

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**IN RE:**

**SPIG INDUSTRY, LLC  
Debtor**

**Chapter 11  
Case No. 15-70310**

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**AMENDED  
DISCLOSURE STATEMENT**

**SPIG INDUSTRY, LLC, Debtor**

**Proponent**

**December 31, 2015**

## **DISCLOSURE STATEMENT**

### **I. INTRODUCTION**

Spig Industry, LLC, a Virginia Limited Liability Company (“SPIG” or “Debtor”), proponent of the attached Plan of Reorganization (“Plan”), by counsel, provides this Disclosure Statement (“Disclosure Statement”) to all of its known creditors and other interested parties pursuant to various sections of the United States Bankruptcy Reform Act, 1978, as amended, especially 11 U.S.C. § 1125, in order to disclose the information deemed by SPIG to be material and relevant to enable its creditors and other parties in interest to arrive at a reasonably informed decision prior to exercising their respective rights to vote for the Plan of Reorganization (“Plan”) attached as **Exhibit 1**.

#### A. Purpose.

This Disclosure Statement describes the terms of the Plan so that a creditor or party in interest can determine the value of the consideration to be received under the Plan and whether the Plan is fair. The Disclosure Statement must provide “adequate information.” The “adequate information” requirement of 11 U.S.C. § 1125(a) mandates that a Debtor in a Chapter 11 case must disclose information of a kind and in sufficient detail to enable creditors to make informed judgments about the Plan and the acceptance or rejection of the Plan. SPIG and its advisors believe this Disclosure Statement contains sufficient information for that purpose, and to the best of their knowledge, information and belief, the contents of this Disclosure Statement are accurate and complete in all material

respects; the information disclosed in this Disclosure Statement has not been subjected to a certified audit nor reviewed by a certified public accountant.

No representations of the financial status of this Company, or otherwise, are authorized by SPIG other than those contained and set forth in this Disclosure Statement. Any representations or inducements to secure the acceptance or rejection of the Plan, which are other than contained in this Disclosure Statement should not be relied upon in arriving at any decision. Any representations made to secure acceptance or rejection of the Plan which are not found in this Disclosure Statement should be reported to: John W.L. Craig, II, Clerk, United States Bankruptcy Court, P.O. Box 2390, Roanoke, Virginia 24010; Margaret Garber, Esq., counsel for the United States Trustee, 210 First Street, S.W., Suite 505, Roanoke, Virginia 24011; Peter Pearl, Spilman Thomas & Battle, PLLC, 310 First St, NW, Suite 1100, Roanoke, VA 242011; and Robert T. Copeland, Esq., Counsel for Debtor, P.O. Box 1296, Abingdon, Virginia 24212. Post-petition solicitation (after March 16, 2015) of acceptance or rejection of the Plan is strictly prohibited unless the United States Bankruptcy Court has approved the Disclosure Statement.

Bankruptcy Court approval of the Disclosure Statement is not a decision by the Court on the merits of the Plan.

B. Standards for Review.

This Disclosure Statement and attachments address the following standards for review and factors, which SPIG and its advisors believe to be relevant to its case and the Plan:

1. Administrative expenses
2. "Cramdown"

3. Debtor's business
4. Definitions
5. Financial difficulties
6. Financial and operational information
7. Insider and affiliate claims/transactions
8. Assets
9. Liabilities
10. Legal proceedings
11. Liquidation analysis
12. Management
13. Material post-petition events
14. Means of effectuating the Plan
15. Plan of Reorganization
16. Plan Proponent
17. Projections
18. Required statements
  - a. Disclosures concerning representations made to secure acceptance of the Plan.
  - b. Plan summary.
  - c. Statement of Bankruptcy Court approval of the Disclosure Statement is not a decision on the merits of the Plan.
  - d. Information as to which classes are impaired and may vote on the Plan.
  - e. Voting Requirements of 11 U.S.C. § 1126.
19. U.S. Trustee fees;
20. Vote required for approval.

C. Definitions.

The definitions and rules of construction set forth in §101, 103 and 1101 of the Bankruptcy Code shall apply when the terms defined or construed therein are used in this Amended Plan. In addition, the following terms when used in this Amended Plan shall, except if the context otherwise requires, supplement those definitions and rules.

1.1 "Administrative Claim" shall mean (i) a claim for costs and expenses incurred through the Effective Date in connection with the administration of the Debtor's estate, including the formulation, confirmation

and implementation of this Plan, allowable in accordance with § 503(b) and entitled to priority under § 507(a)(1) of the Bankruptcy Code, and (ii) and all fees payable to the United States Trustee by the Debtor under 28 U.S.C. § 1930(a)(6).

1.2 "Allowed" shall mean with reference to any Claim that is (i) listed in the schedules filed by the Debtor and not listed as disputed, contingent or unliquidated and has not been objected to by the Reorganized Debtor (ii) set forth in a proper proof of claim that was filed with the Clerk of the Court on or before the Bar Date and to which no objection has been filed, or (iii), in the event of an objection, allowed pursuant to a Final Order of the Court.

1.3 "Available Funds" shall mean funds in the Liquidation Account which could be used to pay Allowed Claims.

1.4 "Bankruptcy Code" shall mean Chapter 11 of Title 11 of the United States Code.

1.5 "Bankruptcy Court" shall mean the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division.

1.6 "Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure.

1.7 "Bar Date" shall mean, with respect to pre-petition claims, October 9, 2015, the date fixed by the Bankruptcy Court for filing proofs of claim or interests.

1.8 "Bar Date for Administrative Claims" shall mean, with respect to post-petition claims and pre-petition Claims under section 503(b)(9) of the Bankruptcy Code, the date fixed herein for filing Administrative Expense Claims.

1.9 "Business Day" shall mean any day on which commercial banks are required to be open for business in Roanoke, Virginia.

1.10 "Cash Distribution" shall mean payment in cash, draft, certified or cashier's checks or wire transfer, or other legal tender.

1.11 "Causes of Action" shall mean all Claims (as defined below), chose in action, third-party claims, counterclaims and cross-claims (including, without limitation, all claims and any avoidance, recovery, or subordination actions against insiders and/or any other entities brought pursuant to the Bankruptcy Code or state law, including, without limitation §§ 510,542, 543, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code or otherwise) of the Debtor, the debtor in possession and/or the Estate that may be pending on the Effective Date or instituted by the Reorganized Debtor, or the after the Effective Date against any entity based in law or equity, including, without limitation, under the Bankruptcy Code, whether direct, indirect, derivative or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order.

1.12 "Chapter 11 Case" shall mean the above-captioned case of the Debtor

1.13 "Claim" shall mean a claim against the Debtor as defined in § 101(5) of the Bankruptcy Code, including, but not limited to, any and all claims arising from the rejection of executory contracts and unexpired leases of the Debtor.

1.14 "Committee" shall mean the official committee of unsecured creditors appointed in the Chapter 11 Case pursuant to Section 1102 of the Bankruptcy Code.

1.15 "Confirmation Date" shall mean the date of the entry of the Confirmation Order.

1.16 "Confirmation Order" shall mean the order entered by the Bankruptcy Court confirming this Plan in accordance with the Bankruptcy Code.

1.17 "Contested Claim" shall mean any Claim or any portion of any Claim as to which the Reorganized Debtor, or any other party in interest has filed an objection in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection has not been withdrawn or adjudicated pursuant to a Final Order.

1.18 "Debtor" or "SPIG" shall mean SPIG Industry, LLC.

1.19 "Disclosure Statement" shall mean the Debtor's Proposed Disclosure Statement approved by the Bankruptcy Court.

1.20 "Effective Date" shall mean that date set forth in Article VII of the Plan.

1.21 "Estate" shall mean the estate of the Debtor created by §541 of the Bankruptcy Code upon the commencement of the Chapter 11 case.

1.22 "Final Order" shall mean an order that shall not have been reversed, stayed, modified or amended and the time to appeal from or to seek review of or rehearing on such order pursuant to Bankruptcy Rule 9023 shall have expired and which order shall have become final.

1.23 "General Unsecured Claim" shall mean any claim against the Debtor, for which there is no security interest, other than an Administrative Claim, Tax Claim or Priority Claim.

1.24 "Holder" shall mean any entity holding a Claim or Interest.

1.25 "Impaired" shall mean a Claim or Interest that is impaired within the meaning of § 1124 of the Bankruptcy Code.

6 "Interests" shall mean all equity securities in the Debtor as defined in § 101(16) of the Bankruptcy Code.

1.27 "Joshua Harman" shall mean that certain individual who is a member of the Debtor and the beneficiary of Judgment Proceeds.

1.28 "Jones Day" shall mean that certain Ohio general partnership law firm and Holder of a valid, undisputed, and Allowed secured claim against the Debtor in the amount of \$6,928,786.38.

1.29(a) "Jones Day Settlement" shall mean that certain settlement agreement, dated December 29, 2015 the terms and conditions of which are expressly incorporated into this Plan by reference by and between, among others, Jones Day and SPIG that resolves, pursuant to Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code, the Jones Day secured claim as set forth in this Plan.

1.29(b) "Jones Day Deficiency" shall mean the amount due and owing to Jones Day pursuant to the Jones Day Settlement.

1.30 "Judgment Proceeds" shall mean certain funds to which Joshua Harman is entitled in connection with various *qui tam* actions brought by Joshua Harman in his individual capacity as a relator under applicable state and federal laws.

1.31 "Liquidation Account" shall mean the interest-bearing bank account established as of the Effective Date for depositing all funds available for distribution to Holders of Allowed Claims.

1.32 "Material Distribution" shall mean an amount that will result in a distribution to an unclassified or classified Claim, as applicable, in an amount equal to or in excess of five percent (5%) of such Allowed Claim.

1.33 "Operational Distributions" shall mean distributions to creditors generated by the operation of the Debtor's business.

1.34 "Operational Payment Benchmark" shall mean payments to General Unsecured Creditors in an amount sufficient to satisfy all Allowed General Unsecured Claims, in full.



1.35 "Plan" shall mean this Plan of Reorganization in the present form and as it may be further amended or supplemented.

1.36 "Petition Date" shall mean March 16, 2015.

1.37 "Post Confirmation Debtor" shall mean the Reorganized Debtor upon and after the Effective Date pursuant to the terms and conditions of the Plan.

1.38 "Priority Claim" shall mean a claim entitled to priority of payment in accordance with § 507(a), (4), (5) and (7) of the Bankruptcy Code, but excluding Administrative Claims.

1.39 "Professional Person" shall mean persons, including attorneys and accountants for the Debtor, the Reorganized Debtor, counsel for the Committee, retained or to be compensated pursuant to §§ 327, 328, 330, 331, 503(b), 506(b) or 1103 of the Bankruptcy Code.

1.40 "Pro rata" shall mean, with respect to each creditor in a particular class, that proportion which its Allowed Claim in its particular class bears to the aggregate sum of all Allowed Claims in the same class once all Contested Claims in that class have become Ultimately Allowed Claims or have been disallowed.

1.41 "Reorganized Debtor" shall be SPIG Industry, LLC or its successor as the representative of the Estate pursuant to §1123(a)(3) of the Bankruptcy Code as designated in accordance with Article V. of the Plan and as set forth in the Confirmation Order to carry out the provision of the Plan on behalf of the Debtor and the Estate.

1.42 "Settlement Agreement" shall mean that certain agreement by and among the Debtor, certain guarantors and Grundy National Bank ("Bank").

1.43 "Tax Claim" shall mean any Allowed Claim that is entitled to priority under §507(a)(8) of the Bankruptcy Code.

1.44 "Ultimately Allowed Claim" shall mean any Contested Claim that has become an Allowed Claim.

1.45 "Unimpaired" shall mean a Claim that is not impaired within the meaning of §1124 of the Bankruptcy Code.

## **II. DEBTOR'S BUSINESS**

### **A. HISTORY**

SPIG began its business in the year 2007, being formed by two brothers, Josh and Chris Harman. The purpose of the business was to manufacture guard rail and other highway safety products. The Harman brothers had extensive experience in the installation of guard rails and they felt that there was a market for the manufacture of a "head end" unit. The business grew rapidly, and in the year 2009 the company decided to manufacture its own designed head end, because it felt that the patents covering the unit were no longer valid. However, Trinity Industries, a large manufacturing company, believed that its patents were still valid and filed a lawsuit against SPIG. SPIG was defended by the law firm of Jones Day and a settlement was reached between Trinity Industries and Spig. The terms of the settlement agreement are confidential. However, the litigation was very expensive, costing over twelve million dollars (\$12,000,000.00) and left SPIG without sufficient operating capital to conduct its business.

After filing its first Chapter 11 proceeding, SPIG continued to seek investors to recapitalize its business. Its sister company, Selco Construction, resumed business operations and it has carried the overhead expenses of Spig, such as electricity. But Spig has never been able to generate sufficient funds to resume business operations.

### **B. REASONS FOR FILING CHAPTER 11**

The Debtor faced a foreclosure proceeding that would have foreclosed its manufacturing facility and office. The Debtor felt that if it filed a Chapter 11, it would, due to the passage of time and Joshua Harman's litigation success, be able to locate an investor, or investors, who would recapitalize the company and/or acquire

the company so that it would be able to recommence operations and repay its creditors.

### **C. POST-PETITION BUSINESS**

After filing for Bankruptcy protection, SPIG began the process of continuing its prior search for investors so it could restart its operations. Selco provided working capital, so Spig has commenced manufacturing operations on a limited basis, but not at a level to service its debt.

### **IV. FINANCIAL INFORMATION**

Attached to the Disclosure Statement, as **Exhibit 2**, is a statement of the cash on hand and the projections of the future cash to be received from the post-petition loan. In the projections, the Debtor projects certain costs for the construction of a galvanizing facility. The Committee raised concerns in its objection to the Disclosure Statement asserting that the Debtor has underestimated the cost of constructing a galvanizing facility which will be necessary for the Debtor to achieve the ongoing profit necessary to meet its financial projections to repay its creditors under the terms of the Plan. The Debtor asserts that the Debtor's projection regarding the construction of the galvanizing facility is based upon estimates whereby principals of the Debtor shall act in the role of, among other things, General Contractor, which will result in significant savings and as a result, based on past experience of the principals of the Debtor in related construction projects, the estimates set forth in the Disclosure Statement are reasonable and achievable. The Committee also requested information regarding the breakout of projected costs of operating the galvanizing facility. The Debtor takes the position that such information is

confidential in nature but has agreed to provide the cost breakout to counsel for the Committee on a confidential basis.

#### **V. INSIDER AND AFFILIATE CLAIMS AND TRANSACTIONS**

The definition of “Insider” includes, if the debtor is a corporation, directors of the debtor; officers of the debtor; person in control of the debtor; partnership in which the debtor is a general partner; general partner of the debtor; and relative of a general partner, director, officer, or person in control of the Debtor. 11 U.S.C. § 101(31)(B). See also 11 U.S.C. § 101(2) for definition of “affiliate,” which includes “insiders.”

Bob Ratliff is an insider who holds a membership interest in the Debtor, and has also loaned money to the Debtor. Joshua Harman is an insider and he is loaning the Debtor funds to restart business operations and pay the fifteen percent (15%) dividend to unsecured creditors (if they choose that payment).

#### **VI. ASSETS**

Attached to this Disclosure Statement are copies of Schedules A and B (**Exhibit 3**) of the Debtor’s bankruptcy petition. Special note is made of the following items of personal property:

1. There is shown on the schedule of personal property a listing for the patent rights owned by the Debtor. The valuation given is the cost of acquiring those rights and the legal fees expended.

2. The schedules show a list of equipment with a value of four million dollars (\$4,000,000.00). The valuation on the equipment is what the management of the Debtor believes to be its fair market value, in place, and not what it would be worth if it was removed and liquidated.

3. The schedules show an account receivable due from a related entity, Selco Construction. This entity previously filed for bankruptcy and its case was dismissed. While it remains as an ongoing business concern, it is heavily indebted. Accordingly, the Debtor does not believe that if Selco is liquidated there would be any dividend paid to the Debtor. Notwithstanding its claim, Selco has waived its claim and will not participate in the general unsecured creditor class under the Plan.

4. Value of certain manufacturing/intellectual property rights.

In its schedules of assets and liabilities, the Debtor discloses that it possesses certain valuable manufacturing/intellectual property rights (the “Rights”) which were the subject of many years of litigation. The Debtor has, pursuant to an order entered under Rule 2004 of the Federal Rules of Bankruptcy Procedure, provided to the Committee a copy of the agreement resolving the litigation with respect to those Rights. The Debtor, in its liquidation analysis, does not give any value to the Rights, because it does not believe that the Rights are marketable, however, this issue has not been resolved with certainty. Creditors should be aware that the Rights, if determined to be marketable, may have significant value to this bankruptcy estate. Upon information and belief, the Rights and any proceeds realized therefrom are not encumbered by liens.

## **VII. LIABILITIES**

The Court entered an order establishing a Bar Date. There is also attached to this disclosure statement, copies of Schedules D, E, & F (**Exhibit 4**), along with a copy of the Claims Register (**Exhibit 5**) for all claims filed as of November 5, 2015. As creditors will see, the real estate of the Debtor is fully encumbered with two deeds of

trust, of which the first one is for the benefit of the Bank. The Bank has filed claim Nos. 10 and 11 and those claims purport to show that the debt on the twenty (20) acres of property, which contains the manufacturing facility, is \$2,800,000.00. The law firm of Jones Day also has a deed of trust on the property securing its debt. A review of the proofs of claim filed with the court shows that the Internal Revenue Service, along with the Commonwealth of Virginia and the Virginia Employment Commission, all assert priority claims for taxes. However, the Debtor did not manufacture products for a period of time and had no employees, therefore the proofs of claim are estimated. Upon the filing of the appropriate tax returns, it is anticipated that the claims will be amended to reflect the actual payrolls issued by the company.

Objections by the Industrial Development Authority.

The objections of the Industrial Development Authority of Washington County, Virginia were based primarily on the fact that the Debtor's schedules did not list the Industrial Development Authority as a creditor. This was an oversight on the part of the Debtor, and the Industrial Development Authority has filed a proof of claim in the case which is not disputed. The Industrial Development Authority will be treated as all other general unsecured creditors in the case under the proposed Chapter 11 plan.

**VIII. ADMINISTRATIVE EXPENSES**

Certain administrative expenses in a bankruptcy proceeding are entitled to priority status and must be paid in cash, in full, as of the Effective Date of the Plan, unless the holder of such Administrative Claim agrees to some other treatment. 11 U.S.C. § 1129(a)(9)(A). Administrative expenses include actual necessary costs and

expenses of preserving the bankruptcy estate, claims for erroneous tax refunds, post-petition taxes, post-petition trade payables, compensation of professional persons, actual necessary expenses incurred by creditors bringing property into the estate, creditors making substantial contributions to the Chapter 11 case, certain custodians, and fees and mileage payable to witnesses. In addition, claims by suppliers for goods delivered in the ordinary course of business and received by the Debtor within twenty (20) days of the filing of the Petition Date and for which payment has not been made may be Administrative Claims ("503(b)(9) Claims"). Also entitled to priority status under the Bankruptcy Code are the quarterly fees required to be paid to the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6). To date, all quarterly fees required to be paid to the United States Trustee are current.

#### **IX. VOIDABLE PREFERENCE AND FRAUDULENT CONVEYANCE CLAIMS**

The Plan provides that the Reorganized Debtor will be the only party authorized to pursue any voidable preference or fraudulent conveyance claims under chapter 5 of the Bankruptcy Code. Nothing in this Disclosure Statement, or in the Plan attached hereto, compromises, settles or disposes of any such cause of action.

At the present time the Debtor has determined that there are no voidable preference claims.

#### **X. PLAN SUMMARY**

The Plan, which is attached as **Exhibit 1** and incorporated herein by reference, proposes to classify claims in accordance with the Bankruptcy Code. As a result of certain litigation, the Debtor's business has been for the most part idled since 2012. One of the

Debtor's principals, Joshua Harman is entitled to certain funds (the "Judgment Proceeds") in connection with judgments on various *qui tam* actions (the "Judgments") brought in his individual capacity as a relator under applicable state and federal laws. Some of the Judgments are presently on appeal. Mr. Harman has received some funding in the form of a loan collateralized by an assignment of a portion of the Judgment Proceeds (the "Initial Proceeds"). Under the Plan, the Debtor will borrow a part of the Initial Proceeds from Joshua Harman, sufficient to pay the priority and administrative claims, in full, to pay Election Distributions (as defined below) and to provide startup funding for business operations. Holders of Allowed Class 4 General Unsecured Claims, except for Jones Day, are given a choice of treatment under the Plan. Holders of an Allowed Class 4 Claims can opt to take a one-time cash payment of fifteen percent (15%) of their Allowed Claim ("Election Distributions") in full satisfaction of their Claims against the estate, which will be paid within thirty (30) days of the Confirmation Date. Such election shall be made on the ballot forwarded in conjunction with the hearing on confirmation of the Plan

If a Class 4 creditor does not choose the Election Distribution, the Plan requires a 100% payout of the Allowed Claim no later than four years following the Confirmation Date ("Back-End Payment Date"). Holders of Allowed Class 4 Claims may be paid earlier than the Back-End Payment Date in the event Joshua Harman receives the balance of the Judgment Proceeds in which case Mr. Harman shall loan additional funds to the Reorganized Debtor sufficient to pay Holders of Allowed Class 4 Claims in full. In addition, if the Debtor reaches certain operational milestones during its post reorganization operations prior to Holders of Allowed Class 4 Claims



being paid in full, it shall pay, except to Jones Day, incremental dividends (“Incremental Operational Distributions”) to Holders of Class 4 Allowed Claims. The cash flow projections supporting the ability of the Debtor to pay all creditors in full within four years, is attached as **Exhibit 2** to this Disclosure Statement. While possible, the Debtor does not believe that Incremental Operational Distributions are likely.

As for its secured creditors, Bank and Jones Day, the Plan incorporates agreements that Joshua Harman has negotiated with Bank (Class 2) and Jones Day (Class 3 and Class 4). Joshua Harman is a guarantor of the Debtor’s obligations to Bank and is a co-obligor with the Debtor with respect to the Jones Day obligations. Those agreements are attached as **Exhibits 6 and 7** to this Disclosure Statement. The Debtor and Reorganized Debtor believe these agreements are fair, equitable, and in the best interests of creditors, and will support these agreements in connection with confirmation of the Plan. As part of its settlement agreement and upon certain payments by Joshua Harmon in his individual capacity and to settle separate claims between Joshua Harmon and Jones Day, Jones Day (i) shall release all its security interest in the assets of the Debtor and (ii) shall have the balance of its secured claim treated as a general unsecured claim within the Class 4 Allowed Claim, provided, however, to the extent made, Jones Day shall not receive a share of any Incremental Operational Distributions.

The purpose of the Plan is to transition the company, so that it can recommence its manufacturing operations.

**XI. MEANS FOR EXECUTION OF THE PLAN  
AND SOURCE OF FUNDS**

The source of funds for the execution of the Plan comes from loans from Joshua Harman and possibly revenues generated by operation of the Debtor's business.

**XII. REQUIREMENTS FOR CONFIRMATION OF CASE**

A. Vote Required for Approval of the Plan. The Plan proposes to divide creditors' claims into five (5) classes. A class of claims is deemed to have accepted the Plan if creditors holding at least two-thirds in amount, and more than one-half the number, of the allowed claims in such class have voted in favor of the Plan. Holders of claims in a class that is not impaired under the Plan are conclusively presumed to have accepted the Plan. A class of creditors, or interest holders, which does not receive or retain any property under the Plan is deemed to have rejected the Plan. Assuming the other confirmation standards of 11 U.S.C. § 1129(a) are met, and the appropriate classes have voted to accept the Plan, the Court can confirm the Plan. The Debtor recommends that creditors and other parties in interest seek legal advice about confirmation standards in a plan of reorganization and voting requirements for approval of the Plan.

B. Cramdown. Pursuant to 11 U.S.C. §1129(a)(8), each class of impaired claims is required to accept a plan in order for a plan to be confirmed. However, if there is an impaired non-accepting class, a debtor may request, pursuant to 11 U.S.C. §1129(b), that the Court still confirm a plan under what are known as the "cramdown" provisions. Cramdown in the context of a Chapter 11 plan allows the court to confirm a plan in the face of a non-accepting class provided the plan does not discriminate

unfairly and is fair and equitable with respect to the claimholders in such class. The Bankruptcy Code provisions provide standards for such fair and equitable treatment for secured and unsecured creditors and interest holders. In order for the Court to consider whether to exercise the provisions of section 1129(b), there needs to be at least one class of impaired claimholders who have accepted the plan without taking into account the votes of Insiders.

The Debtor recommends that unsecured creditors and other impaired classes of claims or interests seek legal advice about the effect of “cramdown” in a bankruptcy case. The availability of “cramdown” is a legal matter to be resolved in the context of the hearing on confirmation of the Plan.

### **XIII. LEGAL PROCEEDINGS**

Presently, there are no legal proceedings pending in the Bankruptcy Court against the Debtor.

### **XIV. DISPUTED CLAIMS**

The Debtor has not yet completed its review of all of the claims. However, an initial review was performed as part of the process of drafting this disclosure statement. Also, as outlined above, there are proofs of claim filed by three (3) taxing authorities which are based upon estimated payrolls. It is expected that once the payroll tax forms are filed that those claims will be amended. All objections to claims will be filed by February 1, 2016.

### **XV. TAX CONSEQUENCES**

The Debtor does not believe that as a result of this Chapter 11 filing it will have any tax consequences due to the large tax loss carry forward that is available to it.

The tax consequences resulting from confirmation of the Plan for holders of Claims and Interests can vary among the various classes in the Plan or within each class. Tax consequences may occur as a result of confirmation of the Plan pursuant to the Internal Revenue Code and pursuant to state, local and foreign tax statutes. Differences in the nature of the claims of various creditors or Interest holders, their taxpayer status and methods of accounting and prior actions taken with respect to their Claims or Interests, as well as the possibility that events subsequent to the day hereof could change the tax consequences of the transactions contemplated herein. No specific tax consequences to any party is represented, implied or warranted. Each holder of a Claim or Interest should seek professional tax advice.

**THE DEBTOR ASSUMES NO RESPONSIBILITY FOR THE EFFECT THAT CONSUMMATION OF THE PLAN WILL HAVE ON ANY GIVEN HOLDER OF A CLAIM OR INTEREST. HOLDERS OF CLAIMS OR INTERESTS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS CONCERNING FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN TO THEIR INDIVIDUAL SITUATION.**

#### **XVI. GUARANTY OF DEBTS**

The insiders of the Debtor, being Josh Harman, Chris Harman and Bob Ratliff, have guaranteed various obligations to Bank, as well as Jones Day.

#### **XVII. FUTURE MANAGEMENT AND OWNERSHIP**

It is anticipated that Chris Harman will remain as the Chief Executive Officer of the Debtor following its reorganization. The proposed Chapter 11 plan also provides that the current owners would maintain their ownership in the reorganized Debtor.

#### **XVIII. LIQUIDATION UNDER CHAPTER 7**

If no plan is confirmed, this case would be converted to a case under Chapter 7 of the Bankruptcy Code. In a Chapter 7 case, a trustee would be appointed to liquidate the remaining assets and make distributions. It is impossible to predict precisely how the proceeds of the liquidation would be distributed to the holders of Claims, however, because of commissions payable to a trustee and the possibility that a trustee would retain new professionals, the Debtor believes the costs associated with administering remaining assets and making distributions would be greater in a Chapter 7 than that which will be incurred under the Plan. As a result, when factoring in the amount of secured debt, creditors should receive a greater distribution under the Plan than if the case were converted. Moreover, any distribution to the holders of Claims that might otherwise be paid under the Plan may be delayed substantially in a Chapter 7 proceeding. Such potential delay could result in lower present value received by creditors and higher administrative costs. In addition, upon conversion of a case, a new bar date would be set resulting in the possibility of additional claims being filed in the case. This increase in claims may have the effect of diluting distributions to creditors. The Debtor believes that the distribution strategy proposed in the Plan provides for the most efficient disposition of the assets of the Debtors resulting in maximum value that will result in expeditious distributions to holders of Claims. Notwithstanding the difficulties in quantifying recoveries to creditors with precision, the Debtor believes that, taking into account the comparison of forced liquidation value to the proposed reorganization, the added costs associated with a liquidation under Chapter 7, the possibility of delay in distributions and additional claims that may result from a new

bar date, the Plan meets the “best interests” test of section 1129(a)(7) of the Bankruptcy Code. All of these factors lead to the conclusion that recoveries under the Plan will be significantly greater than the recoveries available in a Chapter 7 liquidation. Please see **Exhibit 8**, which is a liquidation analysis.

### **XIX. EXECUTORY CONTRACTS**

All executory contracts and unexpired leases shall be assumed as set forth in the Plan, including, but not limited to Article IX, as of the Effective Date. If the rejection of an executory contract or unexpired lease results in damages to the other party or parties to such contract or lease, a Claim for such damages, if not previously evidenced by a filed proof of Claim or barred by a Final Order, shall be forever barred and shall not be enforceable against the Debtor or its properties or agents, successors, or assigns, unless a proof of Claim relating thereto is filed with the Bankruptcy Court within thirty (30) days after the Confirmation Date, or within such other period as may be ordered by the Bankruptcy Court.

### **XX. CONCLUSION**

In order for the Plan to be confirmed by the Court, the Court must find that the criteria set forth in the Bankruptcy Code have been met. The Plan is a legally binding document and should be read in its entirety. The Debtor recommends that creditors and other parties in interest seek legal advice about these matters.

This Disclosure Statement is provided to all known creditors pursuant to 11 U.S.C. §1125, in order to disclose that information deemed by the Debtor and its advisors to be material and relevant to enable its creditors and other parties in interest

to arrive at a reasonably informed decision prior to exercising voting rights on the Plan. The Debtor believes that this Disclosure Statement contains sufficient information for that purpose, and to the best of its knowledge, the contents of this Disclosure Statement are true, accurate and complete in all material respects; the information contained in this Disclosure Statement has not been subjected to a certified audit.

No representations are authorized by the Debtor other than those set forth in this Disclosure Statement. Any representations or inducements to secure the acceptance of the Plan which are other than those contained in this Disclosure Statement should not be relied upon in arriving at a decision. Except as otherwise expressly indicated, all portions of this Disclosure Statement which describe the Debtor and its business have been prepared from information furnished by the Debtor.

After carefully reviewing the Plan, this Disclosure Statement, and (if you are entitled to vote) the instructions accompanying your Ballot, please indicate your acceptance or rejection of the Plan by checking the appropriate box on the enclosed Ballot. Please complete and sign your original Ballot and return it in the envelope provided by the deadline set forth in the ballot instructions. **You must provide all of the information requested by the appropriate Ballot(s). Failure to do so may result in the disqualification of your vote on such Ballot(s).**

Date: December 31, 2015

Respectfully submitted,

**Spig Industry, LLC**

By: /s/ Robert T. Copeland

/s/ Robert T. Copeland  
Robert T. Copeland, VSB #14575  
**COPELAND LAW FIRM, P.C.**  
P.O. Box 1296  
Abingdon, VA 24212  
(276) 628-9525  
(276) 628-4711 (fax)  
Counsel for Debtor