Petition Date, the Debtor filed a motion (the "DIP Motion") for interim and final order authorizing debtor-in-possession financing (Docket No. 2), seeking an interim and final order authorizing the Debtor to obtain post-petition credit from WV Funding LLC (the "DIP Lender") up to an aggregate principal amount outstanding not to exceed $4,000,000.00 on

an interim basis and $5,000,000.00 at any time thereafter. The DIP Lender was a newly formed entity, formed for the purpose of serving as the DIP Lender and ultimately owned by Mr. Forrest. This arrangement was viewed by the Debtor as its only opportunity to reorganize as a going concern enterprise.

Based on initial budgets prepared by the Debtor's management, the Debtor was of the initial impression that $5,000,000 would be sufficient to stabilize its business operations, reassure its vendors and customers that it would continue to operate, and allow the Debtor to adequately address environmental matters as required by applicable law.

Following extensive negotiations among the Debtor, the DIP Lender, the US Trustee, WVAWC and certain counsel to purported class action plaintiffs, on January 28, 2014, the Bankruptcy Court entered the Agreed Interim Order Authorizing Debtor-in-Possession Financing (Docket No. 96). On February 21, 2014, the Court entered the Second Interim Order Authorizing Debtor-in-Possession Financing (Docket No. 152).

The DIP Lender funded an initial advance of $3.0 Million (the "DIP Proceeds") to the Debtor. As discussed below, in early February 2014, the Debtor determined in its business judgment, after consultation with counsel, that the Debtor would not be able to reorganize its business and affairs as a going concern enterprise. The Debtor did not use any of the DIP Proceeds, and, upon demand by the DIP Lender, and after conferring with the Committee, the Debtor repaid all DIP Proceeds to the DIP Lender in March 2014. The Debtor owes no outstanding obligations to the DIP Lender.

2. **Debtor's Attempt to Stabilize its Business Operations**

Also in furtherance of its preliminary reorganization efforts, on the Petition Date, the Debtor filed standard "first day" motions, as follows:

a) Motion for authority to pay pre-petition wages, benefits, and taxes ("Employee Wage Motion");

b) Motion for authority to pay section 503(b)(9) claims ("Section 503(b)(9) Motion");

c) Motion for authority to continue using cash management system, bank accounts, and business forms ("Cash Management Motion");

d) Motion for authority to pay pre-petition taxes ("Tax Motion");

e) Motion for authority to pay certain essential trade vendors' prepetition obligations pursuant to 11 U.S.C. § 105(a) and 363(b) ("Critical Vendor Motion");

f) Motion for an order prohibiting utility companies from altering, refusing, or discontinuing services on account of prepetition invoices and authorizing and approving procedures for providing adequate assurance of future performance ("Utility Motion").

On January 21, 2014, the Bankruptcy Court held a hearing on the above-referenced motions and subsequently entered orders approving each motion. See, Docket Nos. 50, 51, 52, 56, 57, and 63 respectively.

The Debtor believed that the Employee Wage Motion was critical to its reorganization efforts because it ensured that its employees were paid for wages and benefits earned, thereby reducing the risk that those employees would cease working at a critical juncture of the Debtor's operations. Likewise, the Debtor believed that the Cash Management Motion, Utility Motion, and Tax Motion were necessary to avoid any unnecessary disruption to the Debtor's business.

Historically, the Debtor's business operations generated the majority of its revenue during the winter timeframe. During the warmer months, the consolidated entities now comprising the Debtor historically would re-build its inventory used in its freeze conditioning operations. From approximately December through March, the Debtor would generate the majority of its annual revenue by using those stockpiled materials in performing freeze conditioning services for its customers.

Because the Incident occurred at the beginning of the Debtor's "busy season," the Debtor initially believed that it had a sufficient stockpile of materials to continue operating and generating revenue that could be used to pay the administrative expenses incurred post-petition while simultaneously providing funds that could be used, to address environmental matters. The DIP Motion was expected to supplement liquidity in light of extraordinary one-time expenses encountered by Freedom as a result of the Incident.

The Debtor, in its business judgment, believed that it was necessary to reestablish credit terms with its "critical" vendors in order to reorganize. From and after the Incident, to the extent that vendors would do business with Freedom, essentially all vendors required cash in advance or cash on delivery payment. Accordingly, the Critical Vendor Motion was designed to limit the disruption that the Debtor's bankruptcy proceeding had on the Debtor's vendors in an effort to compensate those vendors for pre-petition goods and services in exchange for the same credit terms that existed prior to the Incident. The Debtor believed that this would allow the Debtor to resume more manageable payment relationships with its vendors and ease the strain on its cash flow.

After the Bankruptcy Court approved the Critical Vendor Motion, the Debtor, in conjunction with its financial advisers and legal counsel, began the task of negotiating terms with its critical vendors. In some instances, the Debtor reached agreements with certain critical vendors.

Prior to completing negotiations with critical vendors, the Debtor's approach shifted from attempting to reorganize its business to an orderly wind down of operations. The orderly wind down was implemented in a manner that allowed for maximization of the Debtor's existing inventory and the transition of customers to alternative suppliers in order to allow for maximizing the recovery of accounts receivable. Since the Petition Date, the Debtor has collected approximately $17.5 million of the $19 million in accounts receivable existing on the Petition Date or created thereafter through ordinary course sale of inventory. The shift in focus from going concern to wind down operations and the limited timeframe within which going concern operations occurred resulted in very few vendors actually having satisfied the requirements for treatment as critical vendors. As a result, there were no critical vendor payments made in the case.

3. **Chemical Spill Lawsuits**

On the Petition Date, approximately twenty-eight (28) lawsuits naming Freedom as a defendant were pending in state and federal district court (the "Chemical Spill Lawsuits"). The Debtor believed that promptly determining a strategy to address the Chemical Spill Lawsuits was critical to assuring its vendors and customers that the Debtor had a realistic path to reorganization.

The Debtor determined that litigating dozens of lawsuits in different forums was untenable. The Debtor, with advice of counsel, determined, in its business judgment, that it was necessary for strategic and efficiency purposes to consolidate the Chemical Spill Lawsuits in one forum.

On February 21, 2014 and February 22, 2014, the Debtor filed notices ("Freedom's Notices of Removal") in the Bankruptcy Court pursuant to Rule 9027 of the Bankruptcy Rules removing each of the Chemical Spill Lawsuits in which Freedom was a named defendant. On or about February 24, 2014, WVAWC filed notices ("WVAWC's Notices of Removal" and, collectively with Freedom's Notices of Removal, the "Notices of Removal") in the Bankruptcy Court pursuant to Rule 9027 of the Bankruptcy Rules removing each of the Chemical Spill Lawsuits in which the Debtor was not a named defendant.

Subsequent to the filing of the Notices of Removal, on March 3, 2014, the Debtor and WVAWC filed a motion to withdraw the reference of the Chemical Spill Lawsuits to the District Court. On April 16, 2014, the District Court entered a Memorandum Opinion and Order withdrawing the reference of the Chemical Spill Lawsuits and consolidating those lawsuits into one case for purposes of remand arguments, at case No. 14-14845 (the "Consolidated Action").

On June 3, 2014, plaintiffs in the Consolidated Action filed a joint motion to remand ("Remand Motion") and brief in support thereof. The purpose of the Remand Motion was to have the Chemical Spill Lawsuits heard by a state court judge in Kanawha County, West Virginia. On June 27, the defendants, including the Debtor, filed a joint brief (the "Response Brief") in opposition to the Remand Motion. On July 18, 2014, plaintiffs filed a reply to the Response Brief. Substantial additional argument and briefing has occurred before the District Court in the Consolidated Action. Since the time of execution of a term sheet for a proposed class action settlement involving the Debtor (which settlement, as described below, is no longer moving forward) the Debtor has taken a neutral position with respect to the venue in which the class action litigation should properly occur. The Plan is neutral with respect to the venue for the class action litigation as well. The District Court has not made a ruling with respect to the Remand Motion, and the Debtor has no indication at this time when such ruling may occur.

Almost immediately following the filing of the Notices of Removal, certain plaintiffs' representatives contacted counsel to the Debtor in an effort to discuss a global resolution. Those discussions ultimately resulted in the outline of a global settlement. This settlement in principle was memorialized in a comprehensive term sheet previously filed by the Debtor as Exhibit "B" to the Debtor's Disclosure Statement (the "Prior Disclosure Statement") dated as of August 18, 2014 [Docket No. 532]. Within approximately one month following the Debtor having filed a Plan of Liquidation (the "Prior Plan") dated as of August 18, 2014 [Docket No. 531], the Bankruptcy Court issued certain rulings [Docket No. 557] critical of the Prior Plan and the Prior Disclosure Statement. Subsequently, after notice and hearing [Docket No. 587], and upon recommendation by the Committee, the Bankruptcy Court made an oral ruling requiring the Debtor to focus its efforts primarily, if not exclusively, on environmental remediation matters.

The class action settlement term sheet was premised on certain assumed levels of cash available to the Debtor and certain other financial projections. With the passage of time and the substantial cash dedicated to environmental remediation efforts, the financial assumptions on which the class action settlement term sheet was premised are no longer applicable in the current context of this Case. Likewise, certain pleadings filed by WVAWC made clear that WVAWC intended to vigorously oppose the proposed class action settlement and the Prior Plan, which was premised on the class action settlement term sheet. For these reasons, the Debtor and counsel to the then-proposed putative settlement class action plaintiffs determined not to further pursue approval of the proposed class action settlement.

Notwithstanding the fact that approval of the proposed class action settlement is no longer being pursued, negotiations relating to the Plan have involved Spill Claim Counsel, whom the CRO understands to support the Plan. The CRO further understands that WVAWC does not object to the Plan.

F. General Case Information

1. **Debtor's Professionals**

McGuireWoods LLP represents the Debtor as lead bankruptcy counsel pursuant to an order entered by the Bankruptcy Court first on January 22, 2014 [Docket No. 54]. Following a request for reconsideration by the US Trustee [Docket No. 116], the Court entered an order [Docket. No. 122] amending the January 22, 2014 order to reflect that McGuireWoods, LLP was retained on an interim basis subject to the right of parties-in-interest to object thereto and setting February 21, 2014 as the deadline for parties to object to the Debtor's retention of McGuireWoods, LLP as counsel. There were no objections to retention of McGuireWoods, LLP as counsel.

Barth & Thompson is representing the Debtor as West Virginia bankruptcy counsel pursuant to an order entered by the Bankruptcy Court on January 22, 2014 [Docket No. 53]. The Court, *sua sponte*, entered an order [Docket. No. 122] amending the January 22, 2014 order to reflect that Barth & Thompson was retained on an interim basis subject to the right of parties-in-interest to object thereto and setting February 21, 2014 as the deadline for parties to object to the Debtor's retention of Barth & Thompson as counsel. There were no objections to retention of Barth & Thompson as counsel.

Babst, Calland, Clements & Zomnir, P.C. is representing the Debtor as special environmental counsel pursuant to an order entered by the Bankruptcy Court on March 4, 2014 [Docket No. 195].

Pietragallo Gordon Alfano Bosick & Raspanti LLP ("Pietragallo") is representing the Debtor as special litigation counsel pursuant to an order entered by the Bankruptcy Court on March 4, 2014 [Docket No. 194]. The primary responsibilities handled by the Pietragallo Firm in the Case have been (i) coordination with certain regulatory authorities in the course of their respective investigations of the Incident, (ii) leading matters relating to evidence preservation and review coordination, and (iii) leading matters relating to the pursuit of criminal matters by the Office of the U.S. Attorney against Freedom relating to the Incident.

Civil & Environmental Consultants, Inc. was acting as special environmental consultant to the Debtor pursuant to an order entered by the Bankruptcy Court on March 19, 2014 [Docket No. 230]. By order dated July 2, 2014 [Docket No. 454], ARCADIS US, Inc. was retained by the Debtor as replacement environmental consultant. The Debtor replaced CEC as a result of public pronouncement by the WVDEP criticizing CEC and calling for the Debtor to replace CEC following the mid-June, 2014 water overflow occurrence.

2. **Chief Restructuring Officer**

The wholly unexpected circumstances of Freedom resulting from the Incident combined with the added pressures and requirements of an emergency bankruptcy filing ultimately required the Debtor to retain an experienced crisis manager. Counsel to the Debtor urged senior management and the sole board member of the Debtor to retain a chief restructuring officer ("CRO") and specifically recommended Mark Welch of MorrisAnderson for this role. Once the sole director and senior management of the Debtor agreed to engage Mr. Welch as CRO, the Debtor then conducted discussions and negotiations with the Committee and US Trustee for the proposed appointment of Mark Welch as CRO. This process of negotiations with the Committee and US Trustee (particularly with the US Trustee), took approximately

three (3) weeks to conclude. Following these negotiations, on March 4, 2014 the Debtor filed an Emergency Application to Retain Mark Welch as CRO [Docket No. 191]. The Bankruptcy Court conducted a hearing on the proposed retention of Mark Welch as CRO on March 18, 2014 and following an evidentiary hearing on the matter where Mark Welch was required to provide extensive testimony, an order was entered appointing Mark Welch as the CRO on this date. [Docket No. 228] In connection with the retention of Mark Welch as CRO, the Debtor agreed to and did withdraw its application to retain Mr. Welch's firm, MorrisAnderson & Associates, Ltd., as financial advisor to the Debtor (subject to payment for services rendered through the date of appointment of the CRO). Since March 18, 2014, the CRO has exercised decision making authority (subject to, in certain circumstances, prior approval by the sole director of the Debtor) and complete control over the Debtor, its assets, and wind down operations, including the fulfilment of environmental obligations.

3. The Official Committee of Unsecured Creditors and Professionals

On February 5, 2014, the Office of the United States Trustee filed the Appointment of Committee of Unsecured Creditors appointing the following members of the Committee: (i) Larry Bostick, Archer Daniels Midland; (ii) Daniel K. Adkins, Hartman & Tyner, Inc.; (iii) Charles W. Lawler, Rogers Electrical Contracting Company, Inc.; (iv) Stephen Smith; and (v) Carolyn Mount, West Virginia American Water Company. Larry Bostick was appointed chair of the Committee. Mr. Bostick retired from Archer Daniels Midland during the course of this Case, and his replacement, Gary Barry, has assumed the role of Committee Chairperson.

The Committee is represented by Frost Brown Todd, LLC pursuant to an order entered by the Bankruptcy Court on March 4, 2014 [Docket No. 193]. The Debtor has worked closely and collaboratively with the Committee throughout the Case.

4. Compliance with Bankruptcy Code, Bankruptcy Rules, Local Court Rules and U.S. Trustee Deadlines

On February 17, 2014, the Debtor filed its Statement of Financial Affairs, Schedules of Assets and Liabilities, and lists of Equity Security Holders, each as amended from time to time. On February 25, 2014, the Office of the United States Trustee conducted a meeting of creditors pursuant to section 341 of the Bankruptcy Code (the "Meeting of Creditors"). The Debtor has filed all required monthly operating reports and paid all quarterly fees as and when due to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930.

G. Other Material Activities During Chapter 11 Case

1. Site Access, Evidence Preservation and Plea Agreement

On February 21, 2014, the Bankruptcy Court entered the Site Access and Evidence Preservation Order [Docket No. 149] pursuant to which the Court ordered, among other things, that (i) the Debtor provide certain litigation parties with notice of any changes made to the Remediation Plan; (ii) no tanks at the Etowah River Terminal could be moved, altered, or subjected to any destructive testing without a minimum of forty-eight (48) hours' notice; (iii) certain sampling results were to be provided by the Debtor to certain litigation parties; (iv) certain litigation parties were to be provided access to the Etowah River Terminal; and (v) the Debtor secure and maintain all documentary, electronic, and imagery evidence in its possession. This order resulted from significant negotiations among Pietragallo, McGuireWoods and counsel to a variety of parties in interest. The Debtor has fully complied with the Site Access and Evidence Preservation Order.

Pietragallo began working with the Debtor on January 10, 2014, the day after the Incident. As discussed above, officials from numerous federal and state agencies were present at the Etowah River Terminal in the days and weeks after the Incident, all of which made a variety of demands of the Debtor. During that period, Pietragallo primarily managed those demands and worked with the Debtor to address and comply with each to the greatest extent possible under the circumstances.

In mid-February 2014, the Federal Chemical Safety Board ("CSB") indicated an intention to remove certain tanks from the Etowah River Terminal, including Storage Tank Number 396 and take them off site, which would have directly impacted the Debtor's ability to preserve evidence for the benefit of the estate and other parties in interest. Pietragallo engaged in extensive negotiations with the CSB, which ultimately resulted in the CSB agreeing to allow the Debtor to retain possession of the tanks. Thereafter, representatives of Chemical Spill Claimants toured the Etowah River Terminal and photographed and tested the affected areas on several occasions. Over the course of the Case, extensive collaborative efforts have transpired where Pietragallo, in conjunction with the CRO, coordinated tank specimen, soil specimen, water specimen and other evidentiary sampling among other professionals and consultants to a substantial number of interested parties – all without the need for any intervention by the Bankruptcy Court.

Pietragallo additionally assisted the Debtor in responding to broad document requests from the United States Attorney's Office for the Southern District of West Virginia ("USAO") and the West Virginia Attorney General's Office. A federal grand jury was convened and investigated the Debtor for criminal violations related to the Incident and has made numerous document requests. Pietragallo in conjunction with McGuireWoods has overseen the production of approximately forty thousand (40,000) pages of documents to the grand jury plus also provided, following privilege review, extensive computer records of the Debtor.

Pietragallo in conjunction with lead bankruptcy counsel to the Debtor also engaged in extensive negotiations with the USAO regarding document production on a "rolling basis." This was vital to the Debtor's bankruptcy estate during the first months of the Case because, otherwise, the USAO almost certainly would have executed an immediate search warrant resulting in all of the Debtor's computers and records being seized. With all of the Debtor's financial records electronically stored, seizure of the Debtor's computers would have precluded the CRO from timely pursuing and collecting the accounts receivable that were ultimately collected. To date, those accounts receivable have brought in over seventeen million five hundred thousand ($17,500,000.00) Dollars to the Estate. Since the Incident, the Debtor has cooperated with the United States Department of Justice, through the USAO in its investigation of Freedom and the Incident. As a natural extension of this cooperation, the CRO, on behalf of the Debtor, upon advice of counsel, agreed with the USAO to consent to the filing of a three-count information incorporated by reference into a Plea Agreement that was filed with the United States District Court for the Southern District of West Virginia and docketed at Criminal Action No. 2:14-cv-00275. The Debtor agreed to plead to three counts under Federal law, as follows: (1) a violation of 33 U.S.C. § 1319(c)(1)(A) and 1311 (i.e., negligent discharge of a pollutant); (2) a violation of 33 U.S.C. § 407 and 411 (i.e., unlawful discharge of a refuse matter); and (3) a violation of 33 U.S.C. § 1319(c)(2)(A), 1311 and 1318 (i.e., knowing violation of a permit condition). As part of the Plea Agreement, the USAO agreed with the CRO on behalf of the Debtor that, among other things, the USAO would recommend to the District Court that the statutory minimum fine be assessed against the Debtor and that the USAO would not seek restitution from the Debtor given the pending chapter 11 proceedings of the Debtor and the manner in which Spill Claims are contemplated to be addressed in the Case. In turn, the Debtor agreed, among other things, to cooperate with the USAO in its ongoing investigation of the Incident, thereby saving the Debtor the substantial costs of defending a lengthy criminal trial. A hearing on approval of the Plea Agreement by the District Court was conducted on March 23, 2015. At that time the Plea Agreement was accepted by the District Court, however, the District Court took under advisement

the amount of the fine to be assessed against the Debtor. The CRO, on behalf of the Debtor, continues to work with a probation officer assigned to the matter in order to allow the probation officer to report its financial findings to the District Court. As of the date hereof, the amount of the criminal fine assessed against the Debtor has not been determined by the District Court.

2. **Appointment of Claims Agent**

On March 5, 2014, the Bankruptcy Court entered the Administrative Order Directing Discussions as to the Management of Claims and Development of a Customized Claim Form For Use By "Elk River Spill" Claimants (Docket No. 197) (the "Administrative Order"). Pursuant to the Administrative Order, the Bankruptcy Court instructed counsel to the Debtor, the Committee, representatives of the Chemical Spill Claimants, the assistant US Trustee, and the Clerk of Court to confer and develop a simplified claims process and a customized claim form.

In response to the Administrative Order, the parties participated in numerous conference calls to discuss the retention of a qualified and experienced claims agent for purposes of developing an efficient and cost effective means of noticing and administering a claim process. The Debtor solicited and received proposals from five reputable claims agents. As a result of an interview process by the Debtor and the Committee that took into account pricing, service capabilities, and experience for each of the proposed claims agents, it was ultimately determined by the Debtor and Committee with consent of the US Trustee that Rust Consulting/Omni Bankruptcy ("Rust Omni") was the best candidate to serve as claims agent for this chapter 11 bankruptcy case.

On May 1, 2014, the Debtor filed a Motion for Entry of Order Authorizing the Retention and Employment of Rust Omni as Notice and Claims Agent ("Claims Agent Motion") [Docket No. 298]. The Bankruptcy Court conducted a hearing on the Claims Agent Motion on May 13, 2014. At that hearing, the Bankruptcy Court did not approve the Claims Agent Motion and took the matter under advisement.

On June 18, 2014, the Bankruptcy Court entered an order denying the Claims Agent Motion and appointing a local claims and noticing agent, James W. Lane, Jr. (the "Local Claims Agent"), of the law firm Flaherty Sensabaugh Bonasso PLLC. [Docket No. 419]. The Claims Agent has estimated that his fees will be approximately one hundred thirty five thousand dollars ($135,000.00). The Local Claims Agent, with input from and oversight by the Bankruptcy Court, established a process for notifying potentially affected parties of their right to file a proof of claim in the Case and the deadline by which such claims were required to be filed. This process included, but was not limited to multi-media notifications and town hall meetings conducted by the Local Claims Agent.

3. **Claims Bar Date and Publication Notice Thereof**

The Bankruptcy Court originally set May 27, 2014 as the date by which to file proofs of claim against the Debtor (the "Original Bar Date"). The Committee filed a motion seeking to vacate the Original Bar Date [Docket No. 256], which the Bankruptcy Court granted on April 9, 2014 [Docket No. 262]. On June 17, 2014, the Bankruptcy Court entered an order setting August 1, 2014 as the new bar date (the "Extended Bar Date"). [Docket No. 415].

On June 18, 2014, the Local Claims Agent filed a Motion for Approval of Proposed Publication Notice of Claims Bar Date and Publication Schedule ("Motion for Notice Procedures") [Docket No. 421], which the Bankruptcy Court granted on June 18, 2014 (Doc. No. 422). Pursuant to the Motion for Notice Procedures, the Claims Agent published in several newspapers in general circulation in the Charleston, West Virginia and surrounding communities a notice of the Extended Bar Date and

information on who may file and how to file a proof of claim for several weeks. As of the Extended Bar Date, the Local Claims Agent estimated that approximately 3828 Incident Related Claims totaling approximately One Hundred Seventy Six Million ($176,0000,000) Dollars were filed. The Debtor notes that a very small number of the approximately 3828 claims timely filed comprise the majority in dollar amount of claims asserted. Many such claims appear to be contingent and/or unliquidated and may subsequently be disputed. As of the date hereof, the Debtor cannot reasonably estimate the allowable dollar amount or number of spill claims.

4. **Sale of Poca Blending Business**

On May 5, 2014, the Debtor and Lexycon, LLC ("Lexycon") executed that certain Asset Purchase Agreement pursuant to which Lexycon agreed to purchase and the Debtor agreed to sell, transfer and convey all of its right, title and interest in certain assets, properties and rights associated with the Debtor's operations at the Nitro Facility on an "as is-where is" basis. On May 16, 2014, the Court entered an order approving the Debtor's *Expedited Motion for Entry of Order Approving Sale of the Assets of the Poca Blending Business Free and Clear of all Liens, Claims, Encumbrances, and Interests* [Docket No. 342]. The sale of the Poca Blending Business closed on or about May 20, 2014, and the Debtor's estate received the sum of Five Hundred Seventy-Five Thousand ($575,000.00) Dollars.

The sale of the Nitro Facility provided two significant benefits to the Debtor's Estate. The first component is the actual sale consideration received, which far exceeded the CRO's initial expectations. The second benefit was the avoidance of risks and costs associated with the alternative to the Lexycon sale, which included decommissioning and liquidation of the Nitro Facility. By the CRO's estimate at the time of approval of the sale of the Nitro Facility, on a net basis, after taking into account the liquidation value of assets comprising the Nitro Facility the transaction with Lexycon saved the Estate approximately One Million ($1,000,000) Dollars in demolition and remediation costs. Also, unknown potential environmental obligations and limited resources available to actually decommission the facility made the Debtor's implementation of a demolition and remediation program subject to considerable execution risk and to potential costs of substantially higher amounts than the CRO's base estimates. The CRO's experience with respect to demolition and remediation of the Etowah River Terminal, coupled with the CRO's understanding of substantial regulatory issues faced by Lexycon with respect to its post-closing ownership of the Nitro Facility led the CRO to conclude that all-in costs to the Estate had the CRO not sold the Nitro Facility easily could total several times the $1.0 million cost savings estimate of the CRO.

5. **Settlement Agreement with AIG**

As of the date of the Incident, the Debtor maintained the following two insurance policies (the "Policies") where coverage was potentially implicated: (a) a Commercial General Liability and Pollution Legal Liability policy (the "Primary Policy") issued by AIG Specialty Co. and affiliated parties ("AIG"); and (b) a Commercial Excess policy (the "Excess Policy, together with the Primary Policy, the "Insurance Policies"), also issued by AIG. The two policies provide coverage for, among other things, pollution legal liability. On the date of the Incident, AIG was notified by Freedom in writing of the Incident and a demand for coverage was made. On January 10, 2014, AIG issued a reservation of rights letter but agreed, subject to reservation of rights, to accept the defense of Freedom under coverage D-2 of the Primary Policy. The Insurance Policy limit with respect to the Incident under coverage D-2 is Three Million ($3,000,000) Dollars subject to a deductible of $25,000 and the costs of certain consulting fees paid by AIG, in accordance with order of the Court. Additionally, under the Excess Policy there is certain crisis coverage up to a maximum amount of Three Hundred Thousand ($300,000) Dollars for certain specified costs approved by AIG, including a crisis response public relations firm. There is no direct right of payment by Freedom with respect to this additional crisis coverage. A public relations firm retained by Freedom immediately following the Incident was paid directly by AIG under the crisis coverage.

A variety of potential parties contacted the Debtor or AIG regarding claims that could have the effect of eroding policy limits. These parties include law firms, consultants, vendors, certain former officers or employees and claimants that filed lawsuits against Freedom arising from the Incident. Because the claims against Freedom and other insured parties greatly exceed the limits of the Insurance Policies, there is a significant risk that the Insurance Policies could be quickly exhausted.

The Debtor and AIG engaged in extensive discussions and negotiations regarding the Insurance Policies and the proper disposition of their proceeds. The Debtor and AIG disagree about the extent to which the Insurance Policies afford coverage for the varying claims asserted against the Debtor and other insured or allegedly insured parties and the costs associated with the defense of such claims. The Debtor also conferred with the Committee during the course of negotiations with AIG.

On June 24, 2014, the Debtor filed a Motion to Approve Settlement Agreement and Insurance Buy-Back Agreement Between Debtor and Insurer (the "AIG Settlement Motion") [Docket No. 432]. The AIG Settlement Motion seeks approval of a comprehensive settlement agreement that provides for, among other things, the following forms of relief:

(1) A sale by the Debtor of the Excess Policy to AIG free and clear of any and all rights, claims or interests in and now to the Excess Policy in consideration of $2,909,172.24 which represents coverage limits under the Insurance Policies relating to the Incident less certain expert costs paid directly by AIG in accordance with order of the Bankruptcy Court dated February 27, 2014 [Docket No. 186];

(2) The issuance of an injunctive order for the benefit of AIG and its affiliated entities staying and permanently enjoining any party-in-interest from asserting claims against AIG and its affiliated entities in connection with the Incident and/or the Insurance Policies; and

(3) The continuation of insurance coverage for the benefit of Freedom under the Primary Policy for losses unrelated to the Incident up to an aggregate limit of $1,000,000 subject, however, to the terms, conditions and exclusions of the Primary Policy.

A hearing on the AIG Settlement Motion was conducted by the Bankruptcy Court on July 22, 2014. At the hearing, the Former Ds and Os argued against approval of the AIG Settlement Motion primarily on the basis that they are insured parties under the Insurance Policies and that coverage E-2 (which provides for costs of defense outside of coverage limits not coverage D-2 (which provides for costs of defense within coverage limits) is the appropriate coverage relating to the Incident. In response to the objections, the Debtor requested a period for settlement negotiations, after which, in the absence of consensual resolution, briefing would occur. On July 30, 2014, the Court entered an order [Docket No. 505] providing that in the event a settlement is not filed with the Court on or before August 1, 2014, briefing on issues relating to the AIG Settlement Motion will be required, with all briefing to be completed by August 15, 2014. On August 7, 2014 the Debtor filed a status report with the Bankruptcy Court [Docket No. 513] suggesting that progress is being made in negotiations relating to the AIG Settlement Motion, but that more time is required to finalize potential resolution. On August 8, 2014, the Bankruptcy Court entered an order [Docket No. 514] extending the briefing deadline until August 22, 2014 in the event that withdrawal of the objections to the AIG Settlement Motion does not occur on or before August 15, 2014. Extensive negotiations occurred among various parties in interest. These negotiations culminated in a revised settlement with AIG pursuant to which, among other things (i) AIG agreed to pay an additional $199,318.13 under the emergency response portion of the Insurance Policies, (ii) the Former Ds and Os agreed to withdraw their objections to the AIG Settlement Motion and waive any rights, claims or interests in or to the proceeds of the Insurance Policies, and (iii) certain third party class action litigants agreed not to asset or pursue litigation claims against the Former Ds and Os

(collectively, along with other certain terms and conditions, the "Revised AIG Settlement"). The Revised AIG Settlement was memorialized in a Modified Settlement Agreement dated as of December 11, 2014 (the "Modified AIG Agreement"). The Modified AIG Agreement was filed with the Bankruptcy Court on December 12, 2014 [Docket No. 642] and linked to the AIG Settlement Motion.

Although not a participant in the underlying proceedings on approval of the AIG Settlement Motion, on December 19, 2014, Southern filed an objection (the "Southern Objection") [Docket No. 650] to the Modified AIG Agreement, arguing, *inter alia*, that the Bankruptcy Court does not have jurisdiction to enter injunctive relief provided for in the AIG Settlement Motion and the Revised AIG Settlement improperly stripped Southern of rights he alleged under the Insurance Policies. In turn, the Debtor filed papers [Docket No. 669] responsive to the Southern Objection explaining the Debtor's position regarding the late filing of the Southern Objection and the lack of merit of points espoused in the Southern Objection. The Court entered an order on March 19, 2015 (the "AIG Approval Order") [Docket No. 725] approving the Revised AIG Settlement and overruling the Southern Objection. Although the AIG Settlement Motion and Modified AIG Agreement provided for proceeds of the Insurance Policies to be held in escrow by the CRO pending further order of the Bankruptcy Court or other court of competent jurisdiction, the AIG Approval Order entered by the Bankruptcy Court required that $2.9 million of the proceeds of the Insurance Policies could only be paid to holders of Spill Claims.

On April 1, 2015, Southern filed a Notice of Appeal relating to the AIG Approval Order. [Docket No. 741] The Debtor requested that AIG close on the Modified AIG Agreement over the appeal by Southern, but AIG declined to do so. On April 2, 2015, the Debtor filed a Notice of Appeal relating to the AIG Approval Order. [Docket No. 745] The Southern and Debtor appeals of the AIG Approval Order have been transferred by the Clerk of the Bankruptcy Court to the U.S. District Court for the Southern District of West Virginia. [Docket Nos. 750 and 768]. Also, on April 2, 2015, WVDEP filed a motion in the Bankruptcy Court (the "WVDEP Reconsideration Motion") requesting, *inter alia*, that the Bankruptcy Court reconsider its findings in the AIG Approval Order with respect to the entitlement of the holders of Spill Claims to proceeds of the Insurance Policies [Docket No. 744]. On April 3, 2015, in response to the WVDEP Reconsideration Motion, the Bankruptcy Court entered an order (the "Clarification Order") clarifying the AIG Approval Order. [Docket No. 754]. The Clarification Order determined, *inter alia*, that WVDEP is entitled to priority status with respect to the Debtor's environmental obligations arising from the Incident.

The Debtor contemplates that in the event the settlements incorporated into the Plan are approved in the context of confirmation of the Plan, the appeals of the AIG Approval Order by Southern and the Debtor as well as issues relating to the Clarification Order will be resolved.

6. Investigation of Causes of Action and Proposed Settlements and Compromises

The CRO has, in the course of this Case, reviewed substantial books and records of the Debtor. The CRO has been required to review the Debtor's books and records in connection with requests for information by a variety of regulatory authorities. The CRO has likewise been involved in extensive document review in connection with the production of documents and information to the USAO in connection with two grand jury subpoenas for documents. Likewise, in connection with the Debtor's plea agreement with the USAO, the Debtor, through the CRO, as the Bankruptcy Court appointed fiduciary to the Estate, was required to execute an extensive stipulation of facts. Prior to execution of this stipulation of facts on behalf of the Debtor, the CRO investigated and negotiated these stipulations to assure their accuracy. In the course of serving the role of CRO, the CRO has also engaged in extensive dialogue with virtually every party in interest in this case and/or their respective counsel. As a result of this extensive information gathering process in the course of serving the role of CRO, and based on extensive historical

experience in a broad array bankruptcy related litigation, the CRO reached the conclusion that the most appropriate and expedient path forward to conclude this Case was to pursue settlements with as many parties in interest as reasonably possible. The CRO, with support from bankruptcy counsel, worked to construct a detailed outline for a plan of liquidation premised upon settlements with various parties in interest. This term sheet was shared and discussed with various parties in interest, including, without limitation, the Committee. In response to concerns expressed by the Committee regarding the fact that the Committee had not conducted its own independent investigation of potential Claims and Causes of Action, the CRO and bankruptcy counsel to the Debtor prepared a comprehensive analysis of hypothetical Claims and Causes of Action against certain potential defendants and likely defenses that would be asserted by potential defendants in response to these Causes of Action. This analysis applied the CRO's knowledge of facts and circumstances of Freedom and the Incident to legal precedent as explained to the CRO by the Debtor's bankruptcy counsel. This analysis was then shared by the Debtor with the Committee and an extensive discussion and question/answer session with the full Committee followed. Thereafter, the Committee provided the Debtor a list of certain modifications and terms and conditions that the Committee required in connection with a plan of liquidation that the Committee would support. The CRO accepted the Committee comments and conditions. The Plan reflects the settlements proposed by the CRO on behalf of the Debtor in the plan outline as modified based on input from the Committee and certain negotiations with other parties in interest that followed. A general summary of the settlements and compromises encompassed with the Plan follows.

7. **Settlements and Compromises as the Foundation of the Plan.**

The foundation of the Plan is a series of interdependent settlements and compromises involving numerous parties in interest in the Case. These settlements provide the basis for funding of the Plan and allow for the negotiated distributions provided for under the Plan on the Effective Date. Given the interdependence of the settlements and compromises embodied in the Plan, if any single settlement were not approved, the entirety of the Plan becomes non-feasible either as a result of the execution risks associated with the Plan and/or the inability of the Debtor to fund negotiated obligations under the Plan.

(a) **Southern**. The Estate owns potential Causes of Action against Southern. These Causes of Action may include Claims for breach of duty, fraudulent conveyance, unjust enrichment and preference among others. The Debtor has evaluated these potential Causes of Action, potential defenses to the potential Causes of Action and collectability in the event that a hypothetical judgment were obtained in respect of the Causes of Action against Southern, and determined in the context of this Case that settlement rather than litigation of Causes of Action is in the best interests of the Debtor, its Estate and creditors. In resolution of potential Causes of Action by the Estate against Southern, on the Effective Date, Southern will pay the Southern Contribution. Resolution of the Southern appeal to the District Court of the AIG Settlement Order allows the AIG Settlement Proceeds of $3,199,318 to be paid into the Estate on the Effective Date for the benefit of creditors as provided for in the Plan. In exchange for the Southern Contribution, Southern will be released of all Causes of Action by the Debtor and the Estate. Also, in exchange for the Southern Contribution, and plaintiffs in the Bar 101 Case and the Good Case among others, will be bound by the releases provided for in Section 11.11 of the Plan. Southern is also required to pay additional release consideration to the plaintiffs in the Good Case outside of the context of the Plan. Further, in connection with the Plan, Southern and the Former Ds and Os will execute a mutually satisfactory mutual release agreement on the Effective Date. The Debtor has provided its evaluation and analysis to the Committee and Spill Claim Counsel. The Committee and Spill Claim Counsel support the settlement with Southern if it is approved in conjunction with the Plan.

(b) **Chemstream**. The Estate owns potential Causes of Action against Chemstream. These Causes of Action may include claims for breach of duty, fraudulent conveyance, unjust enrichment, preference, and veil piercing, among others. The Debtor has evaluated these potential Causes of Action,

potential defenses to the potential Causes of Action and collectability in the event that a hypothetical judgment were obtained in respect of the Causes of Action against Chemstream, and determined in the context of this Case that settlement rather than litigation of Causes of Action is in the best interests of the Debtor, its Estate and creditors. In resolution of potential Causes of Action by the Debtor and the Estate against Chemstream, on the Effective Date, Chemstream will provide the Chemstream Contribution. The Debtor has no property interest in the Sale Escrow, and but for the settlements and compromises embodied in the Plan, the Debtor would not receive or be entitled to receive any portion of the Sale Escrow. In exchange for the Chemstream Contribution, Chemstream will be released of all Causes of Action by the Debtor, the Estate and certain other specified parties as set forth in the Plan. The Debtor has provided its evaluation and analysis to the Committee and Spill Claim Counsel. Also, in exchange for the Chemstream Contribution, plaintiffs in the Good Case and plaintiffs in the Bar 101 Case, among others, will be barred by the releases provided for in Section 11.12 of the Plan. The Committee and Spill Claim Counsel support the settlement with Chemstream if it is approved in connection with the Plan.

(c) **The Former Ds and Os**. The Estate owns potential Causes of Action against the Former Ds and Os. These Causes of Action may include claims for breach of duty, fraudulent conveyance, unjust enrichment, preference and veil piercing, among others. The Debtor has evaluated these potential Causes of Action, potential defenses to the potential Causes of Action and collectability in the event that one or more hypothetical judgments were obtained in respect of the Causes of Action against the Former Ds and Os, and determined in the context of this Case that settlement rather than litigation of the Causes of Action is in the best interests of the Debtor, its Estate and creditors. In resolution of potential Causes of Action by the Estate against the Former Ds and Os, on the Effective Date, the Former Ds and Os and Herzing in his capacity as Sellers' Representative will provide the Former Ds and Os Contribution. Each of CHI, as Buyer beneficiary under the Sale Escrow, and the Former Ds and Os, as Sellers through Herzing as the Sellers' Representative under the Sale Escrow, assert competing rights and claims in and to the Sale Escrow. The Debtor has no property interest in the Sale Escrow, and but for the settlements and compromises embodied in the Plan, the Debtor would not be entitled to receive any portion of the Sale Escrow. In exchange for the Former Ds and Os Contribution, the Former Ds and Os and Herzing in his capacity as Sellers' Representative will be released of all Causes of Action by the Debtor and the Estate. The Debtor has provided its evaluation and analysis to the Committee and Spill Claim Counsel. The Committee and Spill Claim Counsel support the settlement with the Former Ds and Os and Herzing in his capacity as Sellers' Representative if it is approved in conjunction with the Plan.

(d) **Proceeds Allocation**. As part of the Plan negotiation process, the Debtor, the Committee and Spill Claim Counsel agree to an allocation of amounts equal to the amount of the AIG Settlement Proceeds such that on the Effective Date $500,000 will be paid to the GC Plan Administrator for the benefit of holders of Class 3 General Unsecured Claims, $500,000 will be paid to the Spill Claim Plan Administrator for the benefit of holders of Class 4 Convenience Class Spill Claims, and $2,199,318 will be paid to the Spill Claim Plan Administrator for the benefit of the holders of Class 5 Spill Claims.

(e) **Estate Waiver and Release of Preference Actions Against Holders of General Unsecured Claims**. As part of the negotiation of terms and conditions of the Plan between the Debtor and the Committee, following an evaluation of potential Preference Actions and potential defenses to Preference Actions, it was agreed that on the Effective Date, the Debtor will waive and release all Preference Actions against holders of General Unsecured Claims. The Debtor evaluated potential Preference Actions and potential defenses to such Preference Actions and determined in the context of this Case that a waiver and release of Preference Actions is in the best interests of the Debtor, its Estate and creditors. In particular, the Debtor submits that until the date of the Incident, the Debtor was solvent, and thus any payments made by the Debtor prior to the date of the Incident that may be subject to a Preference Action would be subject to a solvency defense by defendants to such Preference Actions. The

Debtor has provided its evaluation and analysis to the Committee. The Committee supports the waiver and release of Preference Actions against the holders of General Unsecured Claims if it is approved in conjunction with the Plan.

V. PLAN OF LIQUIDATION

THE FOLLOWING DISCUSSION OF THE PLAN CONSTITUTES A SUMMARY ONLY AND IS QUALIFIED IN ITS ENTIRETY BY THE TERMS OF THE PLAN ITSELF. YOU SHOULD READ THE PLAN BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. CHANGES MAY BE MADE TO THE PLAN. ANY SUCH CHANGES MADE TO THE PLAN WILL BE DESCRIBED AT THE CONFIRMATION HEARING. A COPY OF THE PLAN IS ATTACHED AS EXHIBIT A TO THIS DISCLOSURE STATEMENT.

A. General Description of the Plan

The Plan is a plan of liquidation by which the Debtor's assets including significant potential Claims and Causes of Action will be liquidated by the Debtor on or before the Effective Date. The proceeds of this liquidation will, on the Effective Date, either (i) be distributed to creditors in accordance with the Plan, or (ii) be transferred to two Plan Administrators for subsequent distributions under the Plan: (1) the GC Plan Administrator for the benefit of the holders of Allowed Class 3 General Unsecured Claims, and (2) the Spill Claim Plan Administrator for the respective benefit of the holders of Allowed Class 4 Convenience Spill Claims and Allowed Class 5 Spill Claims.

A negotiated allocation of funds projected to be available to the Debtor on the Effective Date forms the basis for initial distributions to the Plan Administrators. The premise of the negotiated allocation of funds is that for all intents and purposes (other than certain limited testing and reporting obligations) the Debtor's environmental obligations under the Consent Order and the VRP Agreement will be satisfied prior to the Effective Date.

On the Effective Date, the Debtor will pay the GC Plan Administrator the sum of $500,000 for the benefit of the holders of Allowed Class 3 General Unsecured Claims. It is a requirement under the Plan that the GC Plan Administrator make an initial distribution to the holders of Allowed Class 3 Claims as soon as practicable after the Effective Date, following the establishment of a reserve for Disputed Class 3 Claims and projected costs of administration. Allowed Class 3 General Unsecured Claims are not projected to exceed $7.5 million in the aggregate.

On the Effective Date, the Debtor will pay the Spill Claim Plan Administrator the sum of $500,000 for the benefit of the holders of Allowed Class 4 Convenience Spill Claims. The purpose of this negotiated treatment of the holders of Allowed Class 4 Claims is to assure payment to unrepresented holders of smaller dollar amount Spill Claims for reimbursement of a portion of their respective out of pocket expenditures and/or lost wages resulting from the Incident. The Plan requires the Spill Claim Plan Administrator to make distributions to holders of Allowed Spill Claims as promptly as practicable following the Effective Date.

On the Effective Date, the Debtor will pay the Spill Claim Plan Administrator no less than the sum of $2,199,318 for the benefit of holders of Allowed Class 5 Spill Claims. The Spill Claim Plan Administrator is vested under the Plan with authority to determine the manner in which to use or distribute these funds, subject, however, to consultation with the Spill Claim Oversight Committee and approval by the Bankruptcy Court. A process by which the Spill Claim Plan Administrator will determine the manner in which to allow Class 5 Spill Claims will be subject to the same oversight and approval. The most notable potential Claims and Causes of Action that are not settled and resolved by

virtue of the Plan are those relating to the Incident and the CRO encouraged settlement negotiations among WVAWC and Spill Claim Counsel, however, the CRO was not successful in causing such negotiations to occur. The Plan takes a neutral position with respect to these potential Claims and Causes of Action and defenses thereto and does not waive or otherwise address them. The Spill Claim Plan Administrator is vested with authority, subject to consultation with the Spill Claim Oversight Committee, to determine an approach to all Claims and Causes of Action not waived and released under the Plan. The GC Plan Administrator on behalf of the holders of Allowed Class 3 Claims is entitled to share in net recoveries from Claims and Causes of Action, after payment of all costs associated with pursuing such Claims and Causes of Action, on a 50/50 basis with the Spill Claim Plan Administrator until the GC Plan Administrator recovers $7,000,000 from Claims and Causes of Action, and then all such proceeds shall be for the benefit of holders of Allowed Class 5 Claims.

B. Unclassified Allowed Claims and Their Treatment

1. **Administrative Expense Claims**

i. **Administrative Expense Claims Bar Date**. All requests for the allowance and payment of an Administrative Expense Claim must be filed **as a motion** with the Bankruptcy Court and served upon the Debtor, the Committee and other parties-in-interest, in accordance with the Bankruptcy Code and the Bankruptcy Rules, no later than the first Business Day that is 30 days after the Confirmation Date or such other date as approved by order of the Bankruptcy Court. Holders of alleged Administrative Expense Claims must satisfy the burden regarding allowance and payment of Administrative Expense Claims applicable in this district. **The failure to file and serve such a motion for allowance and payment of an Administrative Expense Claim timely and properly shall result in the Administrative Expense Claim being forever barred and discharged. For the avoidance of doubt, an Administrative Expense Claim asserted through a proof of claim filed in the Case is invalid unless a timely motion for allowance and payment of an Administrative Expense Claim is filed.**

ii. **Payment to Holders of Allowed Administrative Expense Claims.** To the extent any non-Professional Administrative Expense Claims are Allowed pursuant to Section 2.1(a) of the Plan, the holder of such Claim will be paid by the Debtor in Cash the Allowed amount of such Claim on the Effective Date or paid by the Spill Claim Plan Administrator in Cash the Allowed amount of such Claim as soon thereafter as practicable unless the holder of such Claim agrees to alternative treatment with the Debtor prior to the Effective Date or the Spill Claim Plan Administrator thereafter.

2. **Professional Fee Compensation and Reimbursement Claims.**

i. Within ten (10) days after the Confirmation Date, all Professionals shall provide the CRO an accounting of any accrued and unpaid fees owed to the Professional through the Confirmation Date and shall provide an estimate of fees expected to be incurred through the Effective Date. The CRO shall hold an amount reasonably estimated by the CRO as necessary to pay all accrued and unpaid fees and expenses owed to Professionals through the Effective Date in the Professional Fee Escrow Account. The CRO shall maintain and control the Professional Fee Escrow Account, and distribute proceeds thereof in accordance with the Plan and Final Orders of the Bankruptcy Court or other court of competent jurisdiction.

ii. All Professionals or other Persons seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 327, 328, 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code shall file their respective final applications for allowance of

compensation for services rendered and reimbursement of expenses incurred no later than twenty (20) days after the Effective Date.

iii. Professionals shall be paid in full by the CRO from the Professional Fee Escrow Account all amounts due and unpaid that are allowed by Final Order of the Bankruptcy Court or another court of competent jurisdiction as soon as practicable following entry of such Final Order.

iv. In the event that the Professional Fee Contribution Amount is necessary in order to allow the Debtor to consummate the Plan on the Effective Date, the Professional Fee Contribution Amount shall be funded by Professionals as follows:

(a) an initial amount of up to $150,000 contributed 75% by McGuireWoods and 25% by Frost Brown Todd;

(b) an amount in excess of $150,000 but less than $300,000 contributed equally by Babst Calland, CEC and Pietragallo; and

(c) an amount in excess of $300,000 but not to exceed $450,000 contributed equally by McGuireWoods and Pietragallo.

v. Any funds remaining in the Professional Fee Escrow Account after payment of all unpaid Claims of Professionals allowed by a Final Order shall be paid by the CRO to the Spill Claim Plan Administrator for such purposes as determined by the Spill Claim Plan Administrator.

3. **Fees Under 28 U.S.C. §1930.** All fees payable in the Case under 28 U.S.C. §1930, as agreed by the CRO or as determined by the Bankruptcy Court, will, if not previously paid by the Debtor, be paid in Cash on the Effective Date or as soon thereafter as is practicable by the Spill Claim, Plan Administrator and will continue to be paid by the Spill Claim Plan Administrator as required under 28 U.S.C. §1930 until such time as an order is entered by the Bankruptcy Court closing the Case.

C. Treatment of Classified Claims and Equity Interests

1. **Class 1 – IRS Secured Claims**. In full and complete satisfaction of the Class 1 Secured Claim of the IRS, on the Effective Date, the unpaid principal and interest components of the Class 1 Secured Claim of the IRS will be deemed an Allowed Claim and the IRS will be paid in Cash the unpaid principal and interest portions of this Claim estimated to total approximately $500,000. In consideration of the allowance and payment of this Claim on the Effective Date, the IRS will waive all penalty amounts associated with this Claim upon receipt of payment in respect of the IRS Class 1 Secured Claim

Class 1 is impaired under the Plan. Holders of Allowed Class 1 Claims are entitled to vote to accept or reject the Plan.

2. **Class 2 – Priority Tax Claims**. Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a different treatment, holders of Allowed Priority Tax Claims, if any, shall be paid in Cash by the CRO on the Effective Date, or if any such Claim is Disputed, then the Spill Claim Plan Administrator will pay the full amount of any such Allowed Priority Tax Claim as soon as reasonably practicable following allowance of any or all such portion(s) of a Disputed Priority Tax Claim. In the event that any Priority Tax Claim is Disputed as of the Effective Date the CRO and the Spill Claim Plan Administrator will agree to an amount to be held by the Spill Claim Plan Administrator in its

Disputed Claim Reserve, and on the Effective Date the CRO will pay such amount to the Spill Claim Plan Administrator.

Class 2 is impaired under the Plan. Holders of Allowed Class 2 Claims are entitled to vote to accept or reject the Plan.

3. **Class 3 – General Unsecured Claims**. On the Effective Date, the GC Plan Administrator shall be paid $500,000 for the benefit of holders of Allowed Class 3 General Unsecured Claims. After establishing reserves in an amount sufficient to address costs of administration and Disputed Class 3 General Unsecured Claims, the GC Plan Administrator will make a pro rata distribution to holders of Allowed Class 3 Claims as soon as reasonably practicable after the Effective Date in accordance with the Plan. In addition to receipt of $500,000 on the Effective Date, the GC Plan Administrator, for the benefit of the holders of Allowed Class 3 Claims, will participate with the Spill Claim Plan Administrator in receipt of fifty (50%) percent of net recoveries from Causes of Action not otherwise released under the Plan, after reimbursement of all fees and expenses associated with such Causes of Action, up to a maximum recovery by the GC Plan Administrator on behalf of holders of Class 3 Claims of $7,000,000. The GC Plan Administrator will distribute proceeds of Causes of Action on a pro rata basis to holders of Allowed Class 3 Claims in accordance with the Plan as soon as reasonably practicable following receipt of such proceeds by the GC Plan Administrator. Upon the Effective Date, the Debtor and the Estate will waive and release Preference Actions against holders of General Unsecured Claims.

Class 3 is impaired under the Plan. Holders of Allowed Class 3 Claims are entitled to vote to accept or reject the Plan.

4. **Class 4 – Convenience Spill Claims**. In full and complete satisfaction of all Class 4 Convenience Class Spill Claims, on the Effective Date, the Spill Claim Plan Administrator shall be paid $500,000 for the benefit of the holders of Class 4 Convenience Class Spill Claims. On or as soon as practicable following the Effective Date, the Spill Claim Plan Administrator will pay each holder of a Class 4 Convenience Class Spill Claim their pro rata share of $500,000. The Spill Claim Plan Administrator will use his or her best efforts to make distributions to the holders of Allowed Class 4 Convenience Class Spill Claims as soon as practical after the Effective Date in accordance with the Plan. The Spill Claim Plan Administrator has the authority to compromise and settle Class 4 Convenience Class Spill Claims and to make distributions to holders of Allowed Class 4 Convenience Class 4 Spill Claims without Bankruptcy Court authority. The Spill Claim Plan Administrator will file a notice with the Bankruptcy Court: (a) identifying the date of distribution to holders of Allowed Class 4 Convenience Class 4 Spill Claims; and (b) listing the claim number and amount of the distribution (the "Class 4 Convenience Spill Claim Distribution Notice"). The Spill Claim Plan Administrator will file the Class 4 Convenience Spill Claim Distribution Notice on or before fifteen (15) days after the distribution date.

Class 4 is impaired under the Plan. Holders of Allowed Class 4 Claims are entitled to vote to accept or reject the Plan.

5. **Class 5 – Spill Claims**. On the Effective Date, the Spill Claim Plan Administrator shall be paid $2,199,318 for the benefit of the holders of Allowed Class 5 Spill Claims. The Spill Claim Plan Administrator, in consultation with the Spill Claim Oversight Committee, and subject to Bankruptcy Court approval will determine the manner in which to utilize and/or distribute the $2,199,318 for the benefit of the holders of Allowed Class 5 Spill Claims. The Spill Claim Plan Administrator, for the benefit of the holders of Allowed Class 5 Spill Claims, shall receive the balance of the Professional Fee Escrow Account and the balance of the DEP Dedicated Fund, if any, after payment of all Allowed Claims of Professionals in accordance with Section 2.2 of the Plan and the payment of all

obligations required under the DEP Consent Order and the VRP Agreement. The Spill Claim Plan Administrator shall utilize excess proceeds of the Professional Fee Escrow Account, if any, and the excess proceeds of the DEP Dedicated Fund, if any, as determined in the reasoned judgment of the Spill Claim Plan Administrator, after consultation with the Spill Claim Oversight Committee and subject to Bankruptcy Court approval as required by the Plan. The Spill Claim Plan Administrator, for the benefit of the holders of Allowed Class 5 Spill Claims, will participate with the GC Plan Administrator in receipt of fifty percent (50%) of net recoveries from Causes of Action not otherwise released under the Plan, after reimbursement of all fees and expenses associated with such Causes of Action, until such time as the GC Plan Administrator receives the sum of $7,000,000 from proceeds of Causes of Action, at which time the Spill Claim Plan Administrator shall receive for the benefit of the holders of Allowed Class 5 Spill Claims, one hundred percent (100%) of all additional proceeds from Causes of Action. The Spill Claim Plan Administrator, in consultation with the Spill Claim Oversight Committee, will distribute proceeds of Causes of Action as soon as practicable following receipt of the same subject to Bankruptcy Court approval. The Spill Claim Plan Administrator or its designee shall also receive, for the benefit of holders of Allowed Class 5 Spill Claims, and in accordance with Section 4.6, all equity interests in the Debtor on the Effective Date.

Class 5 is impaired under the Plan. Holders of Allowed Class 5 Claims are entitled to vote to accept or reject the Plan.

6. **Class 6 – Equity Interests.** On the Effective Date, all Equity Interests in the Debtor shall be deemed cancelled without further action by the Debtor, and 100% of new equity interests in the Debtor shall be issued to the Spill Claim Plan Administrator or its designee for the benefit of the holders of Class 5 Spill Claims on the Effective Date. No holder of a Class 6 Equity Interest in the Debtor shall receive or retain any property or interest in property on account of such Equity Interest.

Class 6 is impaired under the Plan, and the holders of Allowed Class 6 Equity Interests are deemed to reject the Plan.

D. Means for Implementation and Execution of the Plan

1. **Settlements and Compromises as the Foundation of the Plan.** The foundation of the Plan is a series of interdependent settlements and compromises involving numerous parties in interest in the Case. These settlements provide the basis for funding of the Plan and allow for the negotiated distributions provided for under the Plan on the Effective Date. Given the interdependence of the settlements and compromises embodied in the Plan, if any single settlement were not approved, the entirety of the Plan becomes non-feasible either as a result of the execution risks associated with the Plan or the inability of the Debtor to fund negotiated obligations under the Plan.

2. **Payment of Cash to the Plan Administrator and Issuance of Equity Interests in the Debtor to the Spill Claim Plan Administrator.**

(a) On the Effective Date, the Debtor shall pay Cash to the Plan Administrators as designated in the Plan and issue Equity Interests in the Debtor to the Spill Claim Plan Administrator.

(b) On the Effective Date, as a result of the issuance of Equity Interests in the Debtor to the Spill Claim Plan Administrator, all of the Debtor's privileges, including, but not limited to, corporate privileges, confidential information, work product protections, attorney-client privileges, and other immunities or protections (the "Privileges") shall be transferred, assigned and delivered to the Spill Claim Plan Administrator, without waiver, limitation or release, and shall vest with the Spill Claim Plan

Administrator for the benefit of the holders of Class 5 Claims. The Spill Claim Plan Administrator shall hold and be the beneficiary of all Privileges and entitled to assert all Privileges.

(c) The transfer of Cash to the Plan Administrators shall be made for the benefit of the holders of Class 3, Class 4 and Class 5 Claims, respectively, but only to the extent that holders of Class 3, Class 4 and Class 5 Claims are entitled to distributions under the Plan.

(d) The Plan Administrators shall be subject to the terms and conditions of the Plan and the Confirmation Order.

(e) The designation of the Plan Administrators shall be effective on the Effective Date without the need for a further order of the Bankruptcy Court. The Plan Administrators shall exercise reasonable business judgment in the exercise of their duties under the Plan.

(f) The Plan Administrators may invest Cash paid to them in accordance with the Plan for the benefit of the holders of Class 3 Claims and Class 5 Claims, respectively in short term overnight investments or longer term investments as permitted by section 345 of the Bankruptcy Code.

(g) The costs and expenses of the fulfillment of duties of the Plan Administrators under the Plan, including the fees and expenses of the Plan Administrators and their respective retained professionals, shall be paid by the Plan Administrators from the Cash received under the Plan. Such costs and expenses shall be treated with a first priority right of distribution, and without prior approval by the Bankruptcy Court. Each Plan Administrator shall retain such amounts as are reasonably necessary (at the discretion of the Plan Administrators) to meet the future fees and expenses expected to be incurred in administering obligations of each Plan Administrator under the Plan.

3. **Compensation of the Plan Administrators**. The Plan Administrators shall be entitled to reasonable compensation paid from the Cash distributions provided for under the Plan. Compensation to the Spill Claim Plan Administrator shall be approved by the Spill Claim Oversight Committee. Compensation to the GC Plan Administrator shall be approved by the Committee prior to the Effective Date.

4. **Distributions**. The Plan Administrators shall make distributions in accordance with the Plan, beginning as soon after the Effective Date as is deemed practicable by the Plan Administrators in their respective reasoned judgment, from Cash received under the Plan and proceeds of the Causes of Action, except with respect to such amounts (i) as would be distributable to a holder of a Disputed Claim if such Disputed Claim had been Allowed prior to the time of such distribution (but only until such Claim is resolved); (ii) as are reasonably necessary to meet contingent liabilities; (iii) to pay reasonable expenses; and (iv) to satisfy other liabilities incurred by the Plan Administrators in accordance with this Plan.

5. **Retention of Professionals by the Plan Administrators**. The Plan Administrators shall be entitled to engage professionals to assist the Plan Administrators in fulfilling their duties under the Plan. Professionals engaged by a respective Plan Administrator shall be compensated in accordance with Section 5.2(h) of the Plan. The Plan Administrators may, in their sole discretion, retain the services of counsel to the Committee.

6. **Authority to Settle and Grant Releases**. Without limiting the generality of this Section, in connection with the compromise and settlement of any Causes of Action of the Debtor and the Estate not otherwise waived and released under the Plan, the Spill Claim Plan Administrator is authorized

to settle Causes of Action of the Debtor and the Estate, and release and discharge, to the fullest extent permitted by applicable Law, non-Debtor parties to Causes of Action from all Causes of Action of the Debtor and the Estate to which the Spill Claim Plan Administrator is a party in accordance with the Plan, subject to approval by the Bankruptcy. Any such settlement and/or release, however, shall be subject to prior written consent of the GC Plan Administrator. Any settlement effectuated prior to the Confirmation Date, upon approval thereof by the Bankruptcy Court or other court of competent jurisdiction, shall be deemed incorporated into the Plan by reference, and entry of the Confirmation Order, including provisions of such settlement, shall be deemed a settlement pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019. The Spill Claim Plan Administrator shall have the authority to settle or otherwise dispose of any Disputed Class 5 Claim or Cause of Action of the Debtor and the Estate (with prior written approval by the GC Plan Administrator) subject to approval of the Bankruptcy Court,. The GC Plan Administrator shall have the right to settle or otherwise dispose of any Disputed Class 3 Claim subject to approval by the Bankruptcy Court.

7. **Attorney-Client Privilege**. Any attorney-client privilege, work-product privilege or other privilege or immunity that Debtor or the Estate are entitled to assert shall vest in the Spill Claim Plan Administrator on and after the Effective Date, and the Spill Claim Plan Administrator shall be entitled to assert such privilege and immunity to the same extent that the Debtor or the Estate were entitled to do so prior to the Effective Date. For purposes of clarity, Section 5.2(l)of the Plan is not intended to expand or restrict the rights, if any, of third parties to their own privileges or any common interest or joint privileges. Such privileges, if any, are not waived or transferred by this provision.

8. **Federal Income Tax Treatment of Plan Administrator**. The Plan provides for the appointment of the GC Plan Administrator and the Spill Claim Plan Administrator on the Effective Date to address claims and distributions. For tax purposes, the following options are available to the Plan Administrators on the Effective Date and are the most likely treatment for assets and claims in the circumstances of this Plan:

(a) Qualified Settlement Fund (QSF)**.** The assets of the Debtor required to be distributed to the Plan Administrators may be transferred to a QSF. The QSF is treated as a separate taxpayer. The transfer of assets to the QSF is not taxable to the QSF; that is, it receives the assets without such receipt being treated as income. Similarly, it pays no tax on the distribution of the assets to the creditors or claimants. The QSF does pay tax on any income it earns. In most cases, this is interest. The QSF treats its administrative costs as deductible expenses. Thus, only if its income exceeds its expenses does it pay tax. It files a Form 1120-SF, which it must file even if it has a loss. When the QSF makes distributions to the creditors or claimants, it may be required to issue Forms 1099-MISC.

(b) Liquidating Trust**.** Subject to appropriate documentation, on the Effective Date, distributions payable to the Plan Administrator in accordance with the Plan may be paid to a liquidating trust. Although the assets are actually transferred to the Liquidating Trust, the liquidating trust approach treats the Debtor's assets as if the assets were first distributed to the holders of Allowed Claims and such holders of Allowed Claims then contributed the assets to the liquidating trust. This constitutes a completed transfer of the assets by the Debtor. At the time of the deemed distribution to the creditors, the creditors determine the tax consequence of the deemed distribution – usually a business bad debt deduction for the creditors. Because the creditors are treated as having contributed the assets to the liquidating trust, each of them is a grantor to the extent of the assets it contributed. The mechanics of the tax filings for the liquidating trust would likely require the filing of a Form 1041 and provide a statement to each grantor of its portion of the trust's income and expenses.

(c) Plan Administrator Deemed as Holding Assets for Benefit of Applicable Claimants**.** Rather than treating the assets as transferred to a liquidating trust, the assets might be treated as transferred to the Plan Administrator in trust for the benefit of creditors and claimants. The Plan might be treated as a simple trust. The Plan Administrators would determine the items of income and expenses and distribute any distributable net income to the applicable holders of Allowed Claims. There would likely be no taxable income because the expenses would exceed the income. The Plan Administrators respectively, as trustees would file a Form 1041 for the trust and issue Schedules K-1 to the holders of Allowed Claims.

(d) Plan Administrators Treated as Controlling Assets of the Debtor**.** The Plan Administrators could be treated as taking control of the Debtor's assets without the tax ownership of the assets ever leaving the Debtor. If there is any income earned, the Debtor would be responsible for any required taxes and the Spill Claim Plan Administrator, by virtue of the control exercised over the Debtor, would be responsible for filing tax returns on behalf of the Debtor.

9. **Dissolution**. After the Effective Date, Freedom Industries, Inc. shall be dissolved and the Spill Claim Plan Administrator discharged at such time as (i) all Disputed Class 5 Claims have been resolved, (ii) all Causes of Action have been settled and resolved or judgments entered by Final Order and liquidated, and (iii) all distributions required to be made by the Spill Claim Plan Administrator under the Plan have been made. The GC Plan Administrator shall be discharged at such time as all distributions required under the Plan to holders of Allowed Class 3 Claims have been made. Freedom Industries, Inc. shall only exist for a period as long as is necessary to facilitate or complete the recovery and liquidation of the Causes of Action and distribution of their proceeds. The Spill Claim Plan Administrator shall not unduly prolong the duration of Freedom Industries, Inc. and shall at all times endeavor to resolve, settle or otherwise dispose of all Causes of Action, and to effect the distribution of the proceeds of the Causes of Action in accordance with the terms hereof, and dissolve Freedom as soon as practicable.

10. **Indemnification of Plan Administrators**. The Plan Administrators and their respective agents and professionals shall not be liable for actions taken or omitted in their capacity as, or on behalf of, the holders of Claims for whose benefit each respective Plan Administrator is appointed, except those acts, or omissions as determined by Final Order of a court of competent jurisdiction, arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty or ultra vires acts, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Plan Administrators, except for any actions or inactions involving willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty; or ultra vires acts

11. **Distributions to Holders as of the Confirmation Date.** As of the close of business on the Confirmation Date, the Claims Register, the equity register and transfer and other registers as maintained by the Clerk of the Bankruptcy Court, will be closed and there will be no further changes in the record holder of any Claim or Equity Interest. The Plan Administrators will have no obligation to recognize any transfer of any Claim or Equity Interest occurring after the Confirmation Date. The Plan Administrators will instead be authorized and entitled to recognize and deal for all purposes under the Plan with only those record holders stated on the Schedules and/or Claims Register, as the case may be, and other registers as of the close of business on the Confirmation Date.

12. **Closing of Case by Charitable Gift.** If at any time either or both of the Plan Administrators determine (and in the instance of the Spill Claim Plan Administrator with consent of the Spill Claim Oversight Committee) that the expense of administering matters for which a Plan Administrator is responsible under the Plan is likely to exceed the value of the Cash remaining in the

possession of a Plan Administrator, the respective Plan Administrator may apply to the Bankruptcy Court for authority to (i) reserve any amounts necessary to close the Case; (ii) donate any balance of the Cash to a charitable organization exempt from federal income tax under section 501(c)(3) of the Tax Code that is unrelated to the Debtor and any Insider of the Debtor; and (iii) close the Case in accordance with the Bankruptcy Code and Bankruptcy Rules. Notice of such application shall be given electronically, to the extent practicable, to those parties who have filed requests for notices and whose electronic addresses remain current and operating.

13. **Releases of Liens**. Except as otherwise specifically provided in or contemplated by the Plan or in any contract, instrument or other agreement or document created in connection with the Plan, each holder of: (a) any purported Secured Claim and/or (b) any judgment, personal property or ad valorem tax, molder, warehouse or artisan or similar Lien, in each case regardless of whether such Claim is an Allowed Claim, shall, on the Effective Date and regardless of whether such Claim has been scheduled or proof of such Claim has been filed: execute such documents and instruments as the Spill Claim Plan Administrator requires to evidence the holder of a Claim's release of such property or Lien, and if such holder refuses to execute appropriate documents or instruments, the Spill Claim Plan Administrator, in its discretion, may file a copy of the Confirmation Order in the appropriate recording office, which shall serve to release any holder of a Claim's rights in such property.

14. **Cancellation of Existing Securities and Security Agreements**. On the Effective Date, except as expressly provided in this Plan, the securities, promissory notes, trust indentures, share certificates, security agreements, deeds of trust, collateral agency agreements and other instruments evidencing or securing a Claim shall be deemed cancelled without further act or action under any applicable agreement or Law, and the obligations of the Debtor and the Spill Claim Plan Administrator, as successor to the Debtor under the agreements, instruments, trust indentures and certificates governing and securing such Claims, as the case may be, shall be discharged.

E. Plan Administrators' Post-Confirmation Role As Of The Effective Date.

1. **Rights and Obligations Following the Effective Date.** All rights and obligations of the Debtor under this Plan that exist or continue after the Effective Date other than the role of the CRO in (i) administering the Professional Fee Escrow Account and (ii) oversight of ARCADIS US, Inc. under the VRP Agreement unless WVDEP consents to the replacement of the CRO by the Spill Claim Plan Administrator in this role, shall vest in the respective Plan Administrators pursuant to the terms of the Plan and shall be rights and obligations exercisable exclusively by each respective Plan Administrator after the Effective Date. Other than the foregoing two roles, the CRO shall be released of all duties and obligations to the Debtor, the Estate and creditors after the Effective Date.

2. **General Powers**.

(a) In furtherance of and consistent with the purpose of the Plan, the GC Plan Administrator shall exclusively (A) have the power and authority to hold, manage, sell and distribute the Cash to holders of Class 3 Claims in accordance with the Plan, (B) have the power and authority to object or consent to the proposed resolution of any Cause of Action by the Spill Claim Plan Administrator in accordance with the Plan, (C) have the power and authority to prosecute and resolve objections to Disputed Class 3 Claims subject to the Plan, and (D) have the power and authority to perform such other functions as are provided in the Plan. In all circumstances, the GC Plan Administrator shall act in the best interests of the holders of Class 3 Claims and in furtherance of the purpose of the Plan.

(b) In furtherance of and consistent with the purpose of the Plan, the Spill Claim Plan Administrator shall act in the best interests of the holders of Class 4 and Class 5 Claims. The

Spill Claim Plan Administrator, in consultation with the Spill Claim Oversight Committee shall exclusively (A) have the power and authority to hold, manage and distribute Cash distributable to holders of Class 4 and Class 5 Claims in accordance with the Plan, (B) have the power and authority to prosecute any Cause of Action in accordance with the Plan, provided, however, that any such Cause of Action is not waived or released under the Plan, (C) have the power and authority to prosecute and resolve objections to Disputed Class 5 Claims subject to the Plan, (D) have the power and authority to perform such other functions as are provided for in the Plan, and (E) have the power and authority to administer the dissolution of Freedom Industries, Inc. and closure of the Case.

3. **Claims Administration, Prosecution of Objections to Claims, and Plan Distributions**.

(a) The GC Plan Administrator shall have the exclusive power and authority to prosecute and resolve objections to all Disputed Class 3 Claims in accordance with the Plan. The GC Plan Administrator shall have the exclusive right, power and authority to retain and assert all defenses, rights of setoff, recoupment and counterclaims with respect to each of the foregoing. The GC Plan Administrator shall also have the power and authority to hold, manage and distribute Plan distributions to the holders of Allowed Class 3 Claims consistent with applicable provisions of the Plan.

(b) The Spill Claim Plan Administrator shall have the exclusive power and authority to prosecute and resolve objections to Disputed Class 5 Claims in accordance with the Plan. The Spill Claim Plan Administrator shall have the exclusive right, power and authority to retain and assert all privileges, defenses, rights of setoff, recoupment and counterclaims with respect to any Spill Claim. The Spill Claim Plan Administrator shall also have the power and authority to hold, manage and distribute Plan distributions to the holders of all Class 4 Convenience Class Claims and Allowed Spill Claims consistent with applicable provisions of the Plan.

4. **Books and Records.**

(a) Unless applicable non-bankruptcy Law permits the distribution or destruction of certain of the Debtor's business records at an earlier date, the Spill Claim Plan Administrator shall have the responsibility of storing and maintaining books and records until one year after the Effective Date, after which time such books and records may, at the sole discretion of the Spill Claim Plan Administrator, on no less than thirty (30) days' notice to the mailing matrix in the Case, to CHI, Herzing as the Sellers' Representative, and to the GC Plan Administrator, be abandoned or destroyed without further Bankruptcy Court order, unless applicable non-bankruptcy law requires the retention and maintenance of any such books and records for a longer period, in which instance the Spill Claim Plan Administrator shall retain such books and records for at least the minimum period required by applicable non-bankruptcy law. For purposes of this section, books and records include computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of the Debtor maintained by or in possession of third parties and all of the claims and rights of the Debtor and in and to their books and records, wherever located.

(b) The Spill Claim Plan Administrator shall make the Debtor's books and records available for copying and/or inspection by (i) the GC Plan Administrator upon reasonable written request; (ii) CHI, and Herzing as the Sellers' Representative upon reasonable written request; and (iii) third parties by subpoena (which shall not be considered a violation of any bankruptcy stay or any injunction set forth in the Plan or the Confirmation Order) or order of the Bankruptcy Court.

5. **Effectuating Documents and Further Transactions.** The Debtor and each of the Plan Administrators, as the case may be, are authorized and directed to execute, deliver, file or record such contracts, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

6. **Environmental Matters Following the Effective Date and the Sale of the Etowah River Terminal.** The Debtor, as a Debtor in Possession, has an obligation to comply with all applicable non-bankruptcy law. This includes an obligation to comply with applicable environmental laws and regulations. Following the Effective Date, the Debtor shall remain obligated to comply with the VRP Agreement and the Consent Order to the extent that any such obligations remain unperformed on the Effective Date. The financial means to satisfy these ongoing obligations will be assured by virtue of the DEP Dedicated Fund[10] that is anticipated to be established by the CRO prior to the Effective Date, but in no event shall the establishment of the DEP Dedicated Fund occur later than the Effective Date.

It is contemplated that the Etowah River Terminal will be sold by the Debtor on or before the Effective Date to a party acceptable to DEP, and such party shall agree to assume and perform certain obligations (i.e., monitoring, testing and paving all or an agreed portion of the Etowah River Terminal) of the Debtor under the VRP Agreement and the Consent Order. In the event that the Bankruptcy Court has not, by Final Order approved a sale of the Etowah River Terminal prior to the Confirmation Date, the Confirmation Order shall, in accordance with sections 363 and 1123(a)(5)(D) of the Bankruptcy Code, authorize and approve the sale of the Etowah River Terminal free and clear of all liens, claims, encumbrances and interests, subject, however, to legal or contractual obligations of any such purchaser to perform obligations of the Debtor in accordance with the VRP Agreement and/or Consent Order. A sale of the Etowah River Terminal in accordance with the Plan shall not relieve or discharge the obligations of the Debtor in accordance with the VRP Agreement and/or Consent Order.

F. Provisions Governing Class 5 Spill Claims and The Spill Claim Plan Administrator

1. **Responsibility for Distributions to Holders of Allowed Spill Claims by the Spill Claim Plan Administrator; Transfer of Defenses to Spill Claim Plan Administrator**. On the Effective Date, in exchange for funding in accordance with Section 3.5 of the Plan, the Spill Claim Plan Administrator shall be deemed, without need for further action, to have assumed all responsibility for distributions to holders of Allowed Spill Claims in accordance with the Plan and the Confirmation Order. On and after the Effective Date, all privileges, defenses, rights, or claims of the Debtor and the Estate for purposes of pursuing litigation arising out of or related to the Incident shall be transferred to the Spill Claim Plan Administrator.

2. **Class 5 Spill Claims Allowance Procedures**. The Spill Claim Plan Administrator in consultation with the Spill Claim Oversight Committee, shall, as promptly as practicable following the Effective Date, develop a process and procedure for the estimation and/or allowance of unliquidated or Disputed Class 5 Spill Claims. The Spill Claim Plan Administrator shall have full power and authority to take any action to effectuate a procedure for the estimation and/or allowance of Class 5 Spill Claims subject to Bankruptcy Court approval.

[10] The DEP Dedicated Fund will be in an amount agreed upon by the Debtor and DEP, which the Debtor does not expect to exceed $150,000 deposited by the CRO into an earmarked and separately segregated account held by the CRO, the sole purpose of which, until issuance of a certificate of completion by DEP, shall be in compliance with the Consent Order and fulfillment of Freedom's obligations under the VRP Agreement. For the avoidance of doubt, uses of the DEP Dedicated Fund may include payments to ARCADIS USA, Inc. for supervisory and related services, and SPSI with respect to site related contractor services, and the CRO in an ongoing corporate supervisory role.

3. **Good Faith Resolution of Spill Claims by Debtor**. The provisions of the Plan relating to the treatment of Class 4 and Class 5 Claims were negotiated at arms' length between the Debtor, the Committee and representatives of certain holders of Spill Claims, including, without limitation, Spill Claim Counsel. The provisions of the Plan represent a, good faith resolution of the treatment of all Spill Claims by the Debtor.

4. **Spill Claims Injunction**. Except as otherwise expressly provided in the Plan and expressly subject to Section 11.15 of the Plan, and pursuant to the exercise of the equitable jurisdiction and power of the Bankruptcy Court under sections 1123(b)(6) and 105(a) of the Bankruptcy Code or otherwise, in order to preserve and promote the actions contemplated by the Plan and in order to protect the Spill Claim Plan Administrator and to preserve the assets that the Spill Claim Plan Administrator will administer for the benefit of the holders of Spill Claims, the Confirmation Order will provide the following injunction to take effect as of the Effective Date:

Except as otherwise provided in Section 11.15, any Entity that holds or asserts, or which may in the future hold or assert a Spill Claim, or Contribution Claim that is otherwise subject to disallowance under the Bankruptcy Code or applicable state law, or allocation, subrogation, indemnity or similar claims arising from or relating to the Incident or any such Spill Claim against the Debtor shall be permanently stayed, restrained, and enjoined from taking any action against a Protected Party for the purpose of, directly or indirectly, collecting, recovering, or receiving payments, satisfaction, or recovery with respect to, relating to, arising out of, or in any way connected with a Spill Claim or for contribution, allocation, subrogation, indemnity or similar claim, either directly or derivatively through the Debtor, based on or relating to a Spill Claim, whenever and wherever arising or asserted, all of which will be channeled to the assets held by the Spill Claim Plan Administrator for resolution as set forth in the Plan and/or as provided in a Spill Claim liquidation procedure as established after the Effective Date by the Spill Claim Plan Administrator in consultation with the Spill Claim Oversight Committee, and subject to Bankruptcy Court approval. The actions so enjoined include, but are not limited to:

(i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any Spill Claim against or affecting the Debtor, any property or interest of a Protected Party;

(ii) enforcing, levying, attaching (including through any prejudgment attachment), collecting or otherwise recovering by any means or in any manner, whether directly or indirectly, any judgment, award, decree, or other order arising out or related to a Spill Claim against a Protected Party;

(iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien arising out or related to a Spill Claim against any property of any Protected Party;

(iv) asserting or accomplishing any setoff, right of subrogation, right of contribution, right or reimbursement, indemnity, contribution or recoupment of any kind in any manner, directly or indirectly, and in any amount against any liability from any Protected Party arising out or related to a Spill Claim;

(v) proceeding in any manner in any place with regard to any Spill Claim that is subject to and to be determined and paid by the Spill Claim Plan Administrator, except in conformity and compliance a Spill Claim liquidation procedure established after the Effective Date by the Spill Claim Plan Administrator in consultation with the Spill Claim Oversight Committee; and

(vi) asserting any litigation right or Claim against the Insurers or their respective policies with respect to a Spill Claim.

5. **Method of Distributions by Spill Claim Plan Administrator Under the Plan**.

(a) Powers of Spill Claim Plan Administrator and Disbursement of Cash Held by the Spill Claim Plan Administrator. The Spill Claim Plan Administrator will not be required to post any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court, and in the event that the Spill Claim Plan Administrator is otherwise so ordered, all costs and expenses of procuring any such bond or surety will be paid from the Cash distributed to the Spill Claim Plan Administrator on the Effective Date. Subject to input from the Spill Claim Oversight Committee and the terms of this Plan, the Spill Claim Plan Administrator shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (ii) make all distributions contemplated in the Plan, (iii) employ professionals to represent it with respect to its responsibilities under the Plan, (iv) make all determinations about expenditures made by the Spill Claim Plan Administrator, (v) make all determinations about liquidation and/or settlement strategies pursued by Spill Claim Plan Administrator, (vi) settle and compromise any and all Causes of Action of the Debtor and the Estate asserted by the Spill Claim Plan Administrator, (vii) make all determinations about the timing and amount of distributions to the holders of Class 5 Claims, and (viii) exercise such other powers as may be vested in the Spill Claim Plan Administrator by order of the Bankruptcy Court, pursuant to the Plan or as deemed by the Spill Claim Plan Administrator to be necessary and proper to implement the provisions of the Plan. Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Spill Claim Plan Administrator on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement claims (including reasonable attorneys' fees and other professional fees and expenses) made by the Spill Claim Plan Administrator shall be paid in Cash promptly upon approval by the Spill Claim Plan Oversight Committee.

(b) Distributions of Cash to Holders of Allowed Class 5 Claims. At the option of the Spill Claim Plan Administrator any Cash payment to be made to holders of Allowed Class 5 Claims, any Cash payment to be made by the Spill Claim Plan Administrator pursuant to the Plan may be made shall be made by check or wire transfer.

(c) Delivery of Distributions. Subject to Bankruptcy Rule 9010, unless otherwise provided in the Plan, all distributions to any holder of an Allowed Class 4 or Class 5 Claim by the Spill Claim Plan Administrator will be made to the holder of each Allowed Spill Claim at the address of such holder as listed in the proof of claim filed by each holder of a Spill Claim unless the Spill Claim Plan Administrator has been notified, in advance, in writing of a change of address. In the event that any distribution to any holder is returned as undeliverable, no distribution to such holder will be made unless and until the Spill Claim Plan Administrator has been notified of the then current address of such holder, at which time or as soon as reasonably practicable thereafter, such distribution will be made to such holder without interest; provided, however, that, such undeliverable distributions will be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of ninety (90) days after the date of distribution in accordance with the section on unclaimed distributions below. The Spill Claim Plan Administrator will have no obligation to attempt to locate any holder of a Class 4 or Class 5 Claim other than by reviewing the proof of claim giving rise to the Spill Claim.

6. **Withholding and Reporting Requirements**. In connection with the Plan, the Spill Claim Plan Administrator shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements.

7. **Time Bar to Cash Payments**. Checks issued by the Spill Claim Plan Administrator in accordance with the Plan in respect of Allowed Class 4 and Class 5 Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Spill Claim Plan Administrator by the holder of the Allowed Spill Claims to whom such check was originally issued. Any such request in respect of such a voided check shall be made on or before thirty (30) days after the expiration of the sixty (60) day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the Spill Claim Plan Administrator and any Spill Claim in respect of such voided check shall be discharged and forever barred from assertion against the Debtor and its property or the assets held by the Spill Claim Plan Administrator, as the case may be.

8. **Minimum Distributions**. No payment of Cash in an amount less than $100 shall be made by the Spill Claim Plan Administrator. Any Cash held by the Spill Claim Plan Administrator that is undistributable in accordance with Section 6.8 of the Plan shall vest with the Spill Claim Plan Administrator for the benefit of the holders of Class 5 Claims.

9. **Setoffs**. The Spill Claim Plan Administrator may, but shall not be required, to set off against any Class 5 Claim (for purposes of determining the Allowed amount of such Class 5 Claim on which distribution shall be made), any claims of any nature whatsoever that the Debtor may have against the holder of such Class 5 Claim, but neither the failure to do so nor the allowance of any Class 5 Claim hereunder shall constitute a waiver or release by the Debtor or the Spill Claim Plan Administrator of any such claim the Debtor may have against the holder of such Class 5 Claim.

10. **Transactions on Business Days**. If the Effective Date or any other date on which a transaction may occur under the Plan is required to occur on a day that is not a Business Day, the transactions contemplated by the Plan to occur on such day shall instead occur on the next Business Day, but shall be deemed to have been completed as of the required date

G. Provisions Governing the GC Plan Administrator

1. **Distribution Record Date**. As of the close of business on the Confirmation Date, the various registers of Claims or Equity Interests of the Debtor maintained by the Clerk of the Bankruptcy Court shall be deemed closed, and there shall be no further changes in the record holders of any of the Claims or Equity Interests unless otherwise specifically provided under the Plan or Final Order by the Bankruptcy Court or such other court of competent jurisdiction. Neither the Debtor nor the GC Plan Administrator shall have any obligation to recognize any transfer of the Claims or Equity Interests occurring after the Confirmation Date.

2. **Method of Distributions by GC Plan Administrator Under the Plan**.

(a) Effective Date Payments and Transfers by the Debtor. On the Effective Date, the Debtor shall remit to the GC Plan Administrator the Cash payment required by the Plan. The GC Plan Administrator shall pay a Pro Rata Share as soon as practicable to holders of Allowed Class 3 Claims pursuant to the Plan. The transfer by the GC Plan Administrator as described in the preceding sentence shall be made for the benefit of the holders of Class 3 Claims, but only to the extent that the holder of a Class 3 Claim is entitled to distributions under the Plan.

(b) Powers of GC Plan Administrator. All distributions under the Plan to holders of Class 3 Claims will be made by the GC Plan Administrator. The GC Plan Administrator will not be required to post any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court, and in the event that the GC Plan Administrator is otherwise

so ordered, all costs and expenses of procuring any such bond or surety will be funded from the Cash paid to the GC Plan Administrator for the benefit of Class 3 Claims on the Effective Date. Subject to the terms of the Plan, the GC Plan Administrator shall be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (ii) make all distributions contemplated in the Plan, (iii) employ professionals to represent it with respect to its responsibilities under the Plan, (iv) make all determinations about expenditures, (v) make all determinations about strategies relating to the prosecution or settlement of Causes of Action pursued by the Spill Claim Plan Administrator, (vi) make all determinations about the timing and amount of distributions by the GC Plan Administrator to the holders of Class 3 Claims, (vii) object to and resolve Disputed Class 3 Claims; and (viii) exercise such other powers as may be vested in the GC Plan Administrator by order of the Bankruptcy Court and/or pursuant to the Plan, or as deemed by the GC Plan Administrator to be necessary and proper to implement the provisions of the Plan. Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the GC Plan Administrator on or after the Effective Date (including without limitation, taxes) and any reasonable compensation and expense reimbursement claims (including, without limitation, reasonable attorneys' fees and other professional fees and expenses) made by the GC Plan Administrator shall be paid in Cash.

(c) Distributions of Cash. At the option of the GC Plan Administrator, any Cash payment to be made by the GC Plan Administrator pursuant to the Plan may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

(d) Delivery of Distributions. Subject to Bankruptcy Rule 9010, unless otherwise provided in the Plan, all distributions to any holder of an Allowed Class 3 Claim by the GC Plan Administrator will be made to the holder of each Allowed Class 3 Claim at the address of such holder as listed in the Schedules, or on the books and records of the Debtor unless the Debtor or GC Plan Administrator, as the case may be, have been notified, in advance, in writing of a change of address, including, without limitation, by the timely filing of a proof of claim or interest by such holder that provides an address for such holder different from the address reflected in the Schedules or in the Debtor's books and records. In the event that any distribution to any holder is returned as undeliverable, no distribution to such holder will be made unless and until the GC Plan Administrator has been notified of the then current address of such holder, at which time or as soon as reasonably practicable thereafter, such distribution will be made to such holder without interest; provided, however, that, such undeliverable distributions will be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of ninety (90) days after the date of distribution in accordance with Sections 7.4 and 7.5 of the Plan. The GC Plan Administrator will have no obligation to attempt to locate any holder of an Allowed Class 3 Claim other than by reviewing the Schedules and the books and records maintained by Debtor (including any proofs of claim filed against the Debtor).

3. **Withholding and Reporting Requirements**. In connection with the Plan and all instruments issued in connection therewith and distributed thereunder, the GC Plan Administrator shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under the Plan shall be subject to any such withholding or reporting requirements.

4. **Time Bar to Cash Payments**. Checks issued by the GC Plan Administrator in accordance with the Plan in respect of Allowed Class 3 Claims shall be null and void if not negotiated within sixty (60) days after the date of issuance thereof. Requests for reissuance of any check shall be made to the GC Plan Administrator by the holder of the Allowed Class 3 Claim to whom such check was originally issued. Any such request in respect of such a voided check shall be made on or before thirty (30) days after the expiration of the sixty (60) day period following the date of issuance of such check. Thereafter, the amount represented by such voided check shall irrevocably revert to the GC Plan

Administrator for the benefit of the holders of Class 3 Claims and any Class 3 Claim in respect of such voided check shall be discharged and forever barred from assertion against the Debtor and its property or the GC Plan Administrator, as the case may be.

5. **Minimum Distributions**. No payment of Cash in an amount less than $100 shall be made by the GC Plan Administrator. Any Cash paid to the GC Plan Administrator for the benefit of holders of Class 3 Claims that is undistributable in accordance with Section 7.5 of the Plan shall vest in the GC Plan Administrator for the benefit of the holders of Class 3 Claims.

6. **Setoffs**. The GC Plan Administrator may, but shall not be required, to set off against any Class 3 Claim (for purposes of determining the Allowed amount of such Claim on which distribution shall be made), any claims of any nature whatsoever that the Debtor may have against the holder of such Class 3 Claim, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the GC Plan Administrator of any such claim the Debtor may have against the holder of such Claim.

7. **Allocation of Plan Distribution Between Principal and Interest**. All distributions in respect of any Allowed Class 3 Claim made by the GC Plan Administrator shall be allocated first to the principal amount of such Allowed Claim, as determined for federal income tax purposes, and thereafter, to the remaining portion of such Claim comprising interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

H. Procedures for Disputed Claims

1. **Objections to Claims**. Until the Effective Date, the Debtor and the Committee and from and after the Effective Date, the Spill Claim Plan Administrator exclusively, shall be entitled to object to Administrative Expense Claims, Secured or Priority Tax Claims, and Disputed Class 5 Claims. Until the Effective Date, the Debtor and the Committee and from and after the Effective Date, the GC Plan Administrator exclusively shall be entitled to object to Disputed Class 3 Claims.

2. **No Distribution Pending Allowance**. Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

3. **Reserves on Account of Disputed Claims.**

(a) **Establishment and Maintenance of Reserves for Disputed Claims**. The GC Plan Administrator shall maintain the Disputed Claim Reserve at an amount equal to the aggregate of 100% of the distributable amounts to which holders of such Disputed Claims would be entitled under the Plan if such Disputed Class 3 Claims were Allowed Claims in their Disputed Claim Amounts or such lesser amount as determined by the Bankruptcy Court or other court of competent jurisdiction pursuant to a Final Order. With respect to Disputed Secured Claims, Disputed Priority Tax Claims and/or Disputed Class 5 Claims, the Spill Claim Plan Administrator shall maintain one or more Disputed Claim Reserves in the same manner as set forth in the immediately prior sentence. For purposes of effectuating the provisions of Section 8.3(a) of the Plan and the distributions to holders of Allowed Claims, the Bankruptcy Court may fix or liquidate the amount of Disputed Claims pursuant to section 502(c) of the Bankruptcy Code, in which event the amounts so fixed or liquidated shall be deemed the amounts of the Disputed Claims for purposes of distribution under this Plan. In lieu of fixing or liquidating the amount of any Disputed Claim, the Bankruptcy Court may determine the amount to be reserved for any Disputed Claim as requested by the applicable Plan Administrator or such amount may

be fixed by agreement in writing between the applicable Plan Administrator and the holder of a Disputed Claim.

(b) **Distributions Upon Allowance of Disputed Claims**. The holder of a Disputed Claim that becomes an Allowed Claim shall receive a distribution in Cash from the Disputed Claim Reserve of the applicable Plan Administrator as soon as practicable following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Final Order. Such distribution shall be made in accordance with the Plan based upon the distribution that would have been made to such holder under the Plan if the Disputed Claim had been an Allowed Claim on or prior to the Effective Date. No holder of a Disputed Claim shall have any Claim against the Disputed Claim Reserve or the applicable Plan Administrator with respect to such Claim until such Disputed Claim becomes an Allowed Claim, and no holder of a Disputed Claim shall have any right to interest on such Disputed Claim unless otherwise agreed by the applicable Plan Administrator and the holder of such Disputed Claim or determined by the Bankruptcy Court pursuant to a Final Order.

4. **Resolution of Disputed Claims**. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, following the Effective Date, the GC Plan Administrator shall have the exclusive right to make and file objections to Class 3 Claims and shall serve a copy of each objection upon the holder of the Claim to which the objection is made as soon as practicable, but in no event later than one hundred eighty (180) days after the Effective Date (subject, however, to the right of the GC Plan Administrator to seek an extension of time to file such objections from the Bankruptcy Court). The Spill Claim Plan Administrator shall have the exclusive right to make and file objections to Class 5 Claims in accordance with a process to be established by the Spill Claim Plan Administrator in consultation with the Spill Claim Oversight Committee and subject to Bankruptcy Court approval.

5. **Estimation.** The Debtor or Committee prior to the Effective Date or the Plan Administrators following the Effective Date may at any time request that the Bankruptcy Court estimate any contingent, unliquidated or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for purposes of the applicable Disputed Claims Reserve of the applicable Plan Administrator, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtor, Committee or the GC Plan Administrator (as the case may be) may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are intended to be cumulative and not exclusive of one another. On and after the Confirmation Date, Claims that have been estimated may be compromised, settled, withdrawn or otherwise resolved subsequently by the GC Plan Administrator, without further order of the Bankruptcy Court.

6. **Distributions to Holders of Allowed Claims Upon Disallowance of Disputed Claims**. Subject to Section 8.4 of the Plan, upon disallowance of any Disputed Claim, each holder of an Allowed Claim in the same Class as the disallowed Disputed Claim will be entitled to its Pro Rata Share of Cash by the applicable Plan Administrator equal to the distribution that would have been made in accordance with the Plan to the holder of such Disputed Claim had such Disputed Claim been an Allowed Claim on or prior to the Effective Date. Such distributions on account of Disputed Claims will be made at such times as determined by the applicable Plan Administrator. Upon allowance or disallowance of all or a portion of such Disputed Claims, the applicable Plan Administrator will make appropriate distributions in accordance with the Plan.

I. Executory Contracts and Unexpired Leases

1. **Executory Contracts and Unexpired Leases.** On the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party shall be deemed rejected as of the Effective Date, except for an executory contract or unexpired lease that (i) has been assumed or rejected pursuant to Final Order of the Bankruptcy Court prior to the Effective Date, (ii) is subject to separate motion to assume or reject (or terminate or modify, as the case may be) filed under sections 365, 1113 and/or 1114 of the Bankruptcy Code prior to the Effective Date; or (iii) on the Effective Date, the Spill Claim Plan Administrator files with the Bankruptcy Court a motion to assume an executory contract or unexpired lease or a motion to extend the time within which to assume or reject an executory contract or unexpired lease.

Except as provided in Section 11.7 of the Plan, nothing contained in the Plan shall constitute or be deemed to be a waiver of any Cause of Action that the Debtor or Committee may hold against any Person, including, without limitation, any Insurer under any of the Debtor's Insurance Policies

2. **Approval of Rejection of Executory Contracts and Unexpired Leases. Entry** of the Confirmation Order shall constitute the approval, pursuant to sections 365(a), 1113 and/or 1114 of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected as of the Effective Date pursuant to the Plan.

3. **Rejection Claims.** In the event that the rejection of an executory contract or unexpired lease pursuant to the Plan results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not heretofore evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Debtor, the GC Plan Administrator or any property to be distributed under the Plan unless a proof of claim is filed with the Bankruptcy Court and served upon the GC Plan Administrator on or before the date that is twenty (20) days after the Effective Date. The foregoing sentence shall not, however, be applicable to any separate pre-Confirmation Date order of the Bankruptcy Court authorizing rejection of an executory contract or unexpired lease wherein a separate deadline by which rejection damages claims must be filed with the Bankruptcy Court was established.

VI. PROJECTED DISTRIBUTION TO CREDITORS

The Estate has virtually no cash at this time due to the substantial requirements on the Debtor in fulfilling environmental obligations, and, in particular, water collection and disposition obligations. With these obligations addressed, it is the position of the Debtor and the licensed remediation specialist under the VRP that final remediation obligations of the Debtor, if any, should not require substantial additional cash expenditures by the Debtor.

The sources of funding for the Plan are (1) potential proceeds of the sale of the Etowah River Terminal being negotiated by the CRO, (2) the proceeds of settlement with Chemstream and the Former Ds and Os (totaling approximately $2,800,000), (3) the proceeds of settlement with Gary Southern (totaling $300,000), and (4) the proceeds of the AIG Settlement ($3,199,318) made possible only as a result of the settlement with Gary Southern. In the absence of the various settlements proposed by the Debtor in the context of the Plan, only the nominal cash on hand of the Debtor is available. Absent the settlements proposed in the Plan, some form of resolution would need be reached with WVDEP both to assure the ability of the Debtor to sell the Etowah River Terminal, and more importantly, to satisfy the environmental obligations of the Debtor relating to the Etowah River Terminal. Proceeds of the Insurance Policies could not be obtained by the Estate without resolution of the Southern appeal of the AIG Approval Order, and even with resolution of the AIG Approval Order, the ability of the Debtor to use these funds to pay creditors would remain subject to the restrictions of the Clarification Order in the

absence of resolution of matters with WVDEP. All other sources of cash would be subject to either recoveries from litigation or settlement thereof. The outcome of such litigation, cost of such litigation and timing of recoveries, if any, are among the factors contributing to the CRO's determination that the settlements contained in the Plan are in the best interests of the Debtor, its Estate and creditors.

Potential Sources of Cash and Underlying Assumptions

Cash on hand	$100,000[11]
AIG settlement proceeds	$3,199,318[12]
Proceeds of sale escrow with Somerset	$2,820,000[13]
Potential proceeds from Etowah River Terminal sale	$100,000[14]
Proceeds from Gary Southern settlement	$ 300,000
Total Estimated Cash Available on Plan Effective Date	$6,519,318

Claim Categories That Must be Addressed with Estimated Amounts and Assumptions

IRS Secured (Principal & Interest Only)	[$500,000]
DEP Dedicated Fund	[$150,000][15]
Estimated Allowable 503(b)(9) Claims	[$250,000]
Priority Tax Claims	[$2,000]
Fee/Expense Escrow for total to 02/28/2015	[$2,158,693][16]
Professional Fees and Expenses estimated March, 2015 through Effective Date	[$400,000]
General Unsecured Initial Distribution	[$500,000]
Convenience Spill Class Distribution	[$500,000]
Minimum Spill Class Distribution	[$2,199,318]
Total Minimum Plan Payments/Escrows	[$6,660,011]
Net Projected Initial Funding Deficit	$140,693

SUBSTANTIAL EFFORT HAS BEEN MADE TO ENSURE THE ACCURACY OF THE ESTIMATED INFORMATION SUMMARIZED IN THE TABLE IN SECTION VI HEREOF. NO ASSURANCES CAN BE GIVEN THAT THE ESTIMATED AMOUNT OF ALLOWED CLAIMS AND THE PROJECTED DISTRIBUTION WILL BE ACHIEVED.

[11] The extent to which the Debtor will have cash on hand as of a projected date is largely dependent upon the nature and extent of the Debtor's environmental obligations, which continue to be subject to negotiation with WVDEP under the VRP.

[12] Assume that AIG proceeds come into Estate at time of Effective Date and as a result of contemplated settlement with Gary Southern, 100% of AIG settlement proceeds available to Estate.

[13] Escrow of $3.0 million less approximately $180,000 paid to date to IRS (from $1.0 million tax portion of escrow) plus unknown interest. As part of global settlement under Plan with Chemstream and the Former Ds and Os full amount of sale escrow proceeds less IRS payments to date from escrow will be paid to Estate on the Effective Date.

[14] Assume approved sale of Etowah River Terminal Facility to independent third party prior to the Effective Date, however, a sale of this nature and within this time frame cannot be assured.

[15] The amount of the DEP Dedicated fund has not been agreed by the WVDEP and remains subject to WVDEP consent under the VRP. This amount is a best estimate determined by the CRO but is not binding on WVDEP.

[16] Subject to reduction for Professional Fee Contribution Amount.

VII. EFFECTIVENESS OF THE PLAN

A. Conditions Precedent to Effective Date. The following are conditions precedent to the Effective Date of the Plan:

(a) The Bankruptcy Court shall have entered a Confirmation Order in form and substance satisfactory to the Debtor, the Committee, Spill Claim Counsel, Chemstream, the Former Ds and Os, Herzing in his capacity as Sellers' Representative and Southern;

(b) No stay of the Confirmation Order shall then be in effect;

(c) The appeals of the AIG Settlement Order pending before the District Court have been resolved in a manner consistent with the Plan and satisfactory to the Debtor, Committee, Southern and Spill Claim Counsel;

(d) The U.S. Attorney for the Southern District of West Virginia agrees to allow Southern to pay from funds currently subject to a seizure proceeding in the District Court (i) the Southern Contribution, and (ii) the additional release consideration to the plaintiffs in the Good Case; and

(e) The parties granting the release in Section 11.11 of the Plan (or their counsel) execute a release of Southern consistent with Section 11.11 of the Plan.

B. Satisfaction of Conditions. Any actions required to be taken on the Effective Date shall take place and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred prior to the taking of any other such action. If the Debtor determines that one of the conditions precedent set forth in Section 10.1 of the Plan cannot be satisfied and the occurrence of such condition is not waived by the Debtor or cannot be waived by the Debtor, then the Debtor shall file a notice of the failure of the Effective Date with the Bankruptcy Court.

C. Effect of Nonoccurrence of Conditions to Effective Date. If each of the conditions to consummation and the occurrence of the Effective Date has not been satisfied or duly waived on or before the Effective Date, the Confirmation Order may be vacated by the Bankruptcy Court. If the Confirmation Order is vacated pursuant to Section 10.3 of the Plan, the Plan shall be null and void in all respects, and nothing contained in the Plan shall constitute a waiver or release of any Claims and/or Spill Claims against the Debtor, and none of the parties subject to the Plan shall have any liability or obligation under the Plan.

VIII. EFFECT OF CONFIRMATION

A. **Vesting of Assets**. As of the Effective Date, Cash will be paid by the Debtor to holders of Allowed Class 1 Claims, Allowed Class 2 Claims, and Allowed Administrative Expense Claims, to the CRO for the benefit of Professionals to be held in the Professional Fee Escrow Account, the CRO with respect to the DEP Dedicated Fund unless funded prior to the Effective Date, the GC Plan Administrator and the Spill Claim Plan Administrator, all as provided in the Plan. The equity interests in Freedom will vest in the Spill Claim Plan Administrator on the Effective Date, as will all Causes of Action not otherwise waived or released under the Plan. Only Causes of Action of the Debtor and the Estate will vest with the Spill Claim Plan Administrator on the Effective Date.

B. **Release of Assets.** Until the Effective Date, the Bankruptcy Court shall retain jurisdiction of the Debtor, the Estate and their assets and properties. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matter set forth in Article XII of the Plan.

C. **Binding Effect.** Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, and to the fullest extent permitted by section 1141 of the Bankruptcy Code, on and after the Confirmation Date, the provisions of the Plan shall bind any holder of a Claim including any holder of a Spill Claim against, or Equity Interest in, the Debtor and its respective successors and assigns, including, but not limited to, the Plan Administrators, whether or not the Claim, Spill Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

D. **Satisfaction of Claims and Termination of Interests**. To the maximum extent provided by section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, and release, effective as of the Effective Date, of Claims, Spill Claims, Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims, Spill Claims, or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Equity Interests in, the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, Spill Claims and Equity Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability to the extent such Claims, Spill Claims, or Equity Interests relate to services performed by employees of the Debtor prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a proof of claim or proof of interest based upon such debt, right, or Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim, Spill Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim, Spill Claim or Interest has accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims, Spill Claims, and Equity Interests subject to the Effective Date occurring.

Neither this Plan nor the Confirmation Order shall be deemed a release of Allowed Contribution Claims, provided and for clarity, that no Person may seek satisfaction of any claim or Allowed Claim against a Protected Party except as specifically provided in this Plan.

E. **Term of Injunctions or Stays.** Unless otherwise expressly provided herein, all injunctions or stays arising under or entered during the Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date, at which time such injunctions or stays shall be deemed lifted.

F. **Retention of Causes of Action.** Except as otherwise waived and released in accordance with the Plan, on and after the Effective Date, the Spill Claim Plan Administrator shall have the exclusive right to enforce and shall retain, all Causes of Action against any Persons. The Spill Claim Plan Administrator may prosecute, defend, enforce, abandon, settle or release any and all Claims and Causes of Action as it deems appropriate, subject to Bankruptcy Court approval as set forth in the Plan. The Spill Claim Plan Administrator may, in its sole discretion, offset any such claim held against a Person, against any payment due such person under the Plan; *provided, however*, that any Claims of the Debtor arising before the Petition Date shall first be offset against Claims against the Debtor arising before the Petition Date, subject in each instance, however, to the limitations of Section 8.4 of the Plan. All privileges, defenses and rights of avoidance of the Debtor not otherwise waived and released in accordance with the Plan, shall be retained and may be exercised by the Spill Claim Plan Administrator; provided, however, that all privileges, defenses, crossclaims, counterclaims, or Claims for setoff, recoupment, or which seek affirmative relief, in any form or manner whatsoever, related to or arising out of a Class 3 Claim shall be retained and may be exercised by the GC Plan Administrator.

G. **Exculpation**. Except as otherwise specifically provided in the Plan, **neither the Debtor, the sole current director of the Debtor, the CRO, bankruptcy counsel for the Debtor, the Committee, nor any of the Committee's members, or attorneys, in their capacities as such (collectively, the "Exculpated Parties"), shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, or arising out of, the Case, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan (the "Exculpated Claims"), provided, however, that any such liability does not arise from willful misconduct or gross negligence by an Exculpated Party as determined by Final Order of a court of competent jurisdiction**. The Confirmation Order shall enjoin the prosecution by any Person or Entity, whether directly, derivatively or otherwise, of any such claim, obligation, *suit*, judgment, damage, loss, right, remedy, cause of action, charge, cost, debt, indebtedness, or liability which arose or accrued during such period or was or could have been asserted against any of the Exculpated Parties in respect of the Exculpated Claims, except as otherwise provided in the Plan or in the Confirmation Order. Each of the Exculpated Parties shall have the right to independently seek enforcement of this release provision. All such Exculpated Parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities hereunder and under the Bankruptcy Code. Notwithstanding anything herein to the contrary, the exculpation and limitation of liability provided for herein shall not apply to any acts of omissions that occurred prior to the Petition Date. The rights granted hereunder are cumulative with (and not restrictive of) any and all rights, remedies, and benefits that the Exculpated Parties have or obtain pursuant to any provision of the Bankruptcy Code or other applicable law. This exculpation from liability provision is an integral part of the Plan and is essential to its implementation

H. DEBTOR RELEASE. PURSUANT TO SECTION 1123(b) OF THE BANKRUPTCY CODE, ON AND AFTER THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THEIR COOPERATION AND CONTRIBUTIONS TO THE CASE, THE RELEASED PARTIES SHALL BE DEEMED RELEASED AND DISCHARGED BY THE DEBTOR, THE ESTATE, THE CRO, THE GC PLAN ADMINISTRATOR, AND THE SPILL CLAIM PLAN ADMINISTRATOR FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, DEBTS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR, THE ESTATE AND/OR PLAN ADMINISTRATORS AS SUCCESSORS TO THE DEBTOR, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ASSERTED OR UNASSERTED, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, WHETHER FOR TORT, FRAUD, CONTRACT, VIOLATIONS OF FEDERAL OR STATE LAWS, OR OTHERWISE, AND INCLUDING, WITHOUT LIMITATION ANY CLAIMS OR CAUSES OF ACTION BASED ON AVOIDANCE LIABILITY UNDER FEDERAL OR STATE LAWS, VEIL PIERCING, ALTER-EGO, JOINT OR SINGLE BUSINESS ENTERPRISE THEORIES OF LIABILITY, CONTRIBUTION, INDEMNIFICATION, JOINT LIABILITY OR OTHERWISE THAT THE DEBTOR OR THE ESTATE WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT OR THAT THE COMMITTEE OR ANY HOLDER OF A CLAIM OR INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF THE DEBTOR OR THE ESTATE, AND INCLUDING, WITHOUT LIMITATION, ANY CLAIMS OR CAUSES OF ACTION BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM , IN WHOLE OR IN PART, THE DEBTOR, THE DEBTOR'S LIQUIDATION, THE DECEMBER 2013 TRANSACTION, THE INCIDENT AND THE RESPONSE THERETO, THE MERGER OF ENTITIES NOW COMPRISING THE DEBTOR, THE CASE, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR INTEREST THAT IS

TREATED IN THE PLAN, OR THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY RELEASED PARTY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019 OF THE RELEASES PROVIDED FOR IN SECTION 11.8 OF THE PLAN, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED THEREIN, AND FURTHER, SHALL **CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASES PROVIDED FOR IN SECTION 11.8 OF THE PLAN ARE: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS AND CAUSES OF ACTION RELEASED BY THE DEBTOR, AND THE ESTATE; (3) IN THE BEST INTERESTS OF THE DEBTOR, ITS ESTATE AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR AGAINST THE DEBTOR, ITS ESTATE, THE COMMITTEE, THE GC PLAN ADMINISTRATOR OR THE SPILL CLAIM PLAN ADMINISTRATOR FROM ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE RELEASE CONTAINED IN SECTION 11.8 OF THE PLAN.**

WITHOUT LIMITING THE SCOPE OF THE RELEASE BY THE DEBTOR, THE ESTATE, THE CRO, THE GC PLAN ADMINISTRATOR, AND THE SPILL CLAIM PLAN ADMINISTRATOR OF CLAIMS AND CAUSES OF ACTION PROVIDED IN SECTION 11.8 OF THE PLAN, NOTHING IN THIS SECTION SHALL BE INTERPRETED TO GRANT A RELEASE OF CLAIMS OR CAUSES OF ACTION, IF ANY, OF ANY OTHER PERSON OR ENTITY AGAINST CHEMSTREAM, THE FORMER DS AND OS, SOUTHERN, OR HERZING IN HIS CAPACITY AS SELLERS' REPRESENTATIVE.

I. <u>RELEASE BY OTHER RELEASING PARTIES</u>. AS OF THE EFFECTIVE DATE, EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, CHEMSTREAM, THE FORMER Ds AND Os, HERZING AS SELLERS' REPRESENTATIVE, AND SOUTHERN SHALL RELEASE, EACH OF THE DEBTOR, ITS ESTATE THE CRO, THE GC PLAN ADMINISTRATOR AND THE SPILL CLAIM PLAN ADMINISTRATOR AS SUCCESSORS OF THE DEBTOR FROM ANY AND ALL CLAIMS, INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTOR OR ITS ESTATE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREINAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT BASED ON, OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTOR, THE DEBTOR'S LIQUIDATION, THE DECEMBER 2013 TRANSACTION, THE INCIDENT AND THE RESPONSE THERETO, THE MERGER OF THE ENTITIES NOW COMPROMISING THE DEBTOR, THE CASE, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTOR AND ANY PARTY RELEASED PURSUANT TO SECTION 11.9 OF THE PLAN, THE RESTRUCTURING OF CLAIMS AND INTERESTS PRIOR TO OR IN THE CASE, THE NEGOTIATION, FORMULATION, OR PREPARATION OF THE PLAN OR OTHER RELATED AGREEMENTS, INSTRUMENTS OR OTHER DOCUMENTS, UPON ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE RELEASES PROVIDED FOR UNDER SECTION 11.9 OF THE PLAN SHALL NOT SHALL

NOT RELEASE ANY OBLIGATION OF ANY PARTY UNDER THE PLAN OR ANY RELATED DOCUMENT, INSTRUMENT OR AGREEMENT EXECUTED TO IMPLEMENT THE PLAN.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019 OF THE RELEASES PROVIDED FOR IN SECTION 11.9 OF THE PLAN, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED THEREIN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT THE RELEASES PROVIDED FOR IN SECTION 11.9 OF THE PLAN ARE: (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE PARTIES RECEIVING RELEASES UNDER THE PLAN; (2) A GOOD FAITH SETTLEMENT AND COMPROMISE OF THE CLAIMS AND CAUSES OF ACTION RELEASED BY THE DEBTOR, ITS ESTATE AND THE COMMITTEE; (3) IN THE BEST INTERESTS OF THE DEBTOR, ITS ESTATE AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY TO FOR HEARING; AND (6) A BAR AGAINST THE DEBTOR, RELEASING PARTIES FROM ASSERTING ANY CLAIM OR CAUSE OF ACTION RELEASED PURSUANT TO THE RELEASE CONTAINED IN SECTION 11.9 OF THE PLAN.

WITHOUT LIMITING THE SCOPE OF THE RELEASE BY CHEMSTREAM, THE FORMER DS AND OS, SOUTHERN OR HERZING IN HIS CAPACITY AS SELLERS' REPRESENTATIVE IN SECTION 11.9 OF THE PLAN, NOTHING IN SECTION 11.9 OF THE PLAN SHALL BE INTERPRETED TO GRANT A RELEASE OF CLAIMS OR CAUSES OF ACTION, IF ANY, AGAINST ANY PERSON OR ENTITY OTHER THAN THE DEBTOR, ITS ESTATE, THE CRO, THE GC PLAN ADMINISTRATOR AND THE SPILL CLAIM PLAN ADMINISTRATOR AS SUCCESSOR OF THE DEBTOR BY CHEMSTREAM, THE FORMER DS AND OS, SOUTHERN, OR HERZING IN HIS CAPACITY AS SELLERS' REPRESENTATIVE.

J. **Releases of Preference Actions Against Holders of General Unsecured Claims.** Pursuant to section 1123(b) of the Bankruptcy Code and for good and valuable consideration on and after the Effective Date, the Debtor and the Estate waive and release all Preference Actions against holders of General Unsecured Claims.

K. **Limited Third Party Releases of Southern.** On the Effective Date, the plaintiffs in the following cases: (i) Scott Miller, Bar 101, LLC and Ichiban consolidated under Desimone Hospitality Services, LLC, et al v. West Virginia American Water Company, et al., Civil Action No. 2:14-cv-14845 (the "Bar 101 Case"), (ii) Crystal Good M.T.S, N.K.T, A.M.S., Melissa Johnson, Aladdin Restaurant, Inc., Georgia Hamra, Mary Lacy, Joan Green, Jamila Aisha Oliver, Wendy Renee Ruiz, Kimberly Ogier, Roy J. McNeal, Maddie Fields, R.G. Gunnoe Farms LLC and Dunbar Plaza, Inc., consolidated under Good et al. v. American Water Company, Inc., et al., Civil Action No. 2:14-cv-01374 (including the consolidated cases 2:14-cv-11011, 2:14-cv-13164, and 2:14-cv-13454, the "Good Case") and (iii) certain putative class representatives that previously contemplated filing a class action lawsuit for settlement purposes with the Debtor, including Stephen N. Smith, Fuji LLC d/b/a Fuji's Sushi & Teriyaki, Fuji LLC d/b/a Fuji Reef Shop & Salt Water Pet Shop, and Hartman & Tyler, Inc. d/b/a Mardi Gras Casino & Resort (collectively, the plaintiffs in (i), (ii) and (iii) the "Class Action Plaintiffs") do agree and shall:

A. release and forever discharge Southern from any and all claims, damages, costs and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known and unknown, asserted and unasserted, arising from the

events at issue in any and all of the above-referenced civil actions, specifically including, but not limited to, the Incident; and

B. covenant not to sue Southern in any case related to or arising from the Incident and agree to release and forever discharge Southern from any and all claims, damages, costs, expenses (including attorney fees and costs) of any nature whatsoever arising from the Incident.

L. **Limited Third Party Releases of Chemstream**. On the Effective Date, the plaintiffs in the following cases (whether or not specifically identified below): (i) Scott Miller, Bar 101, LLC and Ichiban consolidated under Desimone Hospitality Services, LLC, et al v. West Virginia American Water Company, et al., Civil Action No. 2:14-cv-14845 (including the consolidated cases 2:14-cv-14846 to 14901 and 2:14-cv-11009, the "Bar 101 Case"), (ii) Crystal Good M.T.S, N.K.T, A.M.S., Melissa Johnson, Aladdin Restaurant, Inc., Georgia Hamra, Mary Lacy, Joan Green, Jamila Aisha Oliver, Wendy Renee Ruiz, Kimberly Ogier, Roy J. McNeal, Maddie Fields, R.G. Gunnoe Farms LLC and Dunbar Plaza, Inc., consolidated under Good et al. v. American Water Company, Inc., et al., Civil Action No. 2:14-cv-01374 (including the consolidated cases 2:14-cv-11011, 2:14-cv-13164, and 2:14-cv-13454, the "Good Case"), and (iii) certain putative class representatives that previously contemplated filing a class action lawsuit for settlement purposes with the Debtor, including Stephen N. Smith, Fuji LLC d/b/a Fuji's Sushi & Teriyaki, Fuji LLC d/b/a Fuji Reef Shop & Salt Water Pet Shop, and Hartman & Tyler, Inc. d/b/a Mardi Gras Casino & Resort (collectively, the plaintiffs in (i), (ii) and (iii) the "Class Action Plaintiffs") do agree and shall:

A. release and forever discharge Chemstream from any and all claims, damages, costs and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known and unknown, asserted and unasserted, arising from the events at issue in any and all of the above-referenced civil actions, specifically including, but not limited to, the Incident; and

B. covenant not to sue Chemstream in any case related to or arising from the Incident and agree to release and forever discharge Chemstream from any and all claims, damages, costs, expenses (including attorney fees and costs) of any nature whatsoever arising from the Incident.

M. **INJUNCTION. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN OR FOR OBLIGATIONS ISSUED OR REQUIRED TO BE PAID PURSUANT TO THE PLAN OR CONFIRMATION ORDER, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS, SPILL CLAIMS, INTERESTS, OR LIENS THAT ARE RELEASED OR DISCHARGED BY THE PLAN ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS AGAINST, AS APPLICABLE, THE DEBTOR, THE ESTATE, PLAN ADMINISTRATOR OR THE RELEASED PARTIES: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING, OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH PERSONS OR THE PROPERTY OR THE ESTATES OF SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (4) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION, OR**

RECOUPMENT OF ANY KIND AGAINST ANY OBLIGATION DUE FROM SUCH ENTITIES OR AGAINST THE PROPERTY OF SUCH PERSONS ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS UNLESS SUCH PERSON HAS TIMELY ASSERTED SUCH SETOFF RIGHT PRIOR TO THE EFFECTIVE DATE IN A DOCUMENT FILED WITH THE BANKRUPTCY COURT EXPLICITLY PRESERVING SUCH SETOFF, AND NOTWITHSTANDING AN INDICATION OF A CLAIM OR INTEREST OR OTHERWISE THAT SUCH PERSON ASSERTS, HAS, OR INTENDS TO PRESERVE ANY RIGHT OF SETOFF PURSUANT TO APPLICABLE LAW OR OTHERWISE; AND (5) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED OR SETTLED PURSUANT TO THE PLAN. FOR PURPOSES OF CLARITY, THE INJUNCTION PROVIDED IN SECTION 11.13 OF THE PLAN SHALL NOT APPLY TO CLAIMS AND CAUSES OF ACTION BY THIRD PARTIES THAT ARE NOT SPECIFICALLY WAIVED AND RELEASED CLAIMS AND CAUSES OF ACTION IN ACCORDANCE WITH THE PLAN.

N. **Injunction Against Interference with Plan**. Upon the entry of the Confirmation Order, all holders of Claims, Spill Claims, and Equity Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

O. **APPORTIONMENT OF FAULT IN TORT LAWSUITS.** Subject to any order or orders of the Bankruptcy Court or any other court having jurisdiction over the Debtor, nothing in the Plan or the Confirmation Order shall either grant or diminish or stay the rights, if any, of a party to seek to allocate or apportion liability or fault of Debtor in any lawsuit or to claim a verdict credit for any sums paid by the Debtor to a holder of a Spill Claim. No party shall be permitted to argue that the presence of this reservation in the Plan is a suggestion or implication that any such rights exist, as the intent of this reservation is to preserve the status quo with respect to the matters addressed in Section 11.15 of the Plan, and neither grant nor diminish rights that might or might not otherwise exist.

IX. ALTERNATIVES TO THE PLAN

The Debtor submits that the Plan is the best means of providing maximum recoveries to creditors. Alternatives to the Plan that have been considered and evaluated by the Debtor during the course of the Case and include (i) liquidation of the Debtor's assets under chapter 7 of the Bankruptcy Code, (ii) an alternative chapter 11 plan that would provide for distributions to all Allowed holders of Incident Related Claims rather than the cy pres approach proposed for this class of claimants, and (iii) dismissal of the Case. The Debtor submits that the proposed Plan provides a greater recovery to creditors or a more equitable distribution of Estate assets on a more expeditious timetable than inherent risks in any other course of action available to the Debtor.

A. Other Plans of Liquidation

If the Plan were not confirmed, the Debtor or any other party in interest could attempt to formulate an alternative chapter 11 plan. The Bankruptcy Court terminated the Debtor's exclusivity and thus, any party in interest could propose an alternative plan of liquidation.

The Plan, however, represents an intricate compromise that optimizes the limited resources available to the Debtor for the benefit of the Debtor's constituencies. The Plan includes a series of interdependent compromises between the Debtor and various parties in interest that make escrowed funds and insurance proceeds available for distribution to creditors. In addition, the Plan reserves adequate

resources for the Debtor to address its remaining environmental cleanup operations at the Etowah River Terminal before that facility is sold. The Plan also embodies an agreement among the Debtor, the Committee and Spill Claim Counsel regarding the manner of distribution of funds to holders of Allowed Claims in Classes 3, 4 and 5 under the Plan.

In theory, an alternative plan of liquidation could be proposed that would address the concerns of the Debtor's constituencies as well as satisfy the plan confirmation requirements under the Bankruptcy Code. Such an alternative plan, however, would need to be developed through negotiations with the very same creditor constituencies and parties in interest that negotiated the terms of the Plan.

B. Liquidation Under Chapter 7 of the Bankruptcy Code

If the Plan is not confirmed under section 1129(a) of the Bankruptcy Code, the Case may be converted to a case under chapter 7 of the Bankruptcy Code, in which event a chapter 7 trustee would be appointed (or subsequently elected) to liquidate any remaining assets of the Debtor for distribution to creditors pursuant to chapter 7 of the Bankruptcy Code. For the reasons discussed below, the CRO does not believe that conversion to chapter 7 is in the best interests of the Debtor's estate and creditors.

- If the Case is converted to chapter 7, a trustee initially will be appointed on an interim basis, and a permanent trustee will be appointed or elected on a permanent basis, to manage the affairs of the Estate. The interim and/or permanent trustee will be required to undertake a thorough review of the facts and circumstances, in the performance of his or her fiduciary duties to the Estate, with respect to all issues presented, including among other things the continuing environmental remediation process, the potential sale of the Etowah River Terminal facility, the appeals that have been filed with respect to the AIG Settlement Proceeds, the viability of claims and causes of action held by the Estate and a Claims resolution process for the administrative expense, professional fee and prepetition Claims against the Debtor and the Estate. The trustee(s)' assessment of these matters will require substantial time, effort and expense, and possibly result in significant delay in resolution of these matters, at a time when progress toward completion of this bankruptcy case is critical.

- In particular, a chapter 7 trustee would face a steep learning curve with respect to the environmental remediation process that has been undertaken during the past 14 months. The chapter 7 trustee would need to determine, in his or her independent judgment, if the arrangements made by the CRO with WVDEP, as reflected in the VRP Agreement, are in the best interests of the Debtor, the Estate and creditors. This decision-making would be made in the context of a chapter 7 estate that would have very limited financial means to complete the environmental obligations of the Debtor under the best of circumstances.

- In this regard, the chapter 7 trustee would need to evaluate whether the sale of the Etowah River Terminal proposed by the CRO is, in fact, in the best interests of the Debtor, its Estate and creditors. The current sale transaction proposed by the CRO on behalf of the Debtor, which sale is the most readily available source of additional cash to the Estate, is dependent upon the successful resolution of remediation plans of the Debtor with respect to the Etowah River Terminal. Accordingly, in order for a chapter 7 trustee to be able to sell the Etowah River Terminal, a chapter 7 trustee must be able to either implement the accommodations reached between the CRO and WVDEP or be able to reach successful resolution of the Debtor's environmental obligations in another manner acceptable to the chapter 7 trustee and WVDEP.

- The second major asset available to a chapter 7 trustee is proceeds of the Insurance Policies. As noted at Section [xx] herein, however, those proceeds would not be readily available to the chapter 7 trustee absent a settlement comparable to that reflected in the Plan. The AIG Approval Order is subject to appeal by Gary Southern (as well as the Debtor). In order to be able to obtain proceeds of the Insurance Policies, a chapter 7 trustee must either prevail on appeal or otherwise resolve issues relating to both the Southern claims in and to these proceeds as well as the limitations imposed by the Bankruptcy Court on the use of the proceeds of the Insurance Policies as established in the AIG Approval Order and the Clarification Order.

Finally, a chapter 7 trustee would become the potential plaintiff in and to all Claims and Causes of Action of the Debtor. Many of these potential Claims and Causes of Action have been settled by the CRO in the context of the Plan, with settlements to be implemented on the Effective Date. A chapter 7 trustee would be required to investigate potential Claims and Causes of Action that may be asserted by the Debtor and determine whether the settlements proposed by the CRO on behalf of the Debtor are in the best interests of the Debtor, the Estate and creditor. In the event that a chapter 7 trustee were to decide to litigate rather than settle certain Claims and Causes of Action owned by the Debtor, such a course of action would entail additional delay and expense, as well as risk in terms of defenses that might be asserted and collectability issues with respect to certain potential defendants. The potential recoveries by a chapter 7 trustee from either negotiations to resolve or litigation of such Claims and Causes of Action would be highly uncertain. The CRO submits that the settlements proposed in the Plan are in the best interests of the Debtor, the Estate and creditors. If those settlements are approved in connection with Confirmation of the Plan, the Committee agrees with the assessment of the CRO.

X. CONFIRMATION REQUIREMENTS

A. The Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing before a plan of reorganization or liquidation may be confirmed. The Confirmation Hearing to confirm the Plan has been scheduled for the date set forth in the attached notice of confirmation hearing before the Honorable Ronald G. Pearson, United States Bankruptcy Judge in the United States Bankruptcy Court, Robert C. Byrd U.S. Courthouse, 300 Virginia Street, Room 3200, Charleston, West Virginia 25301. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Any objection to confirmation must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the claim or number and type of shares of equity security interests held by the objector. Any such objection must be filed with the Bankruptcy Court and served so that it is received by the Bankruptcy Court and certain other parties when and as set forth in the attached notice of confirmation hearing.

Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. At the hearing on the confirmation of the Plan, the Bankruptcy Court will confirm the Plan only if the requirements of the Bankruptcy Code, particularly those set forth in section 1129 of the Bankruptcy Code, have been satisfied. Objections to final approval of the Disclosure Statement are governed by Bankruptcy Rules 3017 and 9014. At the final hearing on approval of the Disclosure Statement, the Bankruptcy Court will approve the Disclosure Statement on a final basis if the requirements of Bankruptcy Code section 1125 are satisfied.

B. Acceptances Necessary to Confirm the Plan

At the Confirmation Hearing, the Bankruptcy Court must determine, among other things, whether the Plan has been accepted by the requisite amount and number of Allowed Claims and Allowed Interests in each impaired class. Under the Bankruptcy Code, a class of creditors or equity security holders is impaired if its legal, equitable or contractual rights are altered by a proposed plan of reorganization or liquidation. If a class is not impaired, each creditor or equity security holder in such unimpaired class is conclusively presumed to have accepted the plan pursuant to section 1126(f) of the Bankruptcy Code.

An impaired class of creditors and each holder of a claim in such class will be deemed to have accepted the Plan if the holders of at least two-thirds in amount and more than one-half of those in number of the Allowed Claims in such impaired class for which complete and timely ballots have been received have voted for acceptance of the Plan. An impaired class of equity securities and each holder of an interest in such class will be deemed to have accepted a plan if the Plan has been accepted by at least two-thirds in amount of the interests in such class who actually vote on the Plan.

Because the equity interests held by the members of Class 6 are not receiving anything under the Plan, Class 6 is deemed to have rejected the Plan, and the Debtor cannot satisfy the requirements of section 1129(a)(8) of the Bankruptcy Code. Accordingly, the Debtor intends to seek confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. Under section 1129(b), the Bankruptcy Court must determine, among other things, that the Plan does not discriminate unfairly and that it is fair and equitable with respect to each class of impaired Allowed Claims and Allowed Interests that have not voted to accept the Plan.

C. Best Interests of Creditors

The Bankruptcy Code requires that each holder of an impaired claim or equity interest either (i) accept the Plan, or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

The first step in determining whether this test has been satisfied is to determine the dollar amount that would be generated from the liquidation of the Debtor's assets and properties in the context of a chapter 7 liquidation case. The gross amount of cash that would be available for satisfaction of claims and equity interests would be the sum consisting of the proceeds resulting from the disposition of the unencumbered assets and properties of the Debtor, augmented by the unencumbered cash hold by the Debtor at the time of the commencement of the liquidation cases.

The next step is to reduce that gross amount by the costs and expenses of liquidation and by such additional administrative and priority claims that might result from the use of chapter 7 for the purposes of liquidation. Any remaining net cash would be allocated to creditors and shareholders in strict priority in accordance with section 726 of the Bankruptcy Code. Finally, the present value of such allocations (taking into account the time necessary to accomplish the liquidation) are compared to the value of the property that is proposed to be distributed under the Plan on the Effective Date.

The costs of liquidation of the Debtor under chapter 7 would include the fees payable to a trustee in bankruptcy, as well as those fees that might be payable to attorneys and other professionals that such a trustee might engage. Other liquidation costs include the expenses incurred during the Cases and subsequently allowed in the chapter 7 cases, such as compensation for attorneys, financial advisors, appraisers, accountants and other professionals for the Debtor, and the Committee, and costs and expenses of members of the Committee, as well as other compensation claims.

The foregoing types of claims, costs, expenses, fees and such other claims that may arise in a liquidation case would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay prepetition priority and unsecured Claims.

The Debtor, through the CRO, submits that each impaired Class will receive under the Plan a recovery at least equal in value to the recovery such Class would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code, and almost certainly more due to (i) the statutory fees to which a chapter 7 trustee is entitled for administering assets and (ii) the other matters discussed in Section IX.B above.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Case – including the chapter 7 trustee's investment of substantial time and resources to address the continuing environmental remediation process, the potential sale of the Etowah River Terminal facility, the appeals that have been filed with respect to the AIG Settlement Proceeds, the viability of claims and causes of action held by the Estate and a Claims resolution process for the administrative expense, professional fee and prepetition Claims against the Debtor and the Estate – the Debtor has determined that confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would receive pursuant to liquidation of the Debtor under chapter 7.

The Debtor also submits that the present value of any distributions to each Class of Allowed Claims in a chapter 7 case, would be less than the value of distributions under the Plan because such distributions in a chapter 7 case would not occur for a substantial period of time. In the event litigation was necessary to resolve claims asserted in a chapter 7 case, the delay could be prolonged and administrative expenses increased, such that ultimate creditor recoveries will be decreased.

D. Feasibility

Section 1129(a)(11) of the Bankruptcy Code provides that a chapter 11 plan may be confirmed only if the Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the debtor. Because the Plan provides for the complete liquidation of the Debtor, the Bankruptcy Court will find that the Plan is feasible if it determines that there will exist conditions precedent to the Effective Date can be satisfied and sufficient funds to meet its post-Confirmation Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Cases. Provided that all settlements and compromises encompassed in the Plan are approved by the Bankruptcy Court, and further provided that the Debtor's expectations relating to anticipated final remediation and testing arrangements with WVDEP under the VRP are not substantially under-estimated, the Debtor submits that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code.

E. Confirmation of the Plan

In the event the Bankruptcy Court determines that all of the requirements for the confirmation of the Plan are satisfied, the Bankruptcy Court will issue the Confirmation Order confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

XI. CERTAIN RISK FACTORS TO BE CONSIDERED

HOLDERS OF IMPAIRED CLAIMS AGAINST OR INTERESTS IN THE DEBTOR ARE ENCOURAGED TO READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT

(AND THE DOCUMENTS DELIVERED TOGETHER HEREWITH AND/OR INCORPORATED BY REFERENCE), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THOSE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

A. Parties-In-Interest May Object to the Classification of Claims

Section 1122 of the Bankruptcy Code provides that a plan of reorganization or liquidation may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Debtor submits that the classification of claims and interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, the Debtor cannot give assurances that the Bankruptcy Court will reach the same conclusion.

B. The Debtor May Not Be Able to Secure Confirmation of the Plan

The Debtor cannot assure you that the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, the Debtor cannot assure you that the Bankruptcy Court will confirm the Plan. A non-accepting creditor or equity security holder of the Debtor might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found 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 and that the value of distributions to non-accepting holders of claims and interests within a particular class under the Plan will not be less than the value of distributions such holders would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. While the Debtor cannot give assurances that the Bankruptcy Court will conclude that these requirements have been met, the Debtor submits that the Plan will not be followed by a need for further financial reorganization and that non-accepting holders within each class under the Plan will receive distributions at least as great as would be received following a liquidation under chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and the costs and uncertainty associated with any such chapter 7 case.

The confirmation and consummation of the Plan are also subject to certain conditions.

C. The Debtor, Committee and/or a Plan Administrator May Object to the Amount or Classification of Your Claim

The Debtor reserves the right to object to the amount or classification of any claim or interest. The estimates set forth in this Disclosure Statement cannot be relied on by any creditor whose claim or interest is subject to an objection. Any such claim or interest holder may not receive its specified share of the estimated distributions described in this Disclosure Statement. Such an objection to claim may be prosecuted by the applicable Plan Administrator.

D. Remediation Requirements

The Debtor has an obligation not to violate any applicable non-bankruptcy law in order to confirm a plan of liquidation or plan of reorganization under the Bankruptcy Code. The Debtor's environmental remediation obligations and the manner in which the Debtor intends to approach satisfaction of these obligations is explained more fully in Section IV. B. 2(c)(i) herein.

Fundamental to the Plan's success are the accommodations agreed upon between the CRO on behalf of the Debtor and WVDEP. If WVDEP were not to agree with the Debtor regarding the nature or extent of its remaining environmental obligations relating to the Etowah River Terminal site, the Debtor may run out of funds prior to the implementation of the Debtor's completion of its environmental obligations (as agreed by WVDEP), or in the event that the Debtor were not able to promptly obtain Bankruptcy Court approval for the proposed sale of the Etowah River Terminal, the ability of the Debtor to confirm the Plan could be adversely affected, and in fact, confirmation of the Plan could very likely not occur.

E. The Proposed Settlements May Not Be Approved

Funding for the Plan comes from various sources contingent upon approval by the Bankruptcy Court in the context of confirmation of the Plan, of settlements between the Debtor, Chemstream, the Former Ds and Os and Southern. Likewise, certain provisions of the Plan result from settlements and compromises among the Debtor, the Committee and Spill Claim Counsel. Also, distributions under the Plan are based upon the understanding of the finite nature of the Debtor's environmental obligations with respect to the Etowah River Terminal. If any of these settlements were not approved by the Bankruptcy Court, the Plan will not be feasible, and thus, not confirmable.

F. Payment of the Southern Contribution is Subject to Approval by the Office of the U.S. Attorney

A condition precedent to the Effective Date is approval by the Office of the U.S. Attorney of Southern's payment of the Southern Contribution. In connection with the criminal proceedings pending against Southern, the Office of the US Attorney sought and obtained seizure of many if not all of the assets of Southern. In order for Southern to make the Southern Contribution, (and also pay additional release consideration to the plaintiffs in the Good Case) Southern will be required to obtain approval for the release of funds sufficient to cover the Southern Contribution and the payment of the additional release consideration to the plaintiffs in the Good Case from the Office of the US Attorney and the District Court. Although the CRO understands that such approval is more likely than not, there cannot be assurances at this time that requisite approvals will actually be obtained. Without funding of the Southern Contribution, the settlement and compromise between the Debtor and Southern cannot occur.

XII. WHERE YOU CAN OBTAIN MORE INFORMATION

Pursuant to the requirements of the Office of the U.S. Trustee, the Debtor is required to and has filed monthly operating reports for the postpetition period with the Bankruptcy Court. These monthly operating reports may be obtained at prescribed per page copy rates by writing to the Office of the Clerk of the United States Bankruptcy Court for the Southern District of West Virginia, U.S. Bankruptcy Court Robert C. Byrd U.S. Courthouse 300 Virginia Street, Room 3200, Charleston, West Virginia 25301, or on-line at the Bankruptcy Court's website: http://www.wvsb.uscourts.gov.

XIII. CONCLUSION AND RECOMMENDATION

The Debtor submits that confirmation and implementation of the Plan is preferable to any of the alternatives described above because it will provide the greatest recoveries to holders of Claims. The Debtor urges holders of Claims entitled to vote on the Plan to vote to ACCEPT the Plan.

The Committee has filed a letter of recommendation with the Bankruptcy Court indicating the Committee's support of the Plan and encouraging holders of Class 3, Class 4 and Class 5 Claims to vote to ACCEPT the Plan.

Dated: April 30, 2015

FREEDOM INDUSTRIES, INC.

By: /s/ Mark Welch
Its: Chief Restructuring Officer