UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

IN RE:

SHOTWELL LANDFILL, INC.,	)	CASE NO. 13-02590-8-SWH
CAPITOL WASTE TRANSFER, LLC,	)	CASE NO. 13-07568-8-SWH
CAPITOL RECYCLING, LLC,	)	CASE NO. 13-07567-8-SWH
DEBRIS REMOVAL PARTNERS, LLC,	)	CASE NO. 13-07570-8-SWH
SHOTWELL TRANSFER STATION II, INC.,	)	CASE NO. 13-07572-8-SWH
KING'S GRADING, INC.,	)	CASE NO. 13-07573-8-SWH
Debtors.	)	CHAPTER 11

BRIEF AND MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE CHAPTER 11 PLAN OF LSCG FUND 18, LLC AND AGAINST CONFIRMATION OF THE CHAPTER 11 PLAN OF THE DEBTORS

LSCG Fund 18, LLC ("LSCG"), by and through its undersigned counsel, hereby files this Brief and Memorandum of Law in Support of Confirmation of the Chapter 11 Plan of LSCG Fund 18, LLC and Against Confirmation of the Chapter 11 Plan of the Debtors (the "Brief") and states as follows:

JURISIDCTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(L).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND OVERVIEW[1]

3. Shotwell Landfill, Inc. ("Shotwell") owns a landfill on a 135-acre tract of land in Wendell, Wake County, North Carolina, that accepts construction and demolition debris and waste (the "Landfill"). David W. King, Jr. ("King") is the majority shareholder and sole director and President of Shotwell. David A. Cook ("Cook") is a minority shareholder, holding 6.75% of outstanding shares.[2]

4. Several related entities constitute essential parts of Shotwell's business operations. Waste is collected at two transfer stations: (1) Capitol Waste Transfer, LLC ("Capitol Waste"), located in Garner, North Carolina, and (2) Shotwell Transfer Station II, Inc. ("STSII"), located in Apex, North Carolina. Waste is hauled to the transfer stations and the Landfill by Capitol Recycling, LLC ("Capitol Recycling") (formerly Debris Removal Partners, LLC ("Debris Removal")), a container hauling company. King's Grading, Inc. ("King's Grading") is a company that owns equipment that is used by Shotwell.[3]

5. On April 19, 2013 ("Shotwell Petition Date"), Shotwell filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code.

6. As stated in the Emergency Motion for Appointment of Chapter 11 Trustee filed on October 31, 2013, King engaged in fraudulent and inappropriate conduct by causing, among other things, monies due to Shotwell from Capital Recycling, Debris Removal, STSII, Capitol Waste, and King's Grading (the "Related Entities") to be provided to King to pay for his

[1] Unless otherwise stated, all docket references may be found in the lead case, Case No. 13-2590, Shotwell Landfill, Inc.
[2] In an order dated June 20, 2014, the Court allowed Cook a 6.75% equity interest, representing 337.5 shares, in Shotwell. Doc. No. 593.
[3] Allied Installation, LLC ("Allied") owns the land on which Capitol Waste and Capitol Recycling operate. Shotwell Transfer Station, Inc. ("STSI") is an entity that King previously owned, but he has since sold STSI to a third party. STSI operates on land owned by Dynasty Holdings, LLC ("Dynasty"), a company owned by King.

personal and family obligations. There was also substantial evidence of gross mismanagement.[4] See Doc. No. 147.

7. Shortly thereafter, on December 6, 2013, the Related Entities each filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code (the "Related Petition Date"). The Related Entities are 100% owned by King.

8. On January 22, 2014, the Court entered an order administratively consolidating (the "Administrative Order") the bankruptcy cases of Shotwell and the Related Entities (collectively the "Debtors"). Doc. No. 213.

Loan History

9. The obligations owed to LSCG originated through loans made by Branch Banking and Trust Company ("BB&T") beginning in 2004.

10. On August 13, 2013, BB&T filed a proof of claim, claim no. 6 (the "BB&T Claim"), against Shotwell. On August 19, 2013, BB&T and LSCG entered into a Note Purchase and Sale Agreement, which closed on August 19, 2013. Therefore, on September 11, 2013, LSCG filed an Evidence of Transfer of Claim Other than for Security After Proof of Claim Filed (the "Evidence of Transfer"), providing evidence to the Court that the BB&T Claim had been transferred to LSCG and requesting the Clerk of Court to substitute LSCG for BB&T as the holder of the BB&T Claim (the "Shotwell Claim").

[4] The Court did not rule on the initial Emergency Motion for Appointment of Chapter 11 Trustee. Due to the continued operation of Shotwell and the Related Entities, LSCG compiled substantial evidence of fraud and gross mismanagement, supported by expert financial and environmental reports. On May 1, 2014, LSCG filed a Renewed and Restated Emergency Motion for Appointment of Chapter 11 Trustee (the "Renewed Trustee Motion") with over 800 pages of supporting documentation. Doc. No. 426. The Court held the hearing on the Renewed Trustee Motion on May 21, 2014. On June 13, 2014, the Court entered an order denying the Renewed Trustee Motion (the "Trustee Order"). Doc. No. 565. Instead of appointing a Chapter 11 Trustee, on June 13, 2014, the Court entered an order appointing Doug Gurkins as the Court Restructuring Officer. Doc. No. 566. On June 26, 2014, LSCG filed its Notice of Appeal of the Trustee Order. Doc. No. 622. On September 4, 2014, the Court entered a Supplementary Order Setting Out Bases for Denial of Motion to Appoint Chapter 11 Trustee. Doc No. 802. Currently, the appeal is pending before Judge Fox of the United States District Court for the Eastern District of North Carolina.

11. LSCG amended the Shotwell Claim on February 20, 2014, evidencing a secured debt in the amount of $13,728,012.15. On March 18, 2014, LSCG filed a secured proof of claim against Capitol Waste in the amount of $4,206,263.41 (the "Capitol Waste Claim"), a secured proof of claim against Capitol Recycling in the amount of $14,599,106.96 (the "Capitol Recycling Claim"), a secured proof of claim against Debris Removal in the amount of $14,599,106.96 (the "Debris Removal Claim"), a secured proof of claim against STSII in the amount of $4,206,263.41 (the "STSII Claim"), and an unsecured proof of claim against King's Grading in the amount of $4,167,206.32 (the "King's Grading Claim").

12. No party has filed any objection to the Shotwell Claim, the Capitol Waste Claim, the Capitol Recycling Claim, the Debris Removal Claim, the STSII Claim, or the King's Grading Claim (collectively, the "LSCG Claim"). The history of the LSCG Claim has been provided in several pleadings filed with the Court, including the Motion by LSCG for Relief from the Automatic Stay or, in the Alternative, for Adequate Protection (the "Motion for Relief"), filed on November 27, 2013. Doc. No. 169.[5]

13. As of the Shotwell Petition Date, all obligations related to the loans that constitute the LSCG Claim were in default, and no payments were being made to LSCG; at that time, the amount due to LSCG was $13,728,012.15. The amount due to LSCG as of the Related Petition Date was $14,599,106.96. LSCG has not received any payments during the pendency of these bankruptcy cases.

[5] Detailed loan descriptions are also included in the proofs of claim filed by LSCG in each of the Debtors' cases.

PROCEDURAL HISTORY

14. Due to the extensive procedural history of this case and the importance of the proposed plans and objections by the parties, this section addresses the history of proposed plans and the objections to those plans.

The Debtors' Chapter 11 Plans

15. On August 16, 2013, Shotwell filed its Chapter 11 plan and disclosure statement. Doc. Nos. 98-99. On August 19, 2013, the Court entered an order conditionally approving Shotwell's disclosure statement. Doc. No. 104. The confirmation hearing was set for October 17, 2013. Shotwell, with LSCG's consent, requested two continuances of the Shotwell confirmation date, which the Court rescheduled for February 11, 2014.

16. After entry of the Administrative Order, the Court set January 30, 2014, as the deadline for the Debtors to file a plan and disclosure statement, and the confirmation hearing was set for March 25, 2014 (the "First Confirmation Hearing"). Doc. No. 212.

17. On February 3, 2013, the Debtors filed a Consolidated Chapter 11 Plan (the "Consolidated Plan") and disclosure statement (the "Disclosure Statement"). Doc. Nos. 230-31. The Court conditionally approved the Disclosure Statement on February 6, 2014. Doc. No. 240.

18. Neither the Disclosure Statement nor the Consolidated Plan mentions substantive consolidation, yet the Debtors labelled the plan as a "Consolidated" plan, and the provisions of the Consolidated Plan presupposed that the Debtors had already been substantively consolidated.

19. On March 19, 2014, LSCG filed an objection to the Disclosure Statement. Doc. No. 331. The primary objection of LSCG was that the Debtors failed to provide adequate information pursuant to Section 1125 of the Bankruptcy Code on substantive consolidation and

other matters, and failed to provide adequate financial information, including historical operating data and a description of the Debtors' assets and values.

20. Also on March 19, 2014, LSCG filed an objection to the Consolidated Plan. Doc. No. 330. LSCG objected because the Debtors failed to provide a basis for substantive consolidation and failed to describe the claims with particularity. In addition, the Consolidated Plan was not feasible, was not filed in good faith, was not fair and equitable, and discriminated against the LSCG Claim. The First Confirmation Hearing was held on March 25, 2014.

21. On May 1, 2014, the Court entered an Order Regarding Objections to Disclosure Statement, Doc. No. 425, in which the Court required the Debtors to amend the Disclosure Statement in several ways, including providing "the following information . . . [a] discussion of the substantive consolidation proposed by the debtors through their plan and notice that creditors or each entity will be paid from the consolidated group of entities no matter which particular entity actually owes them money and the possible effects of such treatment; [and] [h]ow the debtor anticipates it will fund balloon payments proposed in the plan." Doc No. 425.

22. Pursuant to the Disclosure Statement Order, on May 16, 2014, the Debtors filed the Amended Disclosure Statement (the "Amended Disclosure Statement"), and on May 22, 2014, the Court entered an order conditionally approving the Amended Disclosure Statement, setting the confirmation hearing for June 23, 2014[6] (the "Second Confirmation Hearing"). Doc. Nos. 470, 481.

[6] Prior to the Second Confirmation Hearing, counsel for LSCG noticed that the Debtors did not serve the Consolidated Plan, Amended Disclosure Statement, and ballots on all of the Debtors' creditors and parties of interest. LSCG filed several documents alerting the Court to this issue and requested that the Court reschedule the Second Confirmation Hearing. See Doc Nos. 597, 609. At the Second Confirmation Hearing, the Court ordered the Debtors to re-serve the Consolidated Plan. The Court continued the Second Confirmation Hearing to July 29, 2014. Doc. No. 615.

The Chapter 11 Plans of LSCG

23. On February 20, 2014, prior to the First Confirmation Hearing, Shotwell's 180-day exclusivity period lapsed. Thus, after an unsuccessful First Confirmation Hearing, on May 13, 2014, prior to the Debtors filing the Amended Disclosure Statement, LSCG filed its disclosure statement (the "LSCG Disclosure Statement") and chapter 11 liquidation plan (the "LSCG Plan") relating to only Shotwell. Doc. Nos. 459-60.

24. Simultaneously with the filing of the LSCG Disclosure Statement and the LSCG Plan, LSCG filed a Motion to Terminate the Exclusivity Period of the Related Entities. Doc. No. 461.

25. The Court did not enter an order conditionally approving the LSCG Disclosure Statement, so on May 23, 2014, LSCG filed a Motion for the Court to Conditionally Approve the LSCG Disclosure Statement and schedule a confirmation hearing for the LSCG Plan. Doc. No. 488. Also on May 23, 2014, the Debtors filed a Motion to Extend the Related Entities' Exclusivity Period. Doc. No. 486.

26. On June 4, 2014, LSCG amended the LSCG Disclosure Statement and the LSCG Plan (collectively the "Amended LSCG Plan and Disclosure Statement"), removing any reference to the Related Entities and the pending motion to terminate the exclusivity period of the Related Entities. Doc. Nos. 525-26. The Amended LSCG Plan and Disclosure Statement also added a carveout for general unsecured creditors and a convenience class that mirrored the Consolidated Plan proposed by the Debtors.

27. On June 5, 2014, the Court held a hearing regarding LSCG's Motion to Conditionally Approve the LSCG Disclosure Statement.[7]

28. On June 12, 2014, the Court made several rulings in a telephonic hearing. The Court denied the Debtors' motion to extend the Related Entities' exclusivity period and ordered LSCG to proceed with the Amended LSCG Plan and Disclosure Statement **only if** LSCG filed a disclosure statement and plan that proposed to substantively consolidate the Debtors (the "Telephonic Order").[8] Audio at Doc. No. 562.

29. Pursuant to the Telephonic Order, on June 16, 2014, LSCG filed a Joint Chapter 11 Plan of Liquidation (the "LSCG Joint Plan") and a Disclosure Statement for Joint Chapter 11 Plan of Liquidation (the "LSCG Joint Disclosure Statement"). Doc. Nos. 573-74. After the Court received objections to the LSCG Joint Disclosure Statement, the Court contacted counsel for LSCG and ordered the LSCG Joint Disclosure Statement to be amended to address concerns and objections.

30. The revised disclosure statement (the "LSCG Amended Joint Disclosure Statement") was filed on June 19, 2014. Doc. No. 585. Among other things, the Court required LSCG to remove the sentence "[u]nlike the Affiliated Debtors' Plan, LSCG's Plan is not substantively consolidated." The Court also ordered LSCG to include a liquidation analysis for each individual debtor.

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[7] Prior to any ruling by the Court on LSCG's Motion to Conditionally Approve the LSCG Disclosure Statement, LSCG filed several amendments to the LSCG Disclosure Statement, Doc. Nos. 552, 555, and an amendment to the LSCG Plan, Doc. No. 553. The amendments made minor adjustments to the auction time line and further increased the carveout for the general unsecured creditors. For ease of reference, the amended documents are incorporated into the defined term "Amended LSCG Plan and Disclosure Statement."

[8] At the June 12, 2014 telephonic hearing, the Court stated, "…if lender wishes to have its plan considered by the court concurrently with that of the debtor, it must file a consolidated plan and disclosure statement no later than June 16th … the only way that I am willing to have the lender's plan run concurrently is if it is a consolidated plan because I think it's the only way that there are apples and apples determination by the creditors." The Order Denying Motion to Extend Exclusivity/Acceptance Period stated that "[t]he motion is DENIED in order to serve the more pressing interest of allowing the confirmation hearing on the consolidated plans filed by the debtor and LSCG Fund 18, LLC to proceed in a sequential manner." Doc. No. 567.

31. On June 20, 2014, the Court conditionally approved the LSCG Amended Joint Disclosure Statement and scheduled the hearing for July 29, 2014 (the "LSCG Confirmation Hearing"). Doc No. 587. However, the Court rescheduled the LSCG Confirmation Hearing to August 18, 2014 due to the Court's preference to have the Debtors' Second Confirmation Hearing proceed prior to the LSCG Confirmation Hearing.

32. Prior to and during the LSCG Confirmation Hearing, LSCG further amended the LSCG Joint Plan and the LSCG Amended Joint Disclosure Statement (collectively the "LSCG Confirmation Plan"), primarily to increase the amount of the carve out to the unsecured creditors.[9] See Doc. Nos. 665, 674, and 783.

Confirmation Hearings

33. The Debtors and LSCG have presented evidence and testimony in support of their respective Chapter 11 plans.[10]

34. In summary, the Consolidated Plan of the Debtors contemplates payment to creditors over time through monthly payments to be received from the continued operation of the Landfill and the Related Entities. All Debtors will be liable for each other's liabilities, thus the profits from Shotwell will not only pay Shotwell's creditors but also the creditors of other Debtors as well. Also, creditors that do not have claims against Shotwell will be lumped in the same group as the Shotwell creditors.

35. The LSCG Joint Plan was amended on October 7, 2014. Doc. No. 864. The LSCG Joint Plan now proposes to place $2.7 million in an escrow account within three days of confirmation. LSCG will use the $2.7 million to purchase all allowed unsecured claims, all

[9] The Court entered orders conditionally approving the amended disclosure statements. Doc. Nos. 669, 677.
[10] On November 27, 2013, LSCG filed a Motion for Relief from Stay. Doc. No. 169. This motion for relief is pending and will be resolved concurrently with confirmation.

allowed secured claims (except Class V[11]), and all allowed tax claims, paying the claims in full within 30 days of the confirmation date. The LSCG Claim and the claims purchased by LSCG will be paid from the proceeds of the sale of the Landfill and the Debtors' property.

Plan and Ballot Summaries

36. Four impaired classes (two controlled by David Stallings[12]) accepted the Consolidated Plan of the Debtors. Four impaired classes and the equity holder class rejected it. The chart below provides a summary of the votes received for the Consolidated Plan.

Class	Accept	Reject	Treatment
Class 1 – Allowed Administrative Expense Claims			Unimpaired
Class 2 – Allowed Priority Tax Claims and Allowed Secured Tax Claims	**no votes received		Impaired
Class 3 – Allowed Secured Claim of LSCG Fund 18, LLC		# Votes Rejected: 5 # Votes Received: 5	Impaired
Class 4 – Allowed Secured Claim of Caterpillar Financial Services Corporation	# Votes Accepted: 1 # Votes Received: 1 ** Accepted both plans, but filed preference for LSCG Plan		Impaired
Class 5 – Allowed Secured Claim of Caterpillar Financial Commercial Account Corporation	**no votes received		Impaired
Class 6 – Allowed Secured Claim Ford Motor Credit	# Votes Accepted: 1 # Votes Received: 1		Impaired
Class 7 – Allowed Secured Claim of TT&E Iron & Metal, Inc.		# Votes Rejected: 1 # Votes Received: 1	Impaired
Class 8 – Allowed Secured Claim of North State Bank	# Votes Accepted: 1 # Votes Received: 1		Impaired
Class 9 – Allowed Unsecured Claim of LSCG Fund 18, LLC		# Votes Rejected: 6 # Votes Received: 6	Impaired
Class 10 – Small Unsecured Claims	# Votes Accepted: 6 ($9,261.38 or 100%) # Votes Received: 6 ($9,261.38)	Votes Rejected: 0 ($0 or 0%) # Votes Received: 6 ($9,261.38)	Impaired
Class 11 – General Unsecured	# Votes Accepted: 9	# Votes Rejected: 13	Impaired

[11] Class 5 is the secured claim of Ford Motor Credit Company ("Ford"), which prefers to be paid over time rather than be paid in full within 30 days of the confirmation date. With respect to this class, the LSCG Joint Plan was amended to provide that Ford's collateral, a vehicle, will not be sold, and Ford will retain its lien.

[12] David Stallings purchased a secured claim while still a member of the Creditors committee. At the request of Jeb Jeutter, attorney for the Committee, David Stallings resigned from the Committee.

Claims (class undecided)	($654,660.97 or 43.8%) # Votes Received: 22 ($1,493,255.63) ** Not counting Waste Industries	($838,594.66 or 56.2%) # Votes Received: 22 ($1,493,255.63)	
Class 12 – Allowed Equity Interests	# Votes Accepted: 1 # Votes Received: 2	# Votes Rejected: 1 # Votes Received: 2	Unimpaired

37. Four impaired classes accepted the LSCG Joint Plan. Two impaired classes (both controlled by David Stallings) and the equity holder class rejected it. Although more general unsecured creditors in Class 10 voted for the LSCG Joint Plan than rejected it, the acceptance of the class depends on the Court's determination of the amount of the claim of Waste Industries. The following chart provides a summary of the votes received for the LSCG Joint Plan.

Class	**Accept**	**Reject**	**Treatment**
Class 1 – Allowed Administrative Expense Claims			Unimpaired
Class 2 – Tax Claims			Unimpaired
Class 3 – Secured Claim of LSCG	# Votes Accepted: 5 # Votes Received: 5		Impaired
Class 4 – Caterpillar Financial Services Corporation Secured Claim	# Votes Accepted: 1 # Votes Received: 1 ** Accepted both plans, but filed preference for LSCG Plan		Impaired
Class 5 – Ford Motor Credit Company LLC Secured Claim			Unimpaired
Class 6 – Caterpillar Financial Commercial Account Corporation Secured Claim	# Votes Accepted: 1 # Votes Received: 1		Impaired
Class 7 – TT&E Iron & Metal, Inc. Secured Claim	# Votes Accepted: 1 # Votes Received: 1		Impaired
Class 8 – North State Bank Secured Claim		# Votes Rejected: 1 # Votes Received: 1	Impaired
Class 9 – Small Unsecured Claims	# Votes Accepted: 2 ($1,202.55 or 11.5%) # Votes Received: 8 ($10,463.93)	# Votes Rejected: 6 ($9,261.3 or 88.5%) # Votes Received: 8 ($10,463.93)	Impaired
Class 10 – General Unsecured Claims	# Votes Accepted: 19 ($838,594.66 or 57.3%) # Votes Received: 26 ($1,463,255.63) ** Not counting Waste Industries	# Votes Rejected: 7 ($624,660.97 or 42.7%) # Votes Received: 26 ($1,463,255.63)	Impaired
Class 11 – Equity Holders	# Votes Accepted: 1 # Votes Received: 2	# Votes Rejected: 1 # Votes Received: 2	Impaired

38. Even though LSCG amended the LSCG Joint Plan after the voting period for its plan, the LSCG Joint Plan does not require re-balloting because the treatment of all parties who have previously accepted the LSCG Joint Plan is either improved or the same. Thus, LSCG did not make any material modifications.

39. Rule 3019 of the Federal Rules of Bankruptcy Procedure provides, "[i]n a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan." Fed. R. Bankr. Proc. 3019.

40. A modification is material if the modification so affects any creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would likely reconsider its acceptance. In re Burcam Capital II, LLC, 2013 WL 593709, at * 2 (Bankr. E.D.N.C. 2013); rev'd and remanded sub nom; CWCapital Asset Mgmt., LLC v. Burcam Capital II, LC, Case No. 5:13-CV-278-F, 2014 WL 2864678 (E.D.N.C. June 24, 2014)(reversed on different grounds).

41. The chart below shows the effect of the most recent modification of the LSCG Joint Plan on creditors and equity interests. The treatment of all affected creditors and interest holders is improved by the modification. Thus, no accepting creditor or interest holder is likely to reconsider its acceptance, and the modification to the LSCG Joint Plan is not material.

Accepting Class/ Creditor	**Plan Modification**	**Effect on Treatment**
Class 3 – Secured Claim of LSCG	None.	None.
Class 4 – Caterpillar Financial Services Corporation Secured Claim	Added language that LSCG will use funds in the Escrow Account to purchase claim.	Better (new source of payment).
Class 6 – Caterpillar Financial Commercial Account Corporation Secured Claim	Added language that LSCG will use funds in the Escrow Account to purchase claim.	Better (new source of payment).
Class 7 – TT&E Iron & Metal, Inc. Secured Claim .	Claim will no longer be paid from the sale of the Debtors' Property. Instead, LSCG will purchase claim within thirty days of the Confirmation Date using funds in the Escrow Account.	Better (new source of payment and faster payment).
Class 9 – Small Unsecured Claims • Machine & Welding Supply Co. • R.W. Moore Equipment Co.	Claims will no longer be paid from the sale of the Debtors' Property. Instead, LSCG will purchase claims within thirty days of the Confirmation Date using funds in the Escrow Account.	Better (new source of payment and faster payment).
Class 10 – General Unsecured Claims • TT&E Iron & Metal, Inc. • Henry Bagwell • David A. Cook • Lone Pine Logistics, LLC • Brown Investments of NC • John D. Brown • Smith Gardner, Inc. • Holding Oil Co., Inc. • Double "J" Enterprises, Inc. • James M. Barnes • LSCG Fund 18, LLC • Waste Industries	Claims will no longer be paid from the sale of the Debtors' Property. Instead, LSCG will purchase claims within thirty days of the Confirmation Date using funds in the Escrow Account.	Better (new source of payment, all claims paid in full, and faster payment).
Class 11 – Equity Holders • David A. Cook	Claims will not be paid until all Allowed Unsecured Claims have been paid.	Better (all unsecured claims paid from Escrow Fund).

LEGAL STANDARD FOR CONFIRMATION

42. Under the Bankruptcy Code, a court should confirm a plan only if the plan meets all of the requirements of Section 1129(a) of the Bankruptcy Code. The proponent of a plan of reorganization has the burden of proving all of the requirements of Section 1129(a) have been satisfied by a preponderance of the evidence. In re Swartville, LLC, No. 11-08676-8-SWH,

2012 WL 3564171, at *4 (Bankr. E.D.N.C. Aug. 17, 2012); In re Atrium High Point Ltd P'ship, 189 B.R. 599, 609 (Bankr. M.D.N.C. 1995).

43. Alternatively, the proponent of a plan may obtain confirmation of its plan if the court finds that the plan "does not discriminate unfairly, and is fair and equitable with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b); In re Premiere Hospitality Group, Inc., No. 13-02145-8-RDD, 2013 WL 6633428, at *2 (Bankr. E.D.N.C. Dec. 16, 2013).

THE CONSOLIDATED PLAN OF THE DEBTORS CANNOT BE CONFIRMED BECAUSE IT FAILS TO MEET THE REQUIREMENTS OF SECTION 1129(a)

44. The Consolidated Plan does not meet the requirements of Section 1129(a).

Section 1129(a)(1)

45. The Consolidated Plan violates Section 1129(a)(1) because it does not comply with the applicable provisions of this title. See 11 U.S.C. § 1129(a)(1). Section 1129(a)(1) requires that the plan comply with all provisions of title 11, including Sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and the contents of a plan. See H.R. Rep. 595, 95th Cong., 1st Sess. 412 (1977), S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5912, 6383 ("Paragraph (1) [of section 1129] requires that the plan comply with the applicable provisions of title 11, such as sections 1122 and 1123, governing classification and contents of plan.").

46. Section 1122 of the Bankruptcy Code requires proper classification of claims by requiring a plan to "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." 11 U.S.C. § 1122(a).

47. The Consolidated Plan improperly classifies claims. Specifically, the Consolidated Plan classifies LSCG's potential unsecured claim in Class 9, separate from Class

11, which includes general unsecured claims. The Debtors do not provide any legitimate basis for differentiating LSCG's potential unsecured claim from other allowed general unsecured claims.

48. The Debtors should place the claims in Class 9 and Class 11 in the same class. In In re Piece Goods Shops Company, L.P., the court stated that whether claims should be separately classified turns on the nature of their status vis-à-vis the debtor:

> Rather, the issue is whether the claims in a class have the same or similar legal status in relation to the debtor. E.g., In re AVO Industries, Inc., 792 F.2d 1140, 1150 (D.C. Cir. 1986). Unsecured claims, whether trade, tort, unsecured notes, or deficiency claims of secured creditors, are generally included in a single class because they are "of equal rank entitled to share pro rata in values remaining after payment of secured and priority claims." FGH Realty Credit Corp. v. Newark Airport/Hotel Limited Partnership, 155 B.R. 93 (D.N.J. 1993).

In re Piece Goods Shops Co., 188 B.R. 778, 788 (Bankr. M.D.N.C. 1995).

49. Previously, the Fourth Circuit in In re Bryson Properties XVIII held that the debtor's discretion is not unlimited with regard to placing unsecured claims into different classes. 961 F.2d 496, 502 (4th Cir. 1992) (finding that "although separate classification of similar claims may not be prohibited, it 'may only be undertaken for reasons independent of the debtor's motivation to secure the vote of an impaired, assenting class of claims.'") (quoting In re Greystone III Joint Venture, 995 F.2d 1274, 1279 (5th Cir. 1991)).

50. The general rules of class classification provide that "the identity of the holder does not render the claims themselves dissimilar" and separate classification may be based upon whether "a debtor can articulate a legitimate business justification for separate classification of unsecured claims." CWCapital Asset Management, LLC v. Burcam Capital II, LLC, 2014 WL 2864678, at *3, *7. For example, there may be a legitimate business justification for separately

classifying otherwise similar unsecured claims when the plan "… pay[s] trade creditors on a shorter time frame than larger institutional creditors." Id. at *4.

51. In the present case, the only evidence offered by the Debtors for classifying the potential unsecured debt of LSCG in Class 9 separate from the general unsecured debts in Class 11 is the testimony of King. He testified that separate classification was warranted because the general unsecured claims in Class 11 consist of trade creditors, and King is worried about the Debtors' reputation.[13] Transcript of July 30, 2014 hearing at p. 173, lines 21-25, p. 174, lines 1-17. King did not explain which business relationships might be affected, or how separate classification of the Class 9 claim from the Class 11 claims will improve or even affect the reputation of the Debtors. The potential Class 9 unsecured claim of LSCG is no different than the other general unsecured claims in Class 11.

52. A review of the claims that voted in Class 11 reveals that only two claims are held by creditors with whom the Debtors have a current relationship (Lone Pine Logistics, LLC and Holding Oil Company, Inc.), and neither of them would be important to maintaining the Debtors' reputation. The majority of the claims that voted in Class 11 could not be affected by the Debtors' reputation because they are claims held or controlled by (a) professionals employed by King or (b) former Shotwell suppliers or employees. The rest of the voting Class 11 claims are held by David Stallings (King's financial advisor), Glenwood Partners (owned by King's attorney), Blanchard, Miller, Lewis & Isley, P.A. (King's attorneys), L.G. Jordan Oil Co., Inc. (purchased by David Stallings), Ragsdale Liggett, LLC (King's attorneys), Snider Fleet Solutions (purchased by David Stallings), Henry Bagwell (former employee), John D. Brown

[13] King's testimony: "Q: All right. Mr. King, do you care about the reputation of the debtors in the community? A: Yes. Q: Do you think that it would be fair to amortize the debt of the general trade creditors, people like –well, who's a general trade creditor? Give me --- name one of your creditors who just supplies you with stuff. A: Umm… Q: Hold – Holden Oil, is that one? A: Well, they're not anymore. Q: All right. Name –name someone who's still one. A: Red Stool company." Transcript of July 30, 2014 hearing at p. 173, lines 21-25; p. 174, lines 1-17.

(former employee), TT&E Iron & Metal, Inc. (former supplier), Smith Gardner and Associates (former engineer), Road Machinery Services, Inc. (former supplier), James M. Barnes (sold Capital Waste Transfer to King), Double "J" Enterprises, Inc. (former supplier), David A. Cook (former employee), and Waste Industries (potential purchaser of the Landfill). Since only two of the voting Class 11 claims have a current relationship with the Debtors, such creditors can hardly form the basis for a concern about the Debtors' reputation and therefore a separate classification.

53. The Debtors have failed to provide any legitimate business reason for classifying and treating LSCG's potential unsecured claim differently from the other unsecured claims. The only logical reason is gerrymandering, which is impermissible. In re Bryson Properties, XVIII, 961 F.2d at 502; In re Swartville, LLC, No. 11-08676, 2012 WL 3564171, at *6.

54. Not only do the Debtors not have a legitimate reason to separately classify the claims in Classes 9 and 11, but also the treatment of Class 9 is much worse than the treatment provided to the general unsecured claims in Class 11. Specifically, the Consolidated Plan provides that the Class 9 claim, which is the potential LSCG unsecured claim, shall be re-amortized over 25 years at 3.25% interest[14] while Class 11 claims receive pro rata an initial amount of $100,000 and thereafter quarterly payments of $45,000 until paid in full, with a 3.25% interest rate.

55. Furthermore, the Consolidated Plan lumps the claims of LSCG together and provides one treatment for all – regardless of whether each claim is secured by personal property or real property. [15]

[14] At the August 18, 2014 hearing, Debtors' counsel amended the Consolidated Plan to increase the interest rate provided to unsecured creditors from the federal judgment rate to 3.25%. LSCG assumes that the increase applies to unsecured creditors for both Class 9 and Class 11. Transcript of August 18, 2014 hearing, p. 60, lines 5-18.

[15] The Consolidated Plan fails to identify the collateral and amount of each claim that constitutes the LSCG Claim, which also makes it difficult to determine whether the Consolidated Plan is feasible and whether it is fair and equitable with regard to LSCG.

56. The Consolidated Plan fails to comply with Section 1129(a)(1) due to impermissible classification and inequitable treatment of like claims. However, the Consolidated Plan also fails to comply with Section 1123, which provides, in part, that a plan must designate classes of claims and provide for the treatment of classes of claims, and that the plan must provide adequate means for the plan's implementation. 11 U.S.C. § 1123(a)(1), (a)(5).

57. In the Consolidated Plan, the Debtors seek to substantively consolidate all the Debtors even though they make no attempt to show any grounds for substantive consolidation. The Amended Disclosure Statement of the Debtors describes its Consolidated Plan as "a form of Substantive Consolidation." Specifically, the Amended Disclosure Statement describes the Debtors' obligations under the Consolidated Plan as:

> "JOINT OBLIGATION OF DEBTORS TO MAKE PAYMENT UNDER THE PLAN: Under the Plan, although the six Debtors will remain separate entities, each Debtor will be liable to make all payments called for by the Plan, regardless of which of the six Debtors originally had liability on the claim. This can be described as a form of "Substantive Consolidation," although that term is not defined by the Bankruptcy Code and is used in different ways by different practitioners. By having each Debtor liable for all Plan payments, it is possible that creditors of any particular Debtor could be prejudiced by having their particular Debtor saddled with the Plan obligations of all the other Debtors. Given the joint manner in which the six Debtors have historically operated (including the regular transfer of funds between the companies, the payment of debtors based upon cash availability rather than obligor, and the periodic writing off of intercompany debt), the Debtors believe that a plan paying all debts in full, over time, regardless of which entity owes the debt, is appropriate." (emphasis added).

58. In ¶ 1.17 of the Consolidated Plan, the Debtors refer to the "consolidated Chapter 11 case."

59. On January 22, 2014, the Court entered the Administrative Order, which administratively consolidated the cases. Doc. No. 213. However, the Debtors have never moved for substantive consolidation. As the Court knows, a jointly administered case is different than a

substantively consolidated case. See In re Tanglewood Farms, Inc. of Elizabeth City, No. 10-06719-8-JRL, 2011 WL 672060, at *1 (Bankr. E.D.N.C. Feb. 18, 2011) ("While Rule § 1015 of the Federal Rule of Bankruptcy Procedure permits the consolidation and joint administration of two pending cases, the rule is merely for procedural convenience and does not involve the consolidation of the two entities' assets and liabilities.")

60. Substantive consolidation is a legal remedy by which "assets of a group of entities [are pooled] into a single survivor." In re Tanglewood Farms, Inc., 2011 WL 672060, at *2 (citing In re Owens Corning, 419 F.3d 195, 206 (3d Cir. 2005)). "The creditors' claims for the separate entities, therefore, will 'morph to claims against the consolidated survivor.'" Id. (citing In re Owens Corning, 419 F.3d at 206 (internal citations omitted)). A court's authority to substantively consolidate separate debtor estates into a single estate is found in Section 105. Id. Since substantive consolidation "forces creditors of one debtor to assume an equal priority position with creditors of less solvent debtors, substantive consolidation should be used 'sparingly.'" In re Eagle Creek Subdivision, LLC, 407 B.R. 206, 208 (Bankr. E.D.N.C. 2008).

61. In order for the Court to grant a motion for substantive consolidation, it must determine (a) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit, or (b) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors. E.g., In re Tanglewood Farms, Inc., 2011 WL 672060, at *2 (emphasis added); In re Eagle Creek Subdivision, LLC, 407 B.R. at 208. See In re Augie/Restivo Baking Co., Ltd., 860 F.2d 515, 518 (2d. Cir. 1998).

62. There are many factors that a court may consider in ascertaining whether the interrelationship between the entities warrant consolidation. Those factors include:

> (1) assumption by the parent of contractual obligations of its subsidiaries; (2) the sharing of overhead, management, accounting, and other related expenses among

> the different corporate entities; (3) the existence of intercompany guarantees on loans; (4) failure to distinguish between property of each entity; (5) shifting of funds from one company to another without observing corporate formalities; (6) parent paying salaries of employees of subsidiaries; (7) subsidiary having grossly inadequate capital; (8) degree of difficulty in segregating and ascertaining individual assets and liabilities; (9) the presence of consolidated financial statements; (10) the parent owning all or a majority of the capital stock of a subsidiary; (11) the parent, its affiliates, and the subsidiary having common directors or officers; (12) the parent or its affiliates financing the subsidiary; (13) the parent shifting people on and off the subsidiary's board of directors; (14) subsidiary having substantially no business except that with the parent or its affiliates or no assets except those conveyed to it by the parent or an affiliate; (15) the parent referring to the subsidiary as a department or division; (16) the directors of the subsidiary not acting independently in the interest of the subsidiary, but taking direction from the parent; and (17) the parent, its affiliates and the subsidiary acting from the same business location.

In re Drexel Burnham Lambert Group, 138 B.R. 723, 764 (Bankr. S.D.N.Y. 1992).

63. In these cases, the Debtors have not even attempted to present evidence that creditors dealt with the Debtors as a single economic unit without relying on their separate identities. The affairs of the Debtors are not hopelessly entangled. In fact, the evidence shows that Debtors maintained separate books and records.

64. The Debtors have also not shown that consolidation will benefit all, or even most, creditors. Implementation of the Consolidated Plan would obligate all Debtors to the debts of all other Debtors. Moreover, many creditors would be paid more quickly in a non-consolidated plan that paid the debts of each Debtor solely from the assets of that Debtor.

65. There is nothing in the record explaining the effect of substantive consolidation of the Debtors and whether it is beneficial to creditors. In fact, King testified that he has not engaged in an analysis of the effect of substantive consolidation, and he has not directed anyone

else to engage in such an analysis.[16] Transcript for July 30, 2014 hearing, p. 228, lines 2-17, 23-25; p. 229, lines 1-5.

66. The Debtors should not be allowed to substantively consolidate without a showing that it is warranted. Without evidence, the Court cannot balance "the prejudice resulting from the proposed consolidation against the effect of preserving separate debtor entities." In re Drexel Burnham Lambert Group, 138 B.R. at 764-5. The Debtors have not made a showing that the extreme and rare act of substantive consolidation is warranted and appropriate. See in re McTeer Oil Co., No. 13-60660-EJC, 2014 WL 2022052, at *5 (Bankr. S.D. Ga. May 14, 2014). Therefore, the Court should not allow this extraordinary remedy. See In re Tanglewood Farms, Inc., 2011 WL 672060, at *2 ("Substantive consolidation should be used sparingly to prevent injustice.") (quoting In re Fas Mart Convenience Stores, Inc., 320 B.R. 587, 594 (Bankr. E.D.Va. 2004)).

67. Thus, the Consolidated Plan does not comply with Section 1129(a)(1).

Section 1129(a)(2)

68. Section 1129(a)(2) requires that the proponent of a plan comply with the applicable provisions of title 11. Courts addressing this subsection have held that this subsection is limited to whether adequate disclosure and solicitation has been provided pursuant to Section 1125. See In re PWS Holding Corp., 228 F.3d 224, 248 (3d Cir. 2000) ("We agree with the District Court's conclusion that § 1129**(**a**)(**2**)** requires that the plan proponent comply with the

[16] King's testimony: "Q: And have you engaged in an analysis as to the effect of the sub -- the -- what I'll call the substantive consolidation or the consolidated plan on the creditors of Shotwell Landfill? Is the consolidation good or bad for them? A: I think the consolidation would be good for them. Q: And why is that? A: Because everybody is going to get paid back. Q: That -- that's not my question. Is the -- the consolidation better for the creditors than for Shotwell Landfill, Inc., than if they were not consolidated? A: I don't really have an opinion on that. I -- I don't -- I don't really know the answer to that. …Q: Okay, and have you engaged in an analysis of the effect of -- of substantive consolidation or consolidation on the equity interest of the various Shotwell entities? A: No. Q: Have you directed anyone to do such analysis? A: No. Transcript for July 30, 2014 hearing, p. 228, lines 2-17, 23-25; p. 229, lines 1-5.

adequate disclosure requirements of § 1125".). See also In re Cypresswood Land Partners, I, 409 B.R. 396, 424 (Bankr. S. D. Tex. 2009).

69. The Debtors have not moved to substantively consolidate the Debtors, and they have not provided any analysis with regard to the effect of substantive consolidation on creditors and equity interest holders. Thus, the Debtors have not complied with Section 1129(a)(2).

Section 1129(a)(3)

70. Section 1129(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law. 11 U.S.C. § 1129(a)(3). Whether a plan is proposed in good faith is determined in light of the circumstances surrounding the plan. See, e.g., In re Texas Extrusion Corps., 844 F.2d 1142, 1160 (5th Cir. 1988), cert denied, 488 U.S. 926 (1988).

71. Numerous bankruptcy courts have held that the "good faith" test of Section 1129(a)(3) is satisfied if there is a reasonable likelihood that the plan will achieve its intended results, which results are consistent with the purposes and objectives of the Bankruptcy Code. In re Renegade Holdings, Inc., 429 B.R. 502, 518 (Bankr. M.D.N.C. 2010) (new hearing granted by In re Renegade Holdings, Inc., Case no. 09-50140C-11W, 2010 WL 2772504 (Bankr. M.D.N.C. July 13, 2010) due to inadequate disclosure under Sections 1129(a)(2) and 1125) . See In re Madison Assocs., 749 F.2d 410, 425 (7th Cir. 1984). See generally Travelers Ins. Co. v. Pikes Peak Water Co. (In re Pikes Peak Water Co.), 779 F.2d 1456, 1459 (10th Cir. 1985).

72. Good faith requires a fundamental fairness in dealing with creditors. In re Renegade Holdings, Inc., 429 B.R. at 518-9. Good faith is "assessed by the bankruptcy judge and viewed under the totality of the circumstances." In re General Teamsters, Warehousemen & Helpers Union Local 890, 225 B.R. 719, 728-9 (Bankr. N.D. Cal. 1998).

73. The facts and circumstances surrounding the Consolidated Plan reveal that it fails to comply with Section 1129(a)(3). Confirmation should be denied for this reason alone. See In re Hartford Run Apts. of Buford, Ltd., 102 B.R. 130, 132 (Bankr. S.D. Ohio 1989) (bankruptcy court may sanction lack of good faith in any manner it chooses). Prepetition and post-petition, King has caused the Debtors to engage in conduct that is inconsistent with the purposes of the Bankruptcy Code.

74. First, the Debtors have not been open, genuine, and forthcoming with the Court or its creditors. At the most basic level, the Debtors' schedules have been materially inaccurate throughout much of this case. Only after LSCG or another party provided notification to the Court did the Debtors amend the schedules. Shotwell amended its schedules at least six times. Doc. Nos. 56, 85, 145, 157, 195, and 352. Moreover, several amendments dealt with obvious large omissions, such as vehicles, that even the most careless debtor would list on its schedules. Doc. Nos. 145, 195; Doc. No. 36 (Case No. 13-7567). Even at the Second Confirmation Hearing (held July 29th-31st 2014), King's testimony showed that the schedules were still inaccurate.[17]

75. More glaring omissions are explained by the financial report written by William A. Barbee of GreerWalker LLP (the "Financial Report").[18] Mr. Barbee detailed the Debtors' failure to disclose many assets and liabilities on their schedules. The Financial Report showed,

[17] "Q: Okay, and Mr. Janvier asked you again this morning, and your testimony was that all of the assets on this list were necessary to the operations of the landfill -- is that -- or its affiliates. Is that correct? King: Yes. Q: Wasn't the -- and I'm looking one, two seven lines down under Shotwell Landfill, the 2008 Ford F350. Wasn't that sold -- King: --- Yes. Q: In December 2013? King: Yes. Q: So it's no longer owned by the company, is it? King: That's correct. Q: Then how could it be necessary for the operations if it's no longer owned? King: That should be off of there. Q: Anything else that should be off of there? King: No. Q: All the other assets are used for the benefit of the company? King: Yes.. Q: Would that include, on the second page, the 1995 Jeep? King: Well, this is King's Grading. Q: Is that 1995 Jeep used for the benefit of King's Grading? King: That's who bought the Jeep at the time Q: Is that 1995 Jeep used for the benefit of King's Grading? King: Not really. Q: Isn't it actually located primarily at the hunting club that you belong to? King: Yes. Q: And so it's used for your personal purposes? King: Yes. Q: Okay, and -- so your statement earlier that all these assets are -- are necessary for the operations of the business is not exactly accurate…" Transcript of July 30, 2014 hearing, p.242, lines 23-25; p. 243, lines 1-25; p. 244, lines 1-14.

[18] The Court admitted the Financial Report into evidence on May 21, 2014, as Exhibit A.

and Mr. Barbee testified, that the Debtors failed to disclose over $5,000,000 in loans from the Debtors to King. In addition, the Financial Report identified numerous transfers to insiders within one year prior to filing the bankruptcy petitions, which the Debtors failed to list on their schedules.[19]

76. Multiple times during these bankruptcy proceedings, King has admitted to receiving over $5,000,000 in loans[20] and has admitted to using the Debtors' funds for his own personal obligations.[21] Yet, the Consolidated Plan makes no mention of loans and transfers to King, and King does not intend to repay the Debtors for these loans.[22]

77. The Debtors' schedules also failed to list liability for a bond held by the State of North Carolina in connection with a road paving project being completed by Turner Construction ("Turner") on behalf of the Debtors.[23] King admitted that he caused the Debtors to pay Turner at

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[19] "Q…Does that reflect certain transfers to you, to Shelly King and to Katie Kessing during what would commonly be known an as an avoidance period? Is that correct? King: Yes. Q: And some of those are substantial, are they not? King: Yes. I don't -- yes. Q: So while the debtor has the right to pursue those transfers, to seek to set them aside and bring those funds back into the estate to pay claims of creditors, the debtor has made a decision not to pursue those claims. Is that correct? King: Yes." Transcript from July 30, 2014 hearing, p. 308, lines 1-19.

[20] "Q: Are you aware that the QuickBooks of your company shows that you personally owe $5,336,000? King: Yes,…" Transcript from July 30, 2014 hearing, p. 275, lines 5-7.

[21] "Q: Did you use this company as your own personal bank account? King: I mean, a lot of it -- not as my personal bank account … I brought a lot of debt with me, you know … so I had these debts with me when I – when I actually ended up buying Shotwell Landfill … as I kept moving forward, if you will … I brought a lot of debt with me. So all I was trying to do was keep my personal debt at bay. Q: At the expense of Shotwell? King: No. I mean, it wasn't just Shotwell, though. I mean, it was --- Q: --- King's Grading and --- King: --- Yes. Q: --- And the other entities in bankruptcy? King: Yes." Transcript from May 21, 2014 hearing, p. 264, lines 7-25, p. 265, lines 1-5. (emphasis added).

[22] "Q: All right, so do you - you plan on paying any of this back to the company? King: I don't – I don't think so. Q: Does your plan say anything about this debt you owe the company? King: No." Transcript from July 30, 2014 hearing, p. 275, lines 10-15.

[23] Mr. Barbee testified as to the logistics of this obligation and payment of same. "Q: Can you explain what you found. Barbee: Essentially pre-petition King's Grading had very little, if any, activity. The only activity it really had was the last of those payments under the prepaid services agreement and the money that went out, the majority of which went to Mr. King. But before that it really had very little revenue and operating activity. It wasn't until Shotwell filed Chapter 11 that you go and look within the Quickbooks and show that there's more -- there's really significant activity going on, and that activity really has to do with money that's coming from Shotwell to King's Grading. And, then, most recently King's Grading has paid Turner Construction approximately $113,000. And it appears that this is for a pre-petition liability related to the -- I think, -- Shotwell Transfer Station II believe is the name of it -- that was sold in 2012. Q: Is that the North Raleigh Transfer Station? Barbee: That's my understanding, yes. Q: Yes. So what were the payments that started to be made post-petition from Shotwell to King's Grading? Barbee: Post-petition it was 30 -- well, it didn't start until late summer of last year when King's Grading essentially

least $180,000 post-petition for a pre-petition debt[24] on which King himself is ultimately liable, as the other guarantor entities are insolvent and/or protected by bankruptcy.[25]

78. Even recently, the Debtors failed to provide timely, adequate notice to the Court and parties in interest. Shotwell entered into a lease with Capital Properties of Raleigh, LLC, which is also a creditor in these cases. The lease commenced July 1, 2014, yet Shotwell did not file the Motion to Approve the Lease Agreement until September 16, 2014, more than two months later, Doc. No. 830, and only after the lease was discovered by LSCG through written discovery to a third party.

79. Second, as set forth in the Renewed and Restated Emergency Motion for Appointment of Trustee and the supporting brief,[26] King has engaged in fraud, self-dealing, and gross mismanagement to the detriment of the Debtors. A summary of that fraud, self-dealing, and gross mismanagement follows:

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ran out of money, had no more cash … But basically it was shown as a -- an inner-company account. And then they went back and deleted the transaction and reentered it as a payment for site maintenance, and then they recharacterized that payment as site maintenance. So then … Q: So what happened to the money that was transferred from Shotwell to King's Grading? Barbee: The majority of that money went to pay Turner Construction the $115,000. Q: And explain why that -- what that was for. Barbee: That -- the Turner Construction was, it appears -- based on what I've been able to piece together, it appears that that is for -- related to a bond that the Kings personally guaranteed. And so that related to the Shotwell Transfer Station I that needed to be -- that basically it would be a liability related to that that would go ultimately to Mr. and Mrs. King if it was not handled within Shotwell -- within King's Grading. Q: What did -- what did Turner Asphalt do with the money? Barbee: It's, it's my understanding that based on what I've seen, it appears that they are doing work at Shotwell Transfer Station I. Q: Building a road. Barbee: Building a roads yes. Q: And who's liable on the performance bond that you've seen for that? Barbee: Mr. and Mrs. King. Transcript from May 21, 2014 hearing, p. 25, lines 11-25; p. 26, lines 1-20; p. 27, lines 7-25; p. 28, lines 1-5.

[24] "Q: And how much did you pay Turner Construction? King: I don't know what the current amount is now. Probably 180,000 … Q: … And you paid that 180,000 from King's Grading to Turner Asphalt? King: Correct. Q: Post-petition? King: Correct. Q: For an obligation incurred before the bankruptcy? King. Yes. Transcript from May 21, 2014 hearing, p. 231, lines 5-7, 11-15.

[25] Q: But that obligation traces back to well prior to the bankruptcy? King: Yes Q: And you understand you're not supposed to be paying pre-bankruptcy debts while you're in bankruptcy? King: I didn't see it like that, but you told me that and I understand that…. Q: All right. Not, I think you heard Mr. Barbee say that you built that -- you built that road to protect yourself because the bond was in your name? King: Bond's in King's Grading's name. Q: Is it possible that you guaranteed that bond? King: I'm sure. Q: Did you do it to protect your own finances? King: I did it to protect the entire empire. Transcript from May 21, 2014 hearing, p. 203, lines 19-25, p. 204

[26] See Doc. Nos. 426, 511-12.

a. Paying pre-petition obligations post-petition;[27]

b. King's use of Debtors' funds as his personal funds;[28]

c. Failure to quickly and adequately comply with environmental regulations and standards;[29] and

d. Failure to obey court orders.[30]

80. Third, King has attempted to deny creditors the right to participate in the bankruptcy process. Shortly prior to the Shotwell Petition Date, Double J Enterprises filed suit against Shotwell, King, and King's wife. Yet Double J never received notice of the Shotwell bankruptcy.[31]

81. Fourth, King attempted to get two creditors removed from the Committee by filing a false police report.

82. On February 28, 2014, King filed a criminal incident report (the "Police Report")[32] with the Raleigh Police Department, alleging embezzlement against Grant Kiser and John Brown, both of whom are unsecured creditors in the Debtors' cases and are members of the Committee. In the Police Report, King alleged that from June 2012 through December 2012

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[27] See Brief ¶ 80.

[28] Within a two-year time span, King used more than $1,900,000 of the Debtors' funds to pay his personal obligations and/or the obligations of King's family. See Financial Report, admitted as Ex. A at May 21, 2014 hearing. King also testified to paying personal expenses from Debtors' funds. "Q. Mr. King, it's true, isn't it, that these companies, your companies, you paid personal expenses out of your companies prior to the bankruptcy being filed? King: Yes." Transcript of May 21, 2014 hearing, p. 198, lines 7-11.

[29] See Environmental Due Diligence report by Stacey Smith of Smith + Gardner, admitted as Ex. C at May 21, 2014. hearing.

[30] King's testimony regarding the order approving his salary: "Q: And are payroll taxes being paid on those amounts? King: I don't have any idea. I don't -- I don't even see the checks: Q: Okay, and why are -- tell me why, if the Court has approved $300,000 in compensation to you and zero to your wife, why are checks being written to your wife? King: No reason." Transcript of July 30, 2014 hearing, p. 190, lines 9-17.

[31] "Q. Okay. You are aware that immediately before the Shotwell bankruptcy was filed that Double J had sued Shotwell Landfill, you and Shelly King, were you not? King. Yes. Q. Okay, and that happened just within a few months of Shotwell filing its bankruptcy petition, did it not? King. I believe that's right. Q. Okay. But your testimony is you have no idea why Double J didn't get notice of the bankruptcy? King. No, I'm -- I do not." Transcript of July 30, 2014 hearing, p. 335, lines 8-20.

[32] The Court admitted the Police Report as Exhibit B at the August 6, 2014 hearing.

Grant Kiser and John Brown stole money from Capitol Recycling instead of refunding the money to the customers of Capitol Recycling.

83. Detective Troy Maddocks ("Det. Maddocks") of the Raleigh Police Department investigated the facts alleged in the Police Report. Det. Maddocks testified that it was strange that the Police Report was filed about two years after the alleged incident[33] and that King failed to provide any documentation or evidence to support his embezzlement allegations.

84. In fact, Det. Maddocks, testified that King told him that he had waited to file the complaint against Grant Kiser and John Brown because "now he [King] had a – a bankruptcy situation going on and he wanted to get these individuals – his lawyer told him that he could get these individuals kicked off the bankruptcy hearing if they were charged."[34] Transcript of August 6, 2014 hearing, p. 105, lines 2-6.

85. After meeting with Grant Kiser and John Brown, Det. Maddocks determined that there was never any embezzlement. Det. Maddocks discovered and testified that Grant Kiser and John Brown thought "Mr. King was trying to get them kicked off his bankruptcy panel…" Transcript of August 6, 2014 hearing, p. 111, lines 12-14.

86. Det. Maddocks did not charge either Grant Kiser or John Brown. However, he testified that he had discussions with his superiors about charging King with filing a false police report. See Transcript from 8/6/14 hearing, pg. 115, lines 1-8. According to the Police Report, Det. Maddocks closed the case on March 12, 2014.

[33] "Q: Now, when you received this information were –were you concerned about the time that had passed since the alleged crime took place? Det. Maddocks: Yes. Q: And why were you concerned about it? Det. Maddocks: Because victims usually don't report crimes almost two—two years after they occur. Q: And can you give us more of your experience with regard to that? Det. Maddocks: Usually –usually victims report crimes immediately." Transcript from 8/6/14 hearing pg. 104, lines 10-20.

[34] "Q: So Mr. King told you that that was the reason for him coming forward at this time. Is that right? Det. Maddocks. Correct. Q. Was to discredit or -- I don't know what the right word is, to do something --- Det. Maddocks. He mentioned he wanted them charged because he knew if they were charged that he could get them kicked off the bankruptcy case. Q. Okay. And -- and he wanted them charged with a crime, is that right? Det Maddocks. Correct.

87. When asked about the status of the case, King lied. King testified:

> King: ----I ----I have not given [Det. Maddocks] the permission to go and ask the DA if they're chargeable.
>
> Question: And you – your understanding is you have to give the detective permission to go to the DA? Is that right?
>
> King: Well, that's - - he told me when I was ready to do that, he would go. And I said I'm not ready. I want to make sure – see if there was any – any more customers out there that, in theory, they were supposed to give money back to.[35]

88. In fact, the case had been closed and there was no further investigation, in part because King never provided Det. Maddocks with supporting documentation even though King urged Det. Maddocks to charge the individuals. Det. Maddocks testified:

> Det. Maddocks: …Mr. King kept calling me, probably two or three times a week, just continuously asking me if they have been charged. But I kept explaining to him that, you know, I didn't have the supporting information that I needed to prove the elements of any crime.[36]

89. Fifth, as explained above, the Consolidated Plan fails to comply with the Bankruptcy Code because the Debtors have failed to show a basis for substantive consolidation. The Consolidated Plan also impermissibly classifies LSCG's potential unsecured claim separately from other general unsecured creditors.

90. In conclusion, considering the totality of circumstances, the Debtors have not acted in a manner consistent with the purposes of the Bankruptcy Code and have failed to demonstrate fairness when dealing with their creditors. The Debtors did not propose the Consolidated Plan in good faith as required by Section 1129(a)(3).

[35] Transcript of July 30, 2014 hearing, p. 296, lines 18-25, p. 297, lines 1-3.
[36] Transcript of August 6, 2014 hearing p. 107, lines 12-17.

Valuation

91. In order to appropriately address the remaining issues with the Consolidated Plan pursuant to Section 1129(a), value must be addressed.

92. The Court has not determined the value of the Landfill. The determination of whether the Consolidated Plan fulfills certain provisions of Section 1129(a) is dependent, at least to some extent, on the value of the interest of LSCG in the Landfill. That value determines the size of the LSCG secured and unsecured claims.

93. The Consolidated Plan proposes to re-amortize the secured claim of LSCG in Class 3 over 25 years at 5% interest. The Consolidated Plan proposes to re-amortize the potential LSCG unsecured claim in Class 9 over 25 years at 3.25% interest.

94. In the Amended Disclosure Statement, the Debtors estimate the amount of LSCG secured claim in Class 3 to be less than $5,000,000. LSCG disputes this valuation.

95. Before the Court are two issues regarding the value of the Landfill. First, the Court must determine the value of the interest of LSCG in the Landfill. LSCG has a deed of trust on the Landfill, and the Court must determine whether the land encumbered by the LSCG deed of trust should be valued as a permitted landfill or as raw land. Second, the Court must review the valuation reports and expert testimony to determine the value of the Landfill itself.

96. The land on which LSCG has a deed of trust is subject to a special use permit that allows the Debtors to operate the Landfill on that land (and only on that land). Each expert witness testified that the land may not be separated from the permit: Frank Leatherman,[37] the

[37] "Q: Is it proper to value a landfill as raw Land? Leatherman: I'm not sure that's ever been adjudicated. The permit is tied specifically to a particular site. There's ongoing conversation particularly in my industry about is it a property right or not a property outright. And that really -- I'm not sure it's been adjudicated. But in my opinion, you can't really separate the permit from the particular site, so they're kind of tied together. The landfill is now in place. There is a permit there. And from my experience with most landfills that are out there operating, some of them have been operating since the sixties. As long as you have good actors involved in the property operation, they

valuation expert of the Debtors; William Nelson[38] and Ronald Thomas,[39] the valuation experts of LSCG; and Doug Gurkins,[40] the Court Restructuring Officer, all agree on this point. Only King suggests that the proper value of the LSCG secured claim is the value of the raw land only. Transcript of July 29, 2014 hearing, p. 96, lines 2-15.

97. As Mr. Thomas testified, the Wake County Unified Development Ordinance provides: "A special use permit runs with the land . . . and is binding on . . . subsequent successors, heirs, or assigns of the property to which it applies. Once the special use permit is recorded in the Register of Deeds, no use or development other than that authorized by the special use permit must be approved on that land." Wake County, N.C., Unified Development Code § 19-23-14 (emphasis added).

98. The Landfill may not be used for any purpose other than as a construction and demolition landfill. Consequently, the valuation of the Landfill as "raw land" is inappropriate and not feasible. Put another way, there is no way to compare the 165 acre tract against other tracts of "raw land" because such comparisons are not viable or realistic. This conclusion is

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generally tend to keep operating. Q: So would a -- in your opinion would a proper valuation of a landfill take into account the special use permit on that landfill? Leatherman: Well, I think they're -- like I said, I think they're tied together. I don't know a way to separate them." Transcript of August 6, 2014 hearing, p. 33, lines 8-25;p. 34, lines 1-5.

[38] "Q. Can the value -- in your opinion, can the value of a landfill be separated from the land? Nelson: No. Q: Why not? Nelson: The land has been -- it's -- it's part of the permit. It's been defined. It's -- it's controlled by the permit, and to separate those two would be to -- I mean, it's just ludicrous. Q: Is the permit tied to a particular piece of land? Nelson: It's -- it's specifically tied to a piece of land defining its geometric characteristics, defining buffers and controlling what can happen there." Transcript of February 20, 2014 hearing, p. 62, lines 10-23.

[39] "Thomas: …Now, this landfill obviously is physically capable of being a landfill. Now, legally -- and this is the important issue here. Legally its zoning has a special use and that special use permits a landfill. This landfill was granted a special use in, I think, 1999, and again in, I believe, 2006, and it was amended to actually double the land area within the -- that was the subject of the special use. That had to be recorded at the register of deeds office. And once you accept that special use permit, that is the only use permitted for that property." Transcript of August 6, 2014 hearing, p. 130, lines 7-19.

[40] "Q: Do you have an idea how much the permits may be worth? Gurkins: Can't sell them. It's never been tested. You can sell them in a swine operation. And in reality, that's what they're buying when they buy this landfill. They're buying the grandfather clause in with this permit. So in real -- no, they're buying real estate. They're buying -- you're advertising --you're selling the real estate. But in actuality, the person that buys it is not buying the real estate, they're buying the landfill. Q: Is it possible to sell the land without the permits? Gurkins: I would hate to try to. In fact, I don't know that I would even accept the job." Transcript of July 31, 2014 hearing, p. 501, lines 5-20.

dictated by the unique, permitted nature of the Landfill that prescribes no use other than that as a construction and demolition landfill.

99. As Mr. Nelson's appraisal states, "[a]n operating landfill sells as a permitted facility which generates revenue as a function of the land ownership and permitted special use." Nelson Appraisal, at p. 4.[41] The appraisal further states that "[t]he purchase or sale of a landfill always includes the actual real estate because the intangible permit to operate runs with the land as it is specific in defining the characteristics of the land in use and follows the path of ownership for at least 30 years post-closure." Nelson Appraisal, at p. 4.

100. Mr. Nelson used the income capitalization approach or discounted cash flow analysis to value the Landfill. Mr. Nelson's appraisal states that "[l]andfills are bought/sold and valued based on income." Nelson Appraisal, at p. 5. He states further that "[t]he INCOME approach is the generally accepted method of valuing a landfill, and in this case, the amalgamated group of Shotwell's assets creating the income stream." Nelson Appraisal, at p. 5. All of the valuation experts agree that the income approach is the appropriate method to determine value of the Landfill because that method combines the market value of the land and the value of the landfill.[42]

101. In Shoosmith Bros., Inc. v. County of Chesterfield, 268 Va. 241, 601 S.E.2d 641 (2004), the Virginia Supreme Court upheld the valuation of a construction and demolition landfill using the income capitalization approach. The Supreme Court stated:

> Based on this record, we hold that the trial court did not err in concluding that Shoosmith failed to show either that the County committed manifest error in assessing the landfill property based on the income method. . . ."

[41] The Court admitted the Nelson Appraisal into evidence on February 20, 2014 as Exhibit A.
[42] See Nelson Value Report, p.4. The Court admitted the Nelson Value Report into evidence on February 20, 2014 as Exhibit A. See Leatherman Value Report, p. 48. The Court admitted the Leatherman Value Report into evidence on August 6, 2014, as Exhibit 5. See Thomas Value Report, pgs. 18-19. The Court admitted the Thomas Value Report into evidence on August 6, 2014, as Exhibit C.

268 Va. at 248, 601 S.E.2d at 645. See also Susan M. Freeman, Valuation of Challenging Collateral in Bankruptcy Cases, ABA Business Bankruptcy Committee Meetings Held in Conjunction with the National Conference of Bankruptcy Judges (Atlanta, Georgia, November 1, 2013), at p. 10 ("Commercial and investment property is commonly valued by determining the income-producing capacity of the property on a stabilized basis through estimating market rent from comparable rentals, making deductions for vacancy and collection losses and operating expenses, then capitalizing the net income at a market-derived rate. It is known as the Discounted Cash Flow, or DCF.") (citing In re Amer. Home Mortg. Holdings, Inc., 637 F.3d 246, 249 (3d Cir. 2011)).

102. In In re LMR, LLC, the court valued a hotel in accordance with its proposed operational use. 496 B.R. 410, 425 (Bankr. W.D. Tex. 2013). The hotel owner filed a Chapter 11 case and sought confirmation of a Chapter 11 plan; AVF, which had a lien on the hotel, objected to confirmation. Id. at 414-15. AVF had filed a proof of claim for $3,815,355 and alleged that the value of the hotel was $3.2 million. Id. at 423. No party filed an objection to the AVF proof of claim as of the confirmation hearing, and the claim was prima facie allowed in that amount. Id. at 424.

103. The LMR court found that under Section 506(a)(1), it is necessary to determine the value of AVF's collateral—the hotel—to determine the amount of AVF's secured claim. Id. at 424. The court began by quoting the statutory language of Section 506(a)(1) and noting that "[j]udicial precedent requires that the 'proposed disposition or use' of the collateral be of paramount importance in valuation." Id. AVF's appraiser valued the hotel at $3.2 million using a blend of an income approach ($3.1 million) and a comparable sales approach ($3.35 million). Id. The court found that the value of the hotel was the $3.2 million proffered by AVF's

appraiser. Id. at 425. The court based this decision on the debtor's plan, which proposed the continued operation of the hotel by the debtor. Id. As a result, the LMR court found that the hotel should, therefore, be valued in accordance with such proposed operational use. Id.

104. The present case is no different. The Debtors seek to retain the Landfill as an operating asset as part of their plan of reorganization. The valuation reports range from a value of $13,700,000 to $28,080,000.[43] Since LSCG has a lien on the Landfill, LSCG has a fully secured claim for purposes of Section 506(a).

105. The Consolidated Plan values the secured claim of LSCG (Class 3) at less than $5,000,000; this value is simply not supported by the record. Since the permit may not be separated from the land, the lien of LSCG on the Landfill must be valued as a permitted landfill, which means that the LSCG Claim is fully secured.

Section 1129(a)(7)

106. With respect to each impaired class of claims or interests, Section 1129(a)(7) requires each holder of an impaired class to (1) accept the plan or (2) receive under the plan at least as much as the holder of an impaired class would receive in a chapter 7 liquidation. 11 U.S.C. § 1129(a)(7)(emphasis added).

107. The Consolidated Plan does not satisfy the best interest of creditors test. It treats the LSCG secured claim as an impaired class and re-amortizes the claim over 25 years at 5% interest, proposing to pay off the entire claim with a balloon payment seven years after the effective date.

108. The Debtors have not provided the creditors or the Court with any information regarding the ability of the Debtors to fund the balloon payment. In fact, the Debtors' own

[43] Since the Court has not yet heard closing arguments regarding the Motion for Relief from Stay and valuation, LSCG will save the analysis and breakdown of the valuation reports for that time.

interest rate expert, John Logan, does not believe that a market exists to finance the Landfill, especially without a guarantor or principal with adequate liquidity or an infusion of capital.[44] Logan assumed the Landfill value to be around $24 to $28 million and concluded that without a solvent guarantor or capital, the Debtors would not be able to obtain $15 million in financing. Transcript of August 18, 2014 hearing, pp. 14-17.

109. Logan also testified that if the Debtors needed to obtain a loan on a landfill amortized over 25 years with a seven-year call, a hypothetical synonymous with the Debtors' proposed treatment of the LSCG secured claim, the Debtors could be successful if there is an acceptable guarantor. Id. at p. 25, lines 6-22.

110. Thus far, the Debtors have not had any success in obtaining financing.[45] More importantly, the Debtors have not provided any evidence that suggests that the Debtors will be able to obtain financing within seven years, except for King's "feeling" that he will be able to obtain a loan in seven years because his credit will be reestablished. Transcript of July 30, 2014 hearing, p. 284, lines 7-9.

111. The Debtors have not presented any alternatives to King as a guarantor. But King will obviously not be an acceptable guarantor or principal to secure financing; he has testified that he has used the Debtors' funds to help keep his personal finances and obligations afloat due to his large personal debt load. See, supra n.21.

[44] Transcript for August 18, 2014 hearing, p. 39, lines 9-21.

[45] "Q. Mr. King during this bankruptcy cases have you explored the opportunity of going to get financing to pay off your debts? King. Yes. Q. What have you found? King. Not much. Q. Have you found anybody who's willing to provide financing for a company in bankruptcy? King. No. Q. Who have you approached? King. Bank of North Carolina, Wells Fargo, and I believe that's it right now. Q. All right. Have you been told that Chapter 11 is just a deal breaker? King. That is correct." Transcript of July 29, 2014 hearing, p. 141, lines 20-25; p. 142, lines 1-9.

112. To satisfy Section 1129(a)(7), the Debtors must show that LSCG will receive under the Consolidated Plan at least as much as LSCG would receive in a Chapter 7 liquidation. The Debtors cannot meet this standard.

113. The liquidation value of the Landfill is $15,700,000. After seven years, the Debtors would need to obtain funding of approximately $13,000,000 to make the balloon payment. See Dragelin Report, p. 11.[46] However, this will be nearly impossible. As Mr. Dragelin explained, there is an extremely high loan to value ratio, and the loan to value ratio will only increase because the Landfill is a depleting asset.[47] The cash flow is inconsistent, and since the Landfill is a construction and demolition landfill, there is more variability and therefore more risk for a prospective lender.[48] Also, the Debtors' projections do not allow for any adversity; they assume perfect operation. See Dragelin Report at 25.

114. The Debtors' expert, Logan, testified that there is no market for this type of loan without a solvent principal or guarantor, and King testified that he is currently unable to obtain financing. The evidence shows that the Debtors will not be able to provide the financing necessary to pay the balloon payment in seven years. Without a successful balloon payment, the Debtors cannot show that LSCG will receive under the Consolidated Plan at least as much as LSCG would receive in a Chapter 7 liquidation. Thus, the Consolidated Plan fails to satisfy the best interest of creditors test.

[46] The Court admitted the Expert Report of Timothy J. Dragelin ("Dragelin Report"), Senior Managing Director at FTI Consulting, Inc., into evidence on August 18, 2014 as Exhibit E.
[47] Transcript of August 18, 2014 hearing, p. 96, lines 5-7; p. 98, lines 11-15; p. 99, lines 2-3.
[48] Transcript of August 18, 2014 hearing, p. 111, lines 7-17.

Section 1129(a)(11)

115. Section 1129(a)(11) requires that a plan be feasible and that confirmation will not likely be followed by the liquidation of the debtor or the need for further financial reorganization. 11 U.S.C. § 1129(a)(11).

116. The purpose of the feasibility requirement is "to prevent confirmation of visionary schemes which promises creditors and equity security holders more under a proposed plan than the debtor can possibly attain after confirmation." In re Smith, 357 B.R. 60, 69 (Bankr. M.D.N.C. 2006). The question of feasibility is a question of fact, and the plan proponent bears the burden to show feasibility of the plan by a preponderance of the evidence. In re Radco Properties, Inc., 402 B.R. 666, 678 (Bankr. E.D.N.C. 2009).

117. For several reasons, the Consolidated Plan is not feasible. First, the Debtors have not shown that they can meet their obligations under the Consolidated Plan. In their projections, the Debtors did not increase their expenses[49] or the salaries of their employees[50] for the next seven years. In fact, the Debtors projected cash flow based solely on historical financial figures rather than using reasonable assumptions about the future; the Debtors did not project based on likely market changes, but simply copied their historical figures.[51]

[49] "Q: Okay. Will you look at these projections, then, and tell me where you have increased the --- the – the expenses? King: I – I haven't. That's why it's conservative. …Q: Conservative in my view is that you take -- you are conservative as in you keep your revenues probably low, knowing that you probably will have increases, because you'll be able to increase your fees. Correct? King: Correct. Q: So you kept your revenues low based on that. That is conservative. But when you keep your expenses at exactly the same level for seven years, that is being not conservative. That's being very aggressive. You're assuming your expense structure is not going to change." Transcript of July 30, 2014 hearing p. 315, lines 10-14; p. 316, lines 13-25.

[50] "Q: For seven years no one's getting a raise? King: Oh, yeah. Yes, ma'am. No, I'm saying yeah, absolutely. So these projections you're getting --everyone's getting the exact -- you have the exact same amount going out for everyone." Transcript of July 30, 2014 hearing, p. 318, line 25; p. 319, lines 1-5.

[51] "Q: Okay, so you understand that these projections don't really reflect what your actual expenses are going to -- or what you even think your actual expenses might be? King: It's -- it was the best, to our knowledge, what we have done historically. Q: But it's not a projection? King. It is a projection. Q: You're going to project -- so you're projecting out that you're going to continue to have exactly identical expenses month after month for seven years? King. That -- and that -- and that is not going to be -- it's not going to be accurate. There's no way that I could

118. Mr. Dragelin testified that the Debtors failed to include necessary assumptions in the projections, such as volume, tonnage, and compact rate, and they failed to account for all necessary expenses such as the cost of the CRO.[52] The projections are not only flawed and unreliable, they also fail to take into account variability in operations. See Dragelin Report at 12, 22, 25.

119. Furthermore, the projections of the Debtors are based on general unsecured claims in Class 11 totaling $950,000. The Consolidated Plan proposes to pay that amount over a five year period. Transcript of July 30, 2014 hearing, p. 301, lines 5-13. However, unsecured claims totaling at least $1,873,982.92 voted for or against the Consolidated Plan. And the claim of Waste Industries has yet to be determined. Total unsecured claims in these cases will be more than twice what the Debtors project. The Debtors will not be able to make the proposed payments to the general unsecured creditors.

120. King is not infusing any new capital into the Debtors, and based on the cash flow projections, any event that may cause a decrease in cash flow will likely cause the Debtors to default in the plan payments. See Dragelin Report, p. 25.

121. King testified that if the Raleigh area is hit by a major disaster, he would be able to generate $5 million in a year. Transcript of July 30, 2014 hearing, p. 320, lines 18-24. This type of unfounded statement is not sufficient to prove that that the Consolidated Plan is feasible. In re Renegade Holdings, Inc., 429 B.R. at 519 ("Success need not be guaranteed – the

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possibly tell you in seven years what my motor grader operator is going to be paid." Transcript of July 30, 2014, p. 319, lines 7-23.

[52] Testimony of Mr. Dragelin: "The problem with actually looking at the projections is that they don't have all the assumptions that you would hope a plan would include to be able to evaluate those assumptions. And those assumptions include the volume, the tonnage, the compaction rate, the tipping fees, various expense assumptions. And I believe that there's been testimony in this case that not all expenses have been included in the debtor's projections, either, including the cost of the CRO, for example, and -- and so those add to the risks associated with the loan as well." Transcript of August 18, 2014, p. 100, lines 8-19.

possibility that a plan may fail is not fatal – but a plan must be supported by adequate evidence that some reasonable assurance of success exists."). Future disastrous weather events are an insufficient basis upon which to base the cash flow of the Consolidated Plan. The Debtors' projections are aggressive and do not provide any margin for error.

122. Furthermore, the Debtors have not provided any evidence that the Debtors will be able to service the LSCG Claim, especially the contemplated balloon payment that is due seven years after the effective date. See supra ¶¶117-19, 122. Dragelin Report, pp. 10-12.

123. Finally, it is important to note that the Debtors will fail regardless of whether the loan is within market terms. The restructuring proposal of the Debtors is not within market terms, for many reasons, including that there is no required equity infusion and a low interest rate. Even with the below market terms and requirements, the Debtors do not demonstrate the ability to repay the loan. See Dragelin Report at 26. If the restructuring proposal is brought within market terms, the Debtors will be unsuccessful as well. For example, 9.5% interest with a 25 year amortization will create a cash shortage of $500,000 the first year. See Dragelin Report at 25. Even if the Consolidated Plan provided for market terms (i.e., a 4.5% interest rate with a 10 year amortization and a 5 year balloon), the Debtors will only complete one year of payments before defaulting. Id. at 26.

124. Any of the options stated above would require further restructuring or the liquidation of the assets of the Debtors. See Dragelin Report at 26. The success of the Debtors is purely visionary and without supporting evidence. For these reasons, the Debtors have not met their burden of proving that the Consolidated Plan is feasible.

125. The Consolidated Plan does not meet the requirements of Section 1129(a) and cannot be confirmed.

APPLICATION OF SECTION 1129(a) TO THE LSCG JOINT PLAN

126. The LSCG Joint Plan is a liquidation plan. It will pay all general unsecured claims (regardless of the auction price), all secured claims (except Ford), all tax claims, and all administrative claims in full within 30 days after confirmation. The LSCG Joint Plan does not meet all the requirements of Section 1129(a) because three impaired classes have not accepted it, but it does fulfill enough of the requirements of Section 1129(a) to proceed to cramdown under Section 1129(b).

127. Section 1129(a)(1) requires that the plan comply with all provisions of Title 11, including Sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and contents of a plan. See H.R. Rep. 595, 95th Cong., 1st Sess. 412 (1977), S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5912, 6383. The LSCG Joint Plan complies with the applicable provisions of Title 11.

128. The Court required LSCG to make its plan a substantive consolidation plan. See, supra, ¶¶ 28, 30. However, since the LSCG Joint Plan is a liquidation plan, it is not dependent upon substantive consolidation. Likewise, the success of the LSCG Joint Plan is not dependent upon meeting the burden required for substantive consolidation.

129. As required by Section 1129(a)(2), LSCG has complied with the applicable provisions of Title 11. There are no outstanding disclosure issues.

130. As Jonathan Grossman of LSCG testified, the LSCG Joint Plan was filed in good faith.[53] Transcript of August 20, 2014 hearing, p. 315, line 1. Section 1129(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law. 11 U.S.C. § 1129(a)(3). The "good faith" test of Section 1129(a)(3) is satisfied if there is a reasonable likelihood that the

[53] "Q: Has LSCG proposed this plan in good faith? Grossman: Absolutely." Transcript of August 20, 2014 hearing, p. 314, line 25; p. 315, line1.

plan will achieve its intended results, which results are consistent with the purposes and objectives of the Bankruptcy Code.

131. The Debtors have had ample time to confirm a plan of reorganization. The Shotwell case has been pending for 18 months, and the Related Entities cases have been pending for ten months, without a confirmed plan in any of these cases. During this time, LSCG has not received any payments toward the LSCG Claim. LSCG is exercising the right of any creditor to file its own Chapter 11 plan once exclusivity expires. LSCG has presented testimony that the LSCG Joint Plan was filed in good faith, and there is no evidence to the contrary.[54]

132. As stated above, the LSCG Joint Plan does not comply with Section 1129(a)(8), because at least one impaired class did not accept the plan. However, the same is true with regard to the Consolidated Plan of the Debtors.

133. The LSCG Confirmation Plan is feasible. Section 1129(a)(11) requires that a plan be feasible and that confirmation will not likely be followed by the debtors' liquidation or the need for further financial reorganization. 11 U.S.C. § 1129(a)(11). The LSCG Joint Plan is a liquidation plan. Mr. Dragelin testified about the interest of Waste Industries and Greenway Waste, both owners of similar landfills in Wake County, to bid at the proposed auction. Lisa Inman, Vice President and General Counsel of Waste Industries USA, Inc., testified that Waste Industries wanted to be the stalking horse bidder for the Landfill at $17 million. Transcript of August 19, 2014 hearing, p. 291, lines 17-21.[55] Mr. Dragelin testified that he spoke with Mike

[54] "Q: Mr. Waldrep asked you if this plan had been proposed in good faith and you answered yes. I think you said of course or something stronger than a yes. Is that right? Grossman: That's correct. Q: What did you mean by that? Grossman: That LS, as a company, in what we do ethically, maybe morally, is we are going to always do the right thing as far as we can do with managing a plan and proposing a plan. We would never do anything that was not necessarily above board, straight up and doing the right thing. That's just how we operate. That's our company." Transcript for August 20, 2014 hearing, p. 329, lines 19-25; p. 330, lines 1-7.

[55] Mr. Dragelin testified that he talked with Ven Poole, the CEO of Waste Industries, who confirmed that Waste Industries would be a bidder at any auction. Transcript of August 18, 2014, p 103, lines 12-23.

Griffin at Greenway Waste and verified his intent to bid at any auction. Transcript of August 19, 2014 hearing p. 257, lines 9-13; p. 269, lines 5-24.

134. No issues have been raised regarding the remaining requirements of Section 1129(a), and LSCG submits that the LSCG Joint Plan fulfills the remaining requirements of that section. Thus, even though the LSCG Joint Plan does not fulfill Section 1129(a)(8), it is appropriate for the LSCG Joint Plan to be confirmed through cramdown pursuant to Section 1129(b).

THE LSCG PLAN IS FAIR AND EQUITABLE, BUT THE CONSOLIDATED PLAN OF THE DEBTORS DOES NOT MEET THE CRAMDOWN REQUIREMENTS OF SECTION 1129(b)

135. Neither the LSCG Confirmation Plan nor the Debtors' Consolidated Plan fulfills the requirements of Section 1129(a)(8). Even though the Debtors obtained accepting ballots from at least one impaired class of claims, the Consolidated Plan does not meet the other requirements of Section 1129(a), as explained above, so the Consolidated Plan should not proceed to confirmation through Section 1129(b). Even if the Court determines that the Consolidated Plan may proceed to cramdown, confirmation must still be denied. The Consolidated Plan discriminates unfairly against creditors and is not fair and equitable with respect to each unaccepting impaired class. Thus, the Consolidated Plan is not confirmable pursuant to Section 1129(b). On the other hand, the LSCG Joint Plan is clearly fair and equitable and should be confirmed pursuant to Section 1129(b).

136. A plan must be "fair and equitable with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." 11 U.S.C. § 1129(b); In re Premiere Hospitality Group, Inc., No. 13-02145-8-RDD, 2013 WL 6633428, at *2 (Bankr. E.D.N.C. Dec. 16, 2013). Numerous courts have held that "simple technical compliance with the requirements

of Section 1129(b)(2) does not assume that the plan is fair and equitable." Sandy Ridge Develop. Corp. v. La Nat'l Bank (In re Sandy Ridge Develop Corp.), 881 F.2d 1346, 1352 (5th Cir. 1989) (citing In re D & F Constr., Inc., 865 F.2d 673, 675 (5th Cir. 1989)). Section 1129(b)(2) only sets the "minimum standards that a plan must meet, and does not require that every plan not prohibited be approved.'" Id.

The Debtors' Consolidated Plan is Not Fair and Equitable

137. The Consolidated Plan unfairly discriminates against LSCG's claims by not appropriately addressing each claim based on its own facts. The LSCG Claim consists of seven different loans, but not all the Debtors are obligated for all the loans. Also, LSCG's collateral includes real property, equipment, accounts, and other personal property. Thus, it is inappropriate to treat all of LSCG's claims as one claim.

138. The Debtors' singular treatment of the LSCG Claim fails to recognize the market realities of each individual loan. For example, an interest rate applicable to real property is different than an interest rate appropriate for a loan secured by personal property, such as equipment. Thus, the Consolidated Plan unfairly discriminates against the LSCG Claim.

139. As discussed above, the Consolidated Plan improperly classifies LSCG's potential unsecured claim in Class 9 by not including it in Class 11 with other general unsecured claims. This classification is impermissible. Generally, "the identity of the holder does not render the claims themselves dissimilar," and separate classification may be based upon whether "a debtor can articulate a legitimate business justification for separate classification of unsecured claims." CWCapital Asset Management, LLC v. Burcam Capital II, LLC, 2014 WL 2864678, at *3, *7. But here, the Debtors cannot articulate a legitimate business justification for classifying Class 9 and Class 11 claims separately. King testified that Class 11 consisted of trade creditors whose

relationships are necessary to maintain the Debtors' reputation. As discussed above, this is simply not true. The Debtors should place the potential Class 9 unsecured claim and Class 11 unsecured claims in the same class. Even though the interest rate is 3.25% for both Class 9 and Class 11 claims, the payment terms differ. Class 9 Claims will be re-amortized over 25 years at 3.25% interest, but Class 11 Claims will be paid pro rata $100,000 upon the effective date and then receive quarterly installments of $45,000. Due to this improper classification, the Consolidated Plan unfairly discriminates against LSCG and is not fair and equitable.

140. The Consolidated Plan does not provide the LSCG secured claim in Class 3 with at least the allowed amount of its claim or the present value of its collateral.

141. For the Consolidated Plan to be fair and equitable with respect to LSCG's secured claim in Class 3, it must provide "that [LSCG] retain the liens securing [its] claim … to the extent of the allowed amount of such claims; and that [LSCG] receive on account of [its] claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property." See 11 U.S.C. § 1129(b)(2)(A)(i). The Consolidated Plan provides for LSCG's secured claim to be placed in current, non-default status and re-amortized over 25 years with interest at 5%. The Debtors propose to make monthly payments pursuant to the re-amortized schedule and pay the claim in full within seven years of the effective date.

142. In Bryson Properties, the Fourth Circuit stated that "in determining the discount rate, the Court must consider the prevailing market rate for a loan of a term equal to the payout period, with due consideration to the quality of the security and the risk of subsequent default." 961 F.2d at fn n.4. As Mr. Dragelin testified, without contradiction, the 5% interest rate

proposed by the Debtors is not reflective of the market rate of interest, and such treatment forces LSCG to assume nearly all the risks associated with the treatment provided in Class 3.

143. As Mr. Dragelin testified, LSCG assumes all the risk because of the structure of the Class 3 terms in the Consolidated Plan; they include:

a. A high loan to value ratio equal to almost 100%;

b. No capital contributions from equity holders;

c. Payment terms inconsistent with market terms;

d. Reliance that the property will maintain its value over 7 years even though it is a depleting asset;

e. Historical cash flow that barely covers required plan payments; and

f. Exclusion of required capital expenditures in Debtors' projections. See Dragelin Report, pp. 11-12.

144. Mr. Logan, the Debtors' interest rate expert, testified that there is no market for this sort of loan–a landfill loan, good loan to value ratio (based upon only a $28 million appraisal),[56] and no significant guarantor with adequate liquidity.[57] Subsequently, Mr. Logan concluded that if the Debtors had a significant guarantor on this 25 year amortized loan with a seven year balloon, the interest rate would be between 4.25%-4.75%. Transcript of August 18, 2014 hearing, p. 25, lines 9-22. Mr. Logan did not survey the market and did not engage in a Till analysis.

145. Mr. Dragelin determined that an efficient market exists for landfill loans. However, the loan terms for the LSCG secured claim in the Consolidated Plan do not meet the

[56] Mr. Logan based his testimony on the Leatherman Value Report, which concluded the value of the Landfill was $28,000,000. Transcript of August 18, 2014 hearing, p. 30, lines 21-25. Thus, with an approximate claim of LSCG of $15,700,000, the loan to value ratio was on the low side of about 56%. Logan also testified that he does not know how a landfill operates. Transcript of August 18, 2014 hearing, p. 31, lines 5-16.

[57] Transcript of August 18, 2014 hearing, pg. 15, lines 17-20; pg. 17, lines 1-6, 12-21.

requirements for a market rate structured loan. Yet the Debtors propose a loan that carries a rate that is within the current market norms. That is inherently unfair as it does not conform to required treatment under Till; the Debtors may not have a market rate without meeting the market terms. Thus, the structure of the Class 3 treatment does not fall within the parameters for an acceptable market rate restructuring. Transcript of August 18, 2014, hearing, p. 112, lines 10-24. Therefore, Mr. Dragelin engaged in a Till analysis.

146. Both Mr. Dragelin and Mr. Logan concluded that a market does not exist for the type of loan structure contemplated in Class 3 in the Consolidated Plan. However, each took a very different path to that conclusion. It cannot be overemphasized that Mr. Logan had absolutely no experience in landfill loans and did not survey an appropriate segment of the market.[58] Mr. Logan determined there was no market and mistakenly stopped his inquiry. On the other hand, Mr. Dragelin spent considerable time speaking with lenders[59] in the market and thoroughly describing elements of an efficient market and the Debtors' position in the market. See Dragelin Report at 13-16. Mr. Dragelin discussed factors to determine appropriate market terms, provided comparisons between the Debtor and the market, and provided thorough financial analyses of the Debtors' projections and plan treatment. Id.

[58] "Q. You said something else, that you don't know much about the market. Can you elaborate on that? What market were you talking about? The market for land --- Logan. --- The market for landfills." Transcript of August 18, 2014 hearing, p. 33, lines 2-7. "Logan: I didn't go through a special exploration. I have attempted to help four or five customers in situations where bankruptcy have been in place, and because of the -- what I see the -- how I see the market in most -- there has not been a solution unless a new guarantor or new capital were brought into the picture. Q. You didn't go to another -- a lending institution, any other lending institutions to say what are you -- what would you do with a loan like this or any -- any of that investigation? Logan. No, I did not. Q. This is based on your experience? Logan. It's based on my experience. Q. And it would, therefore, be limited to your experience. Your opinion is limited to your experience? Logan. It would be." Transcript of August 18, 2014 hearing, p. 35, 24-25; p. 36, lines 1-17. "Q. Mr. Logan, I believe you testified that your determination of the market or lack of a market was based on your experience in helping four or five clients. Is that -- is that correct? Logan. Yes. Q. And I believe you testified that – that you've not had any landfill clients, and so I assume that none of those four or five were landfills. Is that --- Logan. --- No, no, not at all." Transcript of August 18, 2014 hearing, p. 44, lines 7-16

[59] Transcript of August 18, 2014 hearing, p. 85, lines 12-14.

147. The case law is clear: without an efficient market, a Till analysis is the appropriate next step. Till v. SCS Credit Corp., 541 U.S. 465, 478-9 (2004). See In re Pamplico Highway Development, LLC, 468 B.R. 783, 793 (Bankr. D.S.C. 2012) (court found that market rates should be used as discount rate unless no efficient market exists, and, if no efficient market exists, the formula approach set forth in Till is the appropriate methodology for computing the discount rate).

148. The failure of Mr. Logan to perform a Till analysis is a critical and serious error.

149. On the other hand, Mr. Dragelin correctly applied the formula approach articulated in Till. This approach begins with a base rate and then adjusts upwards for risk. See In re MPM Silicones, LLC, 2014 WL 4436335, at *28 (encouraging a formula starting with a base rate that is "essentially **riskless"**) (emphasis added). Factors that affect risk are the circumstances of the estate, the nature of the security, the feasibility of the plan, and the duration of the plan. Till v. SCS Credit Corp., 541 U.S. at 479; In re Grandfather Mountain Ltd. Partnership, 207 B.R. 475, 490 (Bankr. M.D.N.C. 1996) (holding that the risk premium appropriate in determining the market rate of interest depends on "the amount and quality of the collateral, the risk of default and the length of the payout period," and is "increased significantly where the loan to value ratio is 100%").

150. Mr. Dragelin began his Till analysis by using the seven year U.S. Treasury rate, a risk free rate, as the base rate. See Dragelin Report at 17. He did not use the prime rate because the prime rate is short term and includes built-in risk. Id. The seven year U.S. Treasury rate is 2.10%, which is lower than the prime rate at 3.25%. Id.

151. Then Mr. Dragelin adjusted the rate upward by 4% due to the circumstances of the estate. He considered the Debtors' financial difficulties, the Debtors' principal (inadequate

liquidity), and the lack of alternative collateral or means of repayment, as well as the fact that the Debtors are not prime borrowers. It is important to note that the adjustment for a prime borrower would range between 2-3%, so since the Debtors are not prime borrowers, Mr. Dragelin adjusted 1-2% over a prime borrower. See Dragelin Report at 19.

152. Mr. Dragelin adjusted the risk upward by 2% due to the nature of the security. He considered the consistency of cash flow, the type of asset (a depleting asset), the loan to value ratio, and the high risk to LSCG.[60]

153. Mr. Dragelin adjusted the risk upward by 1.5% due to feasibility. Feasibility pursuant to Till deals with the risk that the lender assumes if the debtor is not able to make the payments as articulated in the plan. Mr. Dragelin considered the fact that the Debtors provided no indication of how the balloon payment would be paid, used unsupported assumptions, and excluded necessary capital expenditures from the case flow. See Dragelin Report at 22.

154. Mr. Dragelin adjusted the risk downward by -0.12% due to proposed payments to LSCG that are required by the Consolidated Plan.

155. Finally, Mr. Dragelin determined that 9.5% would be the appropriate rate to adequately compensate LSCG for the risk it is bearing with respect to the restructured notes in Class 3. The Consolidated Plan provides for 5% interest, which will result in a total value to LSCG at less than its secured claim. The proposed treatment of the LSCG secured claim causes LSCG to bear all the risk in the reorganization. E.g., In re Premiere Hospitality Group, Inc., 2013 WL 6633428, at *2 ("A plan which imposes substantial risks upon a creditor may not be fair and equitable under 11 U.S.C. § 1129(b)(1)); In re EFH Grove Tower Assocs., 105 B.R. 310, 314 (Bankr. E.D.N.C. 1989) (noting that the "costs of the debtor's reorganization should be

[60] Mr. Dragelin testified that the Landfill is a depleting asset – meaning the value decreases over time. The Landfill is also a construction and demolition landfill, which is inherently more risky due to market vulnerability and therefore a more variable cash flow. Transcript of August 18, 2014 hearing, p. 99, lines 1-7, p. 111, lines 12-17.

borne by those who stand to gain from the reorganization . . . "). If the appropriate 9.5% interest rate is used, the proposed payments to LSCG are less than the full amount of its secured claim. See Dragelin Report at 29. Thus, the Consolidated Plan is not fair and equitable.

156. In contrast, the LSCG Joint Plan easily complies with Section 1129(b). With respect to all secured claims (except Ford), the LSCG Joint Plan provides for their full payment within thirty days of the Confirmation Date. With respect to the Small Unsecured Claims in Class 9 and the General Unsecured Claims in Class 10, the LSCG Joint Plan provides for full payment of each allowed unsecured claim in these classes within thirty days of the Confirmation Date. Finally, with respect to the Equity Holder Claims in Class 11, the LSCG Joint Plan satisfies the fair and equitable requirement of Section 1129(b) by providing for no distribution to holders of ownership interests in the debtor until all allowed secured claims, allowed administrative expense claims, allowed tax claims, allowed small unsecured claims, and allowed general unsecured claims have been paid in full.

THE LSCG JOINT PLAN IS THE SUPERIOR PLAN: SECTION 1129(c)

157. The LSCG Joint Plan is superior to the Consolidated Plan, which does not fulfill the requirements of Section 1129(a) and is not fair and equitable as required by Section 1129(b). If the Court finds that both plans may be confirmed under Section 1129(b), the Court should choose the LSCG Joint Plan.

158. Section 1129(c) provides that the "court may only confirm one plan … [i]f the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm." 11 U.S.C. § 1129(c).

159. A court should look at the following factors when deciding between two confirmable plans: (1) the type of plan, (2) the treatment of creditors and equity security holders, (3) feasibility of plan, and (4) preferences of creditors and equity security holders. In re TCI 2 Holdings, LLC, 428 B.R. 117 (Bankr. D.N.J. 2010).

160. Generally, a reorganization plan is preferable to a liquidation plan. In re Holly Garden Apts., 238 B.R. 488, 495 (Bankr. M.D. Fla. 1999); In re River Village Assoc., 181 B.R. 795, 805 (E.D. Pa. 1995). But the LSCG Joint Plan proposes to sell the Landfill as a going concern, so no jobs will be lost. In fact, Mr. Leatherman, the Debtors' expert, opined that the Landfill would be more valuable in the hands of a different owner. Transcript of August 6, 2014 hearing, p. 56, lines 16-25; p. 57, lines 1-7.

161. Courts prefer plans that provide quicker payment to the creditors. See In re Internet Navigator, Inc., 289 B.R. 128 (Bankr. N.D. Iowa 2003);In re River Valley Fitness One Ltd. Partnership, 2003 WL 22298573 (showing preference for a plan that pays creditors sooner rather than later).

162. Finally, courts focus on the preferences of creditors through voting. See, e.g., In re Asarco LLC, 420 B.R. 314, 335-6 (S.D. Tex. 2009); In re Greate Bay Hotel & Casino, Inc., 251 B.R. 213, 245 (Bankr. D.N.J. 2000). The LSCG Joint Plan is preferred among creditors, which is evident in reviewing the chart below. The LSCG Joint Plan obtained a higher percentage of the votes by voting acceptance percentage and by amount of claims.

	Votes Accepting Plan	**Value Accepting Plan**
LSCG Joint Plan	Secured Accept: 8/9 (88.9%) Reject: 1/9 (11.1 %) Small Unsecured Accept: 2/8 (25%) Reject: 6/8 (75%)	Secured Accept: $14,041,095.66 (99.9%) Reject: $ 13,617.13 (0.1%) Small Unsecured Accept: $1,202.5 (11.5%) Reject: $9,261.3 (88.5%)

Totals	General Unsecured (not counting Waste Industries Claim) Accept: 19/26 (73%) Reject: 7/26 (27%) **Accept: 29/43(67%)** **Reject: 14/43 (33%)**	General Unsecured (not counting Waste Industries Claim) Accept: $838,594.66 (57.3%) Reject: $624,660.97 (42.7%) **Accept: $14,880,892.82 (96%)** **Reject: $ 639,480.60 (4%)**
Consolidated Plan of the Debtors **Totals**	Secured (assuming LSCG's secured claim is $5M) Accept: 3/9 (33%) Reject: 6/9 (67%) Small Unsecured Accept: 6/6 Reject: 0/6 Unsecured Claim of LSCG Accept: 0/1 Reject: 1/1 General Unsecured (not counting Waste Industries claim) Accept: 9/22 Reject: 13/22 **Accept: 18/38 (47%)*** **Reject: 20/38 (53%)** *** 9 out of 18 votes from claims held and/or purchased by David Stallings**	Secured (assuming LSCG's secured claim is $5M) Accept: $ 200,814.47 (3.8%) Reject: $5,138,267.33 (96.2%) Small Unsecured Accept: $9,261.38 (100%) Reject: $ 0.00 (0.0%) Unsecured Claim of LSCG Accept: $ 0.00 (0.0%) Reject: $4,167,206.32 (100%) General Unsecured (not counting Waste Industries claim) Accept: $654,660.97 (43.8%) Reject: $838,594.66 (56.2%) **Accept: $ 864,736.82 (7.9%)** **Reject: $10,144,068.31 (92.1%)**

163. In this case, although the LSCG Joint Plan is a liquidation plan, it is swift and feasible and preferable to the Consolidated Plan. Within 30 days of confirmation, LSCG will purchase secured claims and pay them in full (except Ford, which wants to be paid over time). Also within 30 days of confirmation, LSCG will pay all unsecured claims and tax claims in full. The LSCG Joint Plan guarantees 100% payment to all other creditors, taking the full risk of the auction on itself.

164. The Consolidated Plan of the Debtors is not confirmable because it violates several provisions of Section 1129(a) and is not fair and equitable to creditors. However, even if the Court finds that it is confirmable, the creditors decidedly prefer the LSCG Joint Plan. The Consolidated Plan is highly speculative and not feasible. The Shotwell case has now gone

eighteen months without a confirmed plan. The Court should not confirm the Debtors' risky plan, which fails to meet so many of the requirements of Section 1129, over the guaranteed full payment to creditors provided by the LSCG Joint Plan.

WHEREFORE, LSCG respectfully requests:

A. The Consolidated Plan not to be confirmed;

B. The LSCG Joint Plan to be confirmed; and

C. For such other and further relief as the Court deems just and proper

Respectfully submitted, this the 10th day of October, 2014.

/s/ *Thomas W. Waldrep, Jr.*
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CERTIFICATE OF SERVICE

I hereby certify that the BRIEF AND MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE CHAPTER 11 PLAN OF LSCG FUND 18, LLC AND AGAINST CONFIRMATON OF THE DEBTORS' CHAPTER 11 PLAN was filed electronically in accordance with the local rules and was therefore served electronically on those entities that have properly registered for such electronic service as of October 10, 2014. I also served the following by First Class U.S. Mail.

Shotwell Landfill, Inc.
3061 Berks Way, Suite 201
Raleigh, NC 27614

Capitol Waste Transfer, LLC
Capitol Recycling, LLC
Debris Removal Partners, LLC
King's Grading, Inc.
Shotwell Transfer Station II, Inc.
3209-120 Gresham Lake Road
Raleigh, NC 27615

Dated this 10th day of October, 2014.

/s/ *Thomas W. Waldrep, Jr.*

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