

THIS IS NOT A SOLICITATION OF ACCEPTANCES OF THE CHAPTER 11 PLAN PROPOSED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN THESE BANKRUPTCY CASES. ACCEPTANCES MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING "ADEQUATE INFORMATION" WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT AND IS SUBJECT TO AMENDMENT PRIOR TO SUCH APPROVAL BEING GRANTED.

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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	:	
In re:	:	Chapter 11
	:	Case No. 16-40043 (CEC)
NEW YORK CRANE & EQUIPMENT	:	Case No. 16-40044 (CEC)
CORP., <i>et al.</i> , ¹	:	Case No. 16-40045 (CEC)
	:	Case No. 16-40048 (CEC)
	:	
Debtors.	:	Jointly Administered
	:	
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**DRAFT DISCLOSURE STATEMENT RELATING TO THE CHAPTER 11 PLAN
PROPOSED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

**THIS DRAFT DISCLOSURE STATEMENT IS BEING FILED PURSUANT TO THE
BANKRUPTCY COURT'S JUNE 7, 2017 ORDER**

***THE FILING OF THIS DRAFT DISCLOSURE STATEMENT
IS WITHOUT PREJUDICE TO THE COMMITTEE'S RIGHT TO
SEEK OTHER OR DIFFERENT RELIEF FROM THE BANKRUPTCY COURT
INCLUDING, WITHOUT LIMITATION, THE APPOINTMENT OF A CHAPTER 11
TRUSTEE FOR JAMES F. LOMMA***

¹ The Debtors, along with the last four digits of each Debtor's federal employer identification number or social security number, are: (i) New York Crane & Equipment Corp. ("NY Crane") (7592); (ii) J.F. Lomma, Inc. (New Jersey) (2773) ("Trucking"); (iii) J.F. Lomma, Inc. (Delaware) (0251) ("Rigging"); and (iv) James F. Lomma (8914) ("Lomma").

DISCLAIMER

THIS DISCLOSURE STATEMENT RELATES TO THE CHAPTER 11 PLAN PROPOSED BY THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE. THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IS THE PROPONENT OF THE PLAN. THE PLAN PROVIDES FOR THE PROPOSED METHOD OF THE LIQUIDATION AND/OR REFINANCING OF THE CONFIRMATION ACCOUNT ASSETS AND OTHER ASSETS OF THE DEBTORS AND THE DISTRIBUTIONS CREDITORS OF THE DEBTORS WOULD RECEIVE IN THE CHAPTER 11 CASE UNDER THE PLAN.

THIS DISCLOSURE STATEMENT IS DESIGNED TO PROVIDE ADEQUATE INFORMATION TO ENABLE HOLDERS OF ELIGIBLE CLAIMS TO MAKE AN INFORMED JUDGMENT ABOUT WHETHER TO ACCEPT OR REJECT THE PLAN. ALL HOLDERS OF ELIGIBLE CLAIMS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. ALL SUMMARIES OF THE PLAN AND OTHER STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS ANNEXED TO THE PLAN, AND THE EXHIBITS ANNEXED TO THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF UNLESS OTHERWISE INDICATED, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF. SIGNIFICANT AMOUNTS OF THE INFORMATION CONTAINED HEREIN IS BASED UPON DISCLOSURES AND FILINGS MADE BY THE DEBTORS IN THESE CASES, AND THEIR ACCURACY AND COMPLETENESS CANNOT BE ASSURED.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE LAW. THIS DISCLOSURE STATEMENT AND THE PLAN DESCRIBED HEREIN HAVE NOT BEEN REVIEWED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAVE THEY APPROVED, DISAPPROVED OR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THE PLAN OR HEREIN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS OF THE DEBTOR IN

THIS BANKRUPTCY CASE SHOULD EVALUATE THIS DISCLOSURE STATEMENT, AND THE PLAN, AND THE ENTIRE RECORD IN THESE CASES IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED. NO PERSON MAY GIVE ANY INFORMATION ON BEHALF OF THE COMMITTEE OR THE DEBTORS REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN, OTHER THAN THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS, THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AND MAY NOT BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS AND SHALL BE INADMISSIBLE FOR ANY PURPOSE ABSENT THE EXPRESS WRITTEN CONSENT OF THE COMMITTEE, THE DEBTORS AND THE PARTY AGAINST WHOM SUCH INFORMATION IS SOUGHT TO BE ADMITTED.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN.

THIS DISCLOSURE STATEMENT WILL NOT BE CONSTRUED TO CONSTITUTE CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE DEBTORS' REORGANIZATION AS TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS.

SPECIAL NOTE

The Committee has sought the appointment of a Chapter 11 Trustee for James F. Lomma.

This draft disclosure statement is being filed pursuant to the Bankruptcy Court's June 7, 2017 Order.

The filing of this draft disclosure statement is without prejudice to the Committee's right to seek other or different relief from the Bankruptcy Court including, without limitation, the appointment of a Chapter 11 Trustee for Mr. Lomma, and the Committee reserves the right to amend, supplement or withdraw the Plan and this disclosure statement.

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I. INTRODUCTION

A. Executive Summary

The Official Committee of Unsecured Creditors (the "Committee") filed its Chapter 11 Plan with the Bankruptcy Court on June 8, 2017 (the "Plan").² A copy of the Plan is attached as Exhibit 1 to this Disclosure Statement. The Committee is the proponent of the Plan and is now seeking the votes of certain Creditors in favor of the Plan. The Disclosure Statement contains information, including a description of the terms of the Plan, to enable Creditors to make an informed decision in voting on the Plan.

THE COMMITTEE RECOMMENDS THAT CREDITORS VOTE TO APPROVE OR OTHERWISE SUPPORT THE PLAN.

B. Considerations in Preparation of the Disclosure Statement and Plan; Disclaimers

BECAUSE ACCEPTANCE OF THE PLAN WILL CONSTITUTE ACCEPTANCE OF ALL THE PROVISIONS THEREOF, HOLDERS OF ELIGIBLE CLAIMS ARE URGED TO CONSIDER CAREFULLY THE INFORMATION REGARDING TREATMENT OF THEIR CLAIMS CONTAINED IN THIS DISCLOSURE STATEMENT.

THE CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO MATERIAL CONDITIONS PRECEDENT. THERE CAN BE NO ASSURANCE THAT THOSE CONDITIONS WILL BE SATISFIED.

THE COMMITTEE PRESENTLY INTENDS TO SEEK TO CAUSE THE EFFECTIVE DATE TO OCCUR AND FOR THE PLAN ADMINISTRATOR TO BE APPOINTED PROMPTLY AFTER CONFIRMATION OF THE PLAN. THERE CAN BE NO ASSURANCE, HOWEVER, AS TO WHEN AND WHETHER CONFIRMATION OF THE PLAN AND THE EFFECTIVE DATE ACTUALLY WILL OCCUR. PROCEDURES FOR DISTRIBUTIONS UNDER THE PLAN, INCLUDING MATTERS THAT ARE EXPECTED TO AFFECT THE TIMING OF THE RECEIPT OF DISTRIBUTIONS BY HOLDERS OF ALLOWED CLAIMS IN CERTAIN CLASSES AND THAT COULD AFFECT THE AMOUNT OF DISTRIBUTIONS ULTIMATELY RECEIVED BY SUCH HOLDERS, ARE DESCRIBED IN HEREIN. THE COMMITTEE RECOMMENDS THAT THE HOLDERS OF ELIGIBLE CLAIMS VOTE TO ACCEPT THE PLAN IN ACCORDANCE WITH THE VOTING INSTRUCTIONS SET FORTH BELOW. TO BE COUNTED, YOUR BALLOT MUST BE DULY COMPLETED, EXECUTED, AND ACTUALLY RECEIVED BY THE VOTING DEADLINE. HOLDERS OF ELIGIBLE CLAIMS ARE ENCOURAGED TO READ AND CONSIDER CAREFULLY THIS

² Capitalized terms which are not defined herein shall have the meanings ascribed to them in the Plan.

ENTIRE DISCLOSURE STATEMENT AND THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, STATUTORY PROVISIONS, DOCUMENTS RELATED TO THE PLAN, ANTICIPATED EVENTS IN THE BANKRUPTCY CASE, AND FINANCIAL INFORMATION. ALTHOUGH THE COMMITTEE BELIEVES THAT THE SUMMARIES ARE FAIR AND ACCURATE, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF THE PLAN OR CERTAIN DOCUMENTS (AND HOLDERS OF ELIGIBLE CLAIMS SHOULD REFER TO THE PLAN AND SPECIFIED DOCUMENTS IN THEIR ENTIRETY AS ATTACHED HERETO), STATUTORY PROVISIONS, EVENTS, OR INFORMATION. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE COMMITTEE IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN, INCLUDING THE FINANCIAL INFORMATION BASED UPON DISCLOSURES AND REPRESENTATIONS BY THE DEBTORS, IS WITHOUT ANY INACCURACY OR OMISSION.

IN DETERMINING WHETHER TO VOTE TO ACCEPT THE PLAN, HOLDERS OF ELIGIBLE CLAIMS MUST RELY UPON THEIR OWN EXAMINATION OF THE DEBTORS AND THE TERMS OF THE PLAN, INCLUDING THE MERITS AND RISKS INVOLVED. THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS WITH RESPECT TO ANY SUCH MATTERS CONCERNING THIS DISCLOSURE STATEMENT, THE SOLICITATION, THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

EXCEPT AS SET FORTH HEREIN, NO PERSON HAS BEEN AUTHORIZED BY THE COMMITTEE IN CONNECTION WITH THE PLAN OR THE SOLICITATION TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO OR INCORPORATED BY REFERENCE OR REFERRED TO HEREIN, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE COMMITTEE.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT DOES NOT, UNDER ANY CIRCUMSTANCE, CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT

ANY TIME SUBSEQUENT TO THE DATE HEREOF. ANY ESTIMATES OF CLAIMS AND INTERESTS SET FORTH IN THIS DISCLOSURE STATEMENT MAY VARY FROM THE AMOUNTS OF CLAIMS OR INTERESTS DETERMINED BY THE COMMITTEE OR ULTIMATELY ALLOWED BY THE BANKRUPTCY COURT, AND AN ESTIMATE, OF ANY KIND, SHALL NOT BE CONSTRUED AS AN ADMISSION.

C. General

This Disclosure Statement has been prepared to comply with section 1125 of the Bankruptcy Code and is hereby transmitted by the Committee to holders of Eligible Claims for use in the solicitation of acceptances of the Plan, a copy of which is attached hereto as Exhibit 1. Unless otherwise defined in this Disclosure Statement, capitalized terms used herein have the meanings ascribed to them in the Plan. All exhibits attached to this Disclosure Statement are incorporated as if fully set forth herein and are a part of this Disclosure Statement.

For purposes of this Disclosure Statement, the following rules of interpretation shall apply: (i) whenever the words “include,” “includes,” or “including” are used, they shall be deemed to be followed by the words “without limitation,” (ii) the words “hereof,” “herein,” “hereby,” and “hereunder” and words of similar import shall refer to this Disclosure Statement as a whole and not to any particular provision, (iii) article, section, and exhibit references are to this Disclosure Statement unless otherwise specified, and (iv) with respect to any Distribution under the Plan, “on” a date means on or as soon as reasonably practicable thereafter.

The purpose of this Disclosure Statement is to provide “adequate information” to entities who hold Eligible Claims to enable them to make an informed decision before exercising their right to vote to accept or reject the Plan. By Order of the Bankruptcy Court entered on _____, 2017, (the “Disclosure Statement Order”) [Dkt. No.____], this Disclosure Statement was approved and held to contain adequate information. A true and correct copy of the Disclosure Statement Order is attached hereto as Exhibit 2.

THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN. THE MATERIAL CONTAINED HEREIN IS INTENDED SOLELY FOR THE USE OF HOLDERS OF ELIGIBLE CLAIMS IN EVALUATING THE PLAN AND VOTING TO ACCEPT OR REJECT THE PLAN AND, ACCORDINGLY, MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN THE DETERMINATION OF HOW TO VOTE ON THE PLAN. THE PLAN IS SUBJECT TO NUMEROUS CONDITIONS AND VARIABLES AND THERE CAN BE NO ABSOLUTE ASSURANCE THAT THE PLAN WILL BE EFFECTUATED.

D. Parties Entitled to Vote on the Plan

Under the provisions of the Bankruptcy Code, not all parties in interest are entitled to vote on a Chapter 11 plan. Creditors whose claims or interests are not impaired by a plan are deemed to accept the plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote. In addition, creditors or equity interest holders whose claims or interests are impaired by the plan and will receive no distribution under the plan are also not entitled to vote because they are deemed to have rejected the plan under section 1126(g) of the Bankruptcy Code.

The following table sets forth which Classes are entitled to vote on the Plan and which are not, and sets forth the proposed recovery, and the impairment status for each of the separate Classes of Claims and Interests provided for in the Plan:

Class	Designation	Impairment	Voting Status
1	Secured Claims	Unimpaired	Deemed to Accept
2	91 st Street Litigation Claims	Impaired	Entitled to Vote
3	Litigation Claims – Other Accidents	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Subordinated Claims	Impaired	Not Entitled to Vote
6	Equity Interests	Impaired	Not Entitled to Vote

Numerous claims have been filed in the Debtors' cases seeking substantial and unliquidated amounts, and the Debtors have not yet sought to adjust or liquidate those claims despite being urged to do so by the Court and the Committee. Moreover, significant Confirmation Account Assets and other non-exempt Assets need to be sold to address Creditor Claims.

Section 1126 of the Bankruptcy Code defines "acceptance" of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the claims actually voted to accept or reject the plan. Your vote on the Plan is important. The Bankruptcy Code requires as a condition to confirmation of a plan of reorganization that each class that is impaired and entitled to vote under a plan votes to accept such plan, unless the plan is being confirmed under the "cramdown" provisions of section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code permits confirmation of a plan of reorganization, notwithstanding the nonacceptance of the plan by one or more impaired classes of claims or equity interests, so long as at least one impaired class of claims votes to accept a proposed plan (not counting the votes of any "insiders" as defined in the Bankruptcy Code). Under that section, a plan may be confirmed by a bankruptcy court if it does not "discriminate unfairly" and is "fair and equitable" with respect to each

non-accepting class.

For a description of the Classes of Claims and Interests and their treatment under the Plan, see Section VI.C.

E. Solicitation Package

Accompanying this Disclosure Statement for the purpose of soliciting votes on the Plan are copies of (i) the Plan, (ii) the notice of, among other things, the time for submitting a ballot (the "Ballot") to accept or reject the Plan, the date, time, and place of the hearing to consider the Confirmation of the Plan and related matters, and the time for filing objections to the Confirmation of the Plan (the "Confirmation Hearing Notice"), and (iii) a Ballot or Ballots (and return envelope(s)) that you may use in voting to accept or to reject the Plan, or a notice of non-voting status, as applicable. If you did not receive a Ballot and believe that you should have, please contact ____ at the address or telephone number set forth in the next subsection.

F. Voting Procedures, Ballots, and Voting Deadline

After carefully reviewing the Plan and this Disclosure Statement, and the exhibits thereto, and the detailed instructions accompanying the Ballot, except for Class 1 (Secured Claims), Holders of Eligible Claims which are not Class 5 (Subordinated Claims) and Class 6 (Interests) should indicate their acceptance or rejection of the Plan by voting in favor or against the Plan on the enclosed Ballot. Each such holder should complete and sign his, her, or its Ballot and return it in the envelope provided so that it is RECEIVED by the Voting Deadline (as defined below).

Each Ballot has been marked to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot or Ballots sent to you with this Disclosure Statement.

If you have any questions about the procedure for voting your Eligible Claim with respect to the packet of materials that you have received, please contact Committee Counsel.

COUNSEL FOR THE COMMITTEE MUST RECEIVE THE ORIGINAL BALLOT ON OR BEFORE 5:00 P.M., PREVAILING EASTERN TIME, ON ____, 2017 (THE "VOTING DEADLINE"). BALLOTS MAY BE SENT TO TOGUT, SEGAL & SEGAL LLP, ATTN: NEIL BERGER, ESQ., ONE PENN PLAZA, SUITE 3335, NEW YORK, NEW YORK 10119. EXCEPT TO THE EXTENT ALLOWED BY THE BANKRUPTCY COURT, BALLOTS RECEIVED AFTER THE VOTING DEADLINE WILL NOT BE ACCEPTED OR USED IN CONNECTION WITH THE COMMITTEE'S REQUEST FOR CONFIRMATION OF THE PLAN OR ANY MODIFICATION THEREOF.

The Committee reserves the right to amend the Plan. Amendments to the Plan that do not materially and adversely affect the treatment of Claims or Interests and are consistent with the terms of the Plan Support Agreement may be approved by the

Bankruptcy Court at the Confirmation Hearing without the necessity of resoliciting votes. In the event resolicitation is required, the Committee will furnish new solicitation materials that will include new Ballots to be used to vote to accept or reject the Plan, as amended.

G. Confirmation Hearing and Deadline for Objections to Confirmation

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on whether the Plan Proponent has fulfilled the confirmation requirements of section 1129 of the Bankruptcy Code. Pursuant to the July __, 2017 Order of the Bankruptcy Court [Dkt. No. __], the Court will conduct a confirmation hearing to consider confirmation and approval of the Plan on _____, 2017 at 10:00 a.m.

II. EXPLANATION OF CHAPTER 11

A. Overview of Chapter 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code, pursuant to which a debtor may reorganize or liquidate assets for the benefit of its creditors, stockholders, and other parties in interest or engage in an orderly liquidation of its business. The Debtors commenced the Bankruptcy Cases by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on January 6, 2016. The Bankruptcy Cases are being jointly administered under Case No. 16-40043 (CEC), Case No. 16-40044 (CEC), Case No. 16-40045 (CEC), and Case No. 16-40048 (CEC).

The commencement of a Chapter 11 case creates an estate of all the legal and equitable interests of the debtor in possession as of the date the petition is filed. Sections 1101, 1107, and 1108 of the Bankruptcy Code provide that a debtor may continue to operate its business and continue in possession of its property as a “debtor-in-possession” unless the bankruptcy court orders the appointment of a trustee. In these Bankruptcy Cases, the Debtors have remained in possession of their property as debtors-in-possession.

Under section 362 of the Bankruptcy Code, the filing of a Chapter 11 petition, among other things, automatically stays all attempts by creditors and other third parties to collect pre-petition claims from the debtor or otherwise interfere with its property or business. Exempted from the automatic stay are governmental authorities seeking to exercise regulatory or policing powers. Except as otherwise ordered by the Bankruptcy Court, the automatic stay remains in full force and effect until the effective date of a confirmed plan of reorganization. In the Debtors’ Bankruptcy Cases, the Bankruptcy Court has denied requests of creditors to modify the automatic stay to continue litigations in non-Bankruptcy Court forums to liquidate claims and/or to repossess property. On July 1, 2016, the Bankruptcy Court entered its *Order Partially Modifying Automatic Stay To Authorize And Allow Creditors Casto And U.S. Steel To Proceed With Mediation* [Dkt. No. 313], pursuant to which, the automatic stay was modified to permit claimants Heather Casto (“Casto”) and U.S. Steel, and the Debtors to participate in court-ordered mediation in a pending litigation in Wayne County, Michigan. Pursuant

to an order of the Bankruptcy Court dated January 1, 2017 [Dkt. No. 707] (the “Casto Settlement Order”), the wrongful death claim asserted by Casto against Rigging was settled with a payment of \$50,000, paid by Ironshore Insurance Company, and not from any funds of the Debtors’ Estates. The Claim asserted by U.S. Steel totals \$14.7 million and has not yet been resolved.

The formulation of a Chapter 11 plan is the principal purpose of a Chapter 11 case. The plan sets forth the means for satisfying the claims against and interests in the debtor’s estate. Unless a trustee is appointed, only the debtor may file a plan during the first 120 days of a Chapter 11 case (the “Filing Period”). However, section 1121(d) of the Bankruptcy Code permits the bankruptcy court to extend or reduce the Filing Period upon a showing of “cause.” Following the filing of a plan, the debtor or plan proponent must solicit acceptances of the plan within a certain time period (the “Solicitation Period”). The Solicitation Period may also be extended or reduced by the Bankruptcy Court upon a showing of “cause.” Pursuant to an order of the Court dated June 7, 2017 [Dkt. No. 902], the Bankruptcy Court terminated exclusivity in favor of the Committee and directed the Committee to file its Plan by June 8, 2017. The July 7, 2017 Order extended the Debtors’ exclusive filing period to June 6, 2017.

B. The Chapter 11 Plan

A Chapter 11 plan sets forth and governs the treatment and rights to be afforded to creditors and interest holders with respect to their claims against, and interests in, the debtor. According to section 1125 of the Bankruptcy Code, acceptances of a Chapter 11 plan may be solicited by the debtor only after a written disclosure statement has been provided to each creditor or shareholder who is entitled to vote on the plan.

The Committee’s plan provides for the installation of an independent plan administrator (“Plan Administrator”), to enforce the Confirmation Account Order and other Orders of the Court, to cause the implementation of the liquidation and/or refinancing of the Confirmation Account Assets and other Assets of the Debtors, wherever located, until such time until all Allowed Administrative Claims and all Allowed Claims are paid in full, plus applicable interest. In the event that such liquidations and refinancings are insufficient to satisfy all Allowed Claims in full, plus applicable interest, the Plan Administrator may seek relief from the Bankruptcy Court to liquidate additional Assets, or to recommend conversion of the Debtors’ Bankruptcy Cases to liquidation cases under Chapter 7 of the Bankruptcy Code.

III. OVERVIEW OF THE PLAN

A. Purpose of the Plan

The primary purpose of the Plan is to set forth the manner in which the Debtors’ and Non-Debtor Affiliates’ assets will be sold and/or refinanced and describe how Claims against and Interests in the Debtors will be treated if the Plan is confirmed by the Bankruptcy Court and thereafter consummated on the Effective Date.

The Disclosure Statement sets forth information regarding the Debtors’ history

and significant events that occurred prior to, and during, the Bankruptcy Cases. The Disclosure Statement describes the Plan, the effects of Confirmation, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the Confirmation process and voting procedures that Holders of Eligible Claims must follow for votes to be counted.

B. Plan Funding Mechanism

On January 31, 2017, the Court entered its Confirmation Account Order, which among other things, approved the Confirmation Account Settlement Agreement, as modified by the Confirmation Account Order.

Pursuant to the Confirmation Account Order and the *Order Holding James F. Lomma in Contempt and Imposing Sanctions* [Dkt. No. 876], the Debtors have contributed the following assets into Confirmation Account Nos. 1 and 2:

- Lomma's investment accounts maintained and with aggregate balances of approximately \$8.6 million at: Locust Wood Capital, LLP (approximately \$4.3 million), Morgan Stanley (approximately \$520,000), and Certera (approximately \$1.5 million) and UBS (approximately \$2.3 million), contributed to Confirmation Account No. 1;
- \$8,518,920 as of June 7, 2017, representing (a) monthly \$1 million contributions of Cash by Debtors and (b) approximately \$1.5 million of collections of aged accounts receivable ("Aged Accounts Receivable") into Confirmation Account No. 2;
- \$15 million, representing the Debtors' proposed refinance of the JLG equipment fleet, to repay loans due and payable from JLJD to Lomma;
- \$25-\$30 million, representing approximate net proceeds from the sales of real property owned in whole or in part by Lomma which have been contributed to Confirmation Account No. 2;
- approximately \$1.5 million, representing collection of additional Aged Accounts Receivable; and
- \$2 million, representing projected monthly payments by the Debtors to Confirmation Account No. 1 pursuant to the Confirmation Account Order.

Within three (3) Business Days after the Effective Date, the Debtors will transfer all accounts and all balances in Confirmation Account Nos. 1 and 2 to the Plan Administrator Confirmation Account, and thereafter, all monthly payments required to be made by the Debtors and the Non-Debtor Affiliates pursuant to the Confirmation Account Order shall be made by them to the Plan Administrator Confirmation Account.

Pursuant to the Plan, consistent with the Confirmation Account Order, immediately following the occurrence of the Appellate Division Decision Date, real property will be sold and the proceeds will be deposited into the Plan Administrator

Confirmation Account by the real estate broker(s) retained by the Committee pursuant to the Orders of the Bankruptcy Court prior to the Effective Date or real estate brokers, if any, retained by the Plan Administrator after the Effective Date. A scheduled identifying the real property that is party of the Confirmation Account No. 2 is attached hereto as Exhibit 3 (the "Real Properties Chart").

The Committee retained Metropolitan Valuation Services, Inc. ("MVS") as its real estate appraiser in connection with these Bankruptcy Cases. Following its retention, MVS performed appraisals and delivered written appraisal reports to the Committee concerning the commercial real properties identified in Lomma's Amended Schedule A-1.2 filed on June 30, 2016 [Dkt. No. 310-1]. As explained in the Real Properties Chart, Lomma's interests in the real property contributed to the Confirmation Account represents fee ownerships, and ownership interests through partnerships and limited liability companies. Importantly, pursuant to the Confirmation Account Order, the Real Property, and not Lomma's interests in business entities which may own or control such Real Property, were contributed to the Confirmation Account to be sold to the extent necessary to satisfy all Allowed Administrative Expenses and Allowed Claims in the Bankruptcy Court. Moreover, the Committee contests the interest and/or liens asserted by FEK in or against certain of the real property. The appraised values for the real property contributed to the Confirmation Account range from approximately \$500,000 to approximately \$20 million with an aggregate appraised value for all of the Real Property totaling approximately \$75 million. Known and recorded mortgages against the real property total approximately \$8 million.

Consistent with the Confirmation Account Order and the June __, 2017 Order of the Bankruptcy Court authorizing the retention of Keen-Summit Capital Partners LLC as real estate broker ("Keen"), Keen may immediately market and attempt to sell the following properties:

- (i) owned by Till the End LLC, located at 280 Central Avenue, Kearny, New Jersey;
- (ii) owned by 125 Doremus Avenue LLC, located at 87-125 Doremus Avenue, Newark, New Jersey;
- (iii) owned by 4301 Boston Post Road LLC, located at 4301 Boston Post Road, Pelham, New York; and
- (iv) the boat slips located at (a) slips 112 and 311, Brielle, New Jersey, and (b) slip YC-043, Point Pleasant, New Jersey.

Pursuant to the Plan, additional property owned in whole or in part by Lomma or a Non-Debtor Affiliate may be sold as necessary to fund Distributions from the Plan Administrator Confirmation Account.

Should the challenges to FEK's claims against the real property be successful, Lomma's fifty percent (50%) interest in the net appraised values could equal approximately \$30-\$40 million, before taxes, litigation expenses and transactional costs.

Pursuant to an order of the Court dated May 1, 2017 [Dkt. No. 825], the Committee was authorized to retain a real estate broker to assist in the sale of Real Property owned by Lomma located at 245 Edgegrove Avenue, Staten Island, New York (the "Staten Island Property"). In his Schedules, Lomma assigned a value of \$300,000 for the Staten Island Property. The Committee has obtained an offer of \$762,500 for the purchase of the Staten Island Property. The Staten Island Property is not subject to any known mortgages or liens, however, it is anticipated that Mr. Lomma's tax basis in the Staten Island Property is low. Notwithstanding, the sale of the Staten Island Property will yield proceeds for the benefit of the estates, and those net proceeds will be contributed to Confirmation Account No. 2.

Further, pursuant to the Plan, consistent with the Confirmation Account Order, upon occurrence of the Appellate Division Decision Date, the following actions shall be taken to the extent needed to make the balance of the Distributable Cash in the Plan Confirmation Account sufficient to pay all Allowed Claims:

- (a) The inventory and assets of TES will be sold or liquidated, and the real property upon which TES is situated shall be sold, and the proceeds deposited in Confirmation Account No. 2. If the business of TES is to be continued, it will be continued in TES or some other business entity owned one hundred percent (100%) by Lomma. Lomma and the Debtors have continuously represented that the TES inventory has a value of approximately \$25 million. Those representations are contained in all of the Monthly Operating Reports filed by TES in the bankruptcy cases, and Lomma provided sworn testimony to the Bankruptcy Court on May 22, 2017 confirming those representations. However, the Committee has recently discovered that a significant portion of the TES equipment inventory, which had been represented to have been held for sale, has actually been actively rented, which could materially impair the liquidation value of that equipment.
- (b) JLJD shall sell, liquidate, or refinance equipment to repay (i) its loan obligation of not less than \$15,151,147 owed to Lomma and (ii) all the excess rent collected by JLJD and NY Crane and Rigging beyond JLJD's actual and documented cash requirements for the equipment that it has leased to NY Crane and Rigging subsequent to the Petition Date, as agreed by the Committee or, after the Effective Date, the Plan Administrator and the Debtors or, if the Committee or, after the Effective Date, the Plan Administrator and the Debtors are unable to agree, as determined by the Bankruptcy Court, which will be deposited into the Plan Administrator Confirmation Account. The Committee has asserted that such excess rent totals at least \$4 million. Debtors enlisted Bristow Truck & Equipment ("Bristow") (without Bankruptcy Court authorization) to value the fleet of equipment available to satisfy Creditors' Claims. Bristow assigned values for the JLJD equipment: "actual cash value" of approximately \$187.5 million, and "orderly liquidation" value of approximately \$141 million. The Committee's financial advisors have performed a valuation of the JLJD equipment and assigned values: "fair market value" of approximately \$144 million; "orderly liquidation value" of approximately \$124 million; and "forced liquidation value" of approximately \$104 million. Various pieces of equipment in the JLJD equipment fleet are subject to secured equipment finance obligations

totaling approximately \$42 million, and the sale of all or a portion of the JLJD equipment fleet would be subject to tax and transaction costs. The Debtors have asserted that the most effective means to obtain value in connection with the JLJD equipment fleet is through refinancings, and they have obtained written commitments for refinancing opportunities concerning these assets. *See* Dkt. No. 590.

- (c) The actual value of the JLJD equipment is subject to, among other things, market conditions, and the method of the sale of the JLJD equipment, if sold, and there is no certainty with regard to price that can be obtained in any such sale.
- (d) The Jane St. Apt. will be sold pursuant to the terms of the Confirmation Account Order, but is anticipated to generate more than \$1.6 million, if sold.
- (e) JK Crane will repay its loan obligation to the Plan Administrator in the amount of \$400,000 to the extent not already paid, which amount will be deposited into Confirmation Account No. 2 or the Plan Administrator Confirmation Account if paid after the Effective Date.

In accordance with the Confirmation Account Order, the Plan, and any other Order that may be entered by the Bankruptcy Court, the assets and proceeds in the Plan Administrator Confirmation Account will be available for Distributions under the Plan.

C. Summary of Proposed Distributions Under the Plan

Under the Plan, Claims against, and Interests in, the Debtor are divided into six (6) Classes. Certain Claims, including Administrative Claims and Priority Tax Claims, are not classified and, if not paid prior, will receive payment in full in Cash on the later of the Effective Date or the date such Claim is Allowed, or as otherwise agreed to by the holder of such Claim. All other Claims and Interests, to the extent Allowed, will receive the Distributions described below.

IV. THE CONFIRMATION HEARING AND OBJECTION DEADLINE

THE BANKRUPTCY COURT HAS SET _____, 2017, AT __.M., PREVAILING EASTERN TIME, AS THE DATE AND TIME FOR THE HEARING ON CONFIRMATION AND TO CONSIDER ANY OBJECTIONS TO THE PLAN. THE CONFIRMATION HEARING WILL BE HELD AT THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF NEW YORK, CONRAD B. DUBERSTEIN COURTHOUSE, 271-C CADMAN PLAZA EAST, BROOKLYN, NY 11201-1800. THE COMMITTEE WILL REQUEST THE PLAN BE CONFIRMED AT THE CONFIRMATION HEARING.

THE BANKRUPTCY COURT HAS FURTHER FIXED _____,2017, AT __ P.M., PREVAILING EASTERN TIME, AS THE DEADLINE (THE "OBJECTION DEADLINE") FOR FILING OBJECTIONS TO CONFIRMATION WITH THE BANKRUPTCY COURT. OBJECTIONS TO CONFIRMATION MUST BE SERVED

SO AS TO BE RECEIVED BY THE FOLLOWING PARTIES ON OR BEFORE THE OBJECTION DEADLINE:

Counsel to the Committee:

Togut, Segal & Segal LLP
Attn: Albert Togut, Esq.
and Neil Berger, Esq.
One Penn Plaza, Suite 3335
New York, New York 10119

Counsel to the Debtors:

Goldberg Weprin Finkel Goldstein LLP
Attn: Kevin J. Nash, Esq.
and Neal M. Rosenbloom, Esq.
1501 Broadway, 22nd Floor
New York, New York 10016

The United States Trustee:

Office of the United States Trustee
for Region 2
Attn: Nazar Khodorovsky, Esq.
U.S. Federal Building
201 Varick Street, Suite 1006
New York, New York 10014

ANY OBJECTION TO CONFIRMATION MUST BE IN WRITING AND (A) MUST STATE THE NAME AND ADDRESS OF THE OBJECTING PARTY AND THE AMOUNT OF ITS CLAIM OR THE NATURE OF ITS INTEREST AND (B) MUST STATE WITH PARTICULARITY THE NATURE OF ITS OBJECTION. ANY CONFIRMATION OBJECTION NOT TIMELY FILED AND SERVED AS SET FORTH HEREIN SHALL BE DEEMED WAIVED AND SHALL NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

V. THE BANKRUPTCY CASE

A. Events Leading Up to the Filing

On May 30, 2008, a Kodiak tower crane fell from the sky at the corner of 91st Street and First Avenue in New York City (the "May 2008 Accident"), which resulted in the death of two young men aged 27 and 30. The ensuing wrongful death litigation – a component of the 91st Street Crane Litigation – lasted nearly eight years, and the trial, believed to be the longest civil trial in New York City history, lasted over eleven months and involved approximately 68 witnesses. The docket for the wrongful death litigation includes over 8,000 entries.

After three days of jury deliberations, the jury determined that the May 2008 Accident was caused by the negligence of the Debtors, and that those deaths were so avoidable that punitive damages approaching \$50 million were appropriate. *See generally* Case No. 16-40043 (CEC), Claim No. 17-1 at Ex. A (Proof of Claim filed by the

Estate of Donald Christopher Leo), Claim No. 18-1 (Proof of Claim filed by the Estate of Ramadan Kurtaj).³

On January 5, 2016, Judgments aggregating approximately \$96 million were entered against the Debtors in the Supreme Court, New York County (the “Trial Court”) in connection with the 91st Street Crane Litigation. The Judgments assigned full liability for the May 2008 Accident to the Debtors: sixty one percent (61%) to Lomma; nineteen percent (19%) to Debtor NY Crane; and twenty percent (20%) to Trucking and Rigging (without specifying apportionment between Trucking and Rigging). *See Consolidated Declaration of James F. Lomma Pursuant to Local Bankruptcy Rule 1007-4* [Dkt. No. 1]⁴ (the “Lomma Declaration”) at ¶¶ 5, 7, 12.

B. The Debtors’ Appeals of the Judgments

The Debtors filed notices to appeal the Judgments to the Appellate Division on the same day that the Judgments were entered. The Debtors filed a motion to modify the Automatic Stay to pursue the Appeals of the Judgments on February 8, 2016. *See* Dkt. No. 61.

On appeal, the Debtors have argued that, among other things, (i) expert testimony that they sought to introduce was improperly excluded from trial which would have established that operator error caused the May 2008 Accident, warranting a new trial; (ii) the verdict as to any Debtor other than NY Crane should be reversed because its corporate veil should not have been pierced; and (iii) the Judgments’ compensatory and punitive damage awards should be vacated or significantly reduced.

Appellees have argued that, among other things, (i) the Debtors’ expert testimony was properly excluded and that the evidence established that the Debtors made a conscious and deliberate decision to ignore warnings and put profits over public safety; (ii) there was ample evidence for the jury to find Lomma personally liable and pierce the veils of the Corporate Debtors; and (iii) the Judgments’ compensatory and punitive damage awards should be upheld or only modestly adjusted. Appellees have also asserted that Lomma is jointly and severally liable for the full amount of the Judgments pursuant to NY CPLR section 1601 because the jury verdicts assigned 61% of the liability of the Judgments to Lomma.

On May 10, 2017, more than sixteen months after the commencement of these Bankruptcy Cases, the Appellate Division heard oral argument concerning the Appeals.

Although the outcome of the Appeals cannot be predicted, it appears unlikely that the Appellate Division will order a new trial. Instead, it is more likely that the Appellate Division will determine the amount of the Judgments’ compensatory and punitive damage awards.

³ Lomma was criminally indicted for these deaths, and acquitted. One of the Debtors’ employees, Tibor Varganyi, was also indicted in criminal court, pleaded guilty to two counts of criminally negligent homicide, and received community service.

⁴ Unless otherwise noted, citations to the docket are to the Bankruptcy Cases.

C. Commencement of the Bankruptcy Case

The day after they filed the Appeals, on January 6, 2016 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court, rather than posting an appellate bond.

Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors have continued to operate their businesses and manage their properties as debtors in possession.

As described in greater detail in the Lomma Declaration, the Debtors sought Chapter 11 relief “to continue active business operations and preserve the going concern value of their assets while the Debtors pursue an appeal from certain adverse judgments entered in the Supreme Court, New York County on January 5, 2016.” See Lomma Declaration at ¶ 4.

A separate litigation among the insurance companies, which issued insurance policies covering the Debtors, was commenced in the Trial Court. That action was removed by the Debtors to the United States District Court for the Southern District of New York shortly after the Petition Date, was then transferred to the United States District Court for the Eastern District of New York and then ultimately to the Bankruptcy Court. See *National Interstate Insurance Company, et al. v. Zurich American Insurance Company, et al.*, Case No. 1:16-cv-00670-MKB-JO (the “Adversary Proceeding” or “Insurance Litigation”). Pursuant to an Order of the Bankruptcy Court, the Insurance Litigation was remanded to the Trial Court, but stayed pending entry of a further order of the Bankruptcy Court.

D. Formation and Representation of the Committee

On February 12, 2016, the U. S. Trustee appointed a three-member Committee, consisting of: (i) Maria Leo, as Administratrix of the Estate of Donald Christopher Leo; (ii) Xhevahire Sinanaj, as Administratrix of the Estate of Ramadan Kurtaj; and (iii) Sorbara Construction Corp. (“Sorbara”) [Dkt. No. 65].

The Committee selected Ms. Leo and Ms. Sinanaj as its Co-Chairpersons. The Committee retained the law firm of Togut, Segal & Segal LLP (the “Togut Firm”) as counsel [Dkt. No. 204], and Duff & Phelps, LLC (“D&P”) as its financial advisor [Dkt. No. 205].

E. Lomma’s Inaccurate Schedules of Assets and Liabilities, Statement of Financial Affairs, and Amendments Thereto

On the Petition Date, Lomma filed materially false and inaccurate Schedules of Assets and Liabilities and Statement of Financial Affairs that disclosed Debtor assets of less than \$10 million. See Dkt. No. 1. Following the Committee’s investigation into Lomma’s assets, liabilities, and financial affairs, Lomma amended his schedules three times – on June 24, 2016, June 30, 2016, and July 8, 2016 – to list previously undisclosed assets, including Lomma’s prepetition transfers of more than \$20 million to his insiders, fourteen undisclosed bank accounts and investment accounts, and at least two

additional real properties, all with scheduled asset values of approximately \$100 million, and approximately \$150 million of additional undisclosed liabilities. *See* Dkt. Nos. 1, 290-94, 310, 322-25. Lomma amended those Schedules only after being compelled to do so by the Court, the Committee, and the U.S. Trustee.

The Committee contends that Lomma's failures, on more than one occasion, to accurately disclose his assets and liabilities was an intentional attempt to hide assets from creditors. The Debtors contend that Lomma's failure to accurately disclose his assets and liabilities was inadvertent and immaterial because of the Debtors' production of tax returns and other information to the Committee. The Committee has demonstrated that Lomma has made material misrepresentations and omissions since the Petition Date.

The Court has observed that Lomma only discloses assets after he is caught hiding them. *See e.g., Transcript of Hearing Held on October 17, 2017* at 117:23-118:7 (THE COURT: "I certainly – I have the impression you've been hiding assets...and I've developed that impression over the course of...almost a year...of listening to the Committee trying to pull teeth to get disclosure from you folks.").

F. Lomma's Transfers of Funds from the Debtors to Non-Debtor Affiliates and Insiders

Lomma is the President and sole shareholder of each of the three Corporate Debtors: NY Crane; Trucking; and Rigging. *See* Lomma Declaration at ¶ 22. However, the Debtors comprise only a small portion of a larger group of affiliated companies that are controlled or owned, in whole or in part, by Lomma, and his children and FEK. *See, e.g., id.* at ¶ 6. By way of example:

- Lomma is the sole shareholder of: (i) TES; (ii) JFL; (iii) Lomma Warehouse Corp.;⁵ (iv) Lomma South Inc.; and (v) Lomma Associates Inc. (collectively, the "Wholly-Owned Affiliates"), all of which have and continue to conduct business with the Debtors;
- Lomma is the managing member, and has a substantial ownership interest in, entities owned with his children which have and continue to conduct business with the Debtors: (i) JLJD (Lomma is managing member and owns 25%); (ii) LJ Ventures (Lomma owns 99%); and (iii) Lomma LLC d/b/a JK Crane (Lomma owns 24%) (the "Partly-Owned Affiliates," together with the Wholly-Owned Affiliates, the "Non-Debtor Affiliates"); and
- Lomma also owns and co-owns various investment properties with FEK as partners, or through various forms of business associations, including: (i) South Kearny Associates; (ii) Till the End LLC; (iii) 125 Doremus LLC; (iv) 4301 Boston Post Road LLC; (v) 25 Berkshire

⁵ Lomma failed to disclose his interest in Lomma Warehouse Corp. in his original and Amended Schedules. *See* Dkt. Nos. 53 and 101, Schedule B-53.

Valley Road LLC; (vi) JG Reis and Sons, Inc.;⁶ (vii) Steele Creek Road Associates; (viii) partnership for 48 Third Avenue, Kearny, New Jersey; and (ix) partnership for 9 Albert Avenue, Newark, New Jersey (collectively, the “FEK Entities”).

The Committee has demonstrated by sworn declaration evidence and sworn expert testimony that Lomma, facing more than \$200 million in liabilities, orchestrated a course of dealings beginning prior to the Petition Date after the May 2008 Accident to try to distribute millions of dollars to the Non-Debtor Affiliates owned, in whole or in part, by Lomma and his family, as well as to business partners and the FEK Entities. *See Declaration of James S. Feltman in Support of Committee’s Motion Compelling the Debtors to Establish and Contribute to a Plan Confirmation Account* [Dkt. No. 453] (“Feltman Decl.”) at ¶¶ 13, 23-29.⁷ Through various mechanisms, Lomma has directed that millions of dollars flow from the Debtors’ estates to non-Debtor entities and Insiders, in amounts determined by Lomma at his sole discretion.

To date, the Debtors have offered no sworn declaration evidence or sworn testimony to the contrary.

i. Lomma’s Payment of More Than \$20 Million in Profit Rent to JLJD and Conversion of Cash to Equipment

The monthly operating reports filed by Lomma on behalf of the Debtors and the Non-Debtor Affiliates and the uncontroverted expert testimony of Mr. Feltman demonstrate that Lomma has directed the vast majority of the revenue generated by Debtors NY Crane and Rigging, the “cash cows” of the Lomma enterprise, to his Non-Debtor Affiliates.

Under Lomma’s control and direction, from 2011 through August 2016, NY Crane and Rigging generated approximately \$83 million in revenue, but had less than \$7 million in retained earnings as of August 31, 2016. *Feltman Decl.* ¶ 38, Exs. 1-2.

Under Lomma’s exclusive direction, NY Crane and Rigging together have paid JLJD \$1.625 million per month in rent, of which the Committee contends at least \$425,000 represented “profit” in excess of JLJD’s monthly expenses, which consist almost entirely of \$1.3 million in equipment finance debt service through August 2016. *Id.* at ¶¶ 13, 23-29.

Prior to the Petition Date, Lomma conveyed nearly \$20 million of “profit rent” to JLJD, which was converted to illiquid crane inventories that are largely sitting idle. *Id.* at Ex. 1.1.

And during these cases, Lomma directed property of the Debtors’ estates to be paid and transferred to Non-Debtor Affiliates without business justification, including

⁶ JG Reis and Sons, Inc. was not disclosed in Lomma’s original and Amended Schedules. *See* Dkt. No. 1, Schedule B-53, and 101.

⁷ James S. Feltman is a Managing Director of D&P, and has led the team of financial advisors retained by the Committee.

the continued payment of \$4 million of “profit rent,” which JLJD did not need to operate, which had been converted to crane inventories for Lomma’s Non-Debtor Affiliates, which have a utilization of only approximately 30%. *See, e.g., id.* at ¶ 28.

The Committee has established, through Mr. Feltman’s uncontroverted sworn declaration and expert testimony, that Lomma has converted tens of millions of dollars of the Debtors’ cash into new equipment owned by Non-Debtor Affiliates notwithstanding that the equipment utilization rates for his Debtors and Non-Debtor Affiliates is only approximately 30%. Feltman Decl. at ¶¶ 30-32, Ex. 6.

Using funds acquired from the Debtors, JLJD has acquired more than \$11.1 million in new equipment from January through August 2016 alone. *Id.* As the Bankruptcy Court noted, the cash generated by the Debtors is “certainly going into illiquid form and illiquid forms...He’s buying cranes out, buying cranes and equipment, taking cash and ... he’s increased his crane inventory very substantially.” *Transcript of Hearing Held on October 17, 2016* at 107:15-108:1.

To date, the Debtors have offered no sworn declaration evidence or sworn testimony to the contrary.

Pursuant to the Confirmation Account Order obtained by the Committee, Lomma is currently prohibited from directing NY Crane and Rigging to make profit rent payments to JLJD.

ii. Transfers to Family Members and Insiders

Lomma transferred assets from the Debtors to Insiders, Non-Debtor Affiliates, and the FEK Entities prior to the Petition Date. It was not until he was forced to amend his Schedules that Lomma disclosed that prior to the Petition Date, he loaned \$20 million to Non-Debtor Affiliates that he owns with his children.

In his Amended Schedules, Lomma disclosed, *inter alia*, that:

- In addition to the approximately \$15.2 million Lomma is owed from JLJD, Lomma is also owed \$4.7 million from Wholly-Owned Affiliates. *See* Dkt. No. 101 (Amended Schedules) at ¶ (D)(3);
- NY Crane and Rigging, together, pay \$48,000 per month to the FEK Entities as “rent.” *See id.* at ¶ (D)(6); and
- Lomma and the other Debtors have contingent liabilities relating to various finance lease obligations of Non-Debtor Affiliates. *See id.* at ¶ (D)(5).

It has also become clear that Lomma’s children have acquired interests in the Non-Debtor Affiliates that do business with the Debtors, apparently without having made any capital contributions in exchange for those interests. Lomma testified at a section 341 meeting that one of his children purchased her siblings’ interests in non-Debtor affiliate JK Crane using funds in a trust account that Lomma established for her. *See* Dkt. No. 688 at ¶ 34 (“Committee Trustee Motion”).

Further, in response to the Committee's discovery requests, Lomma has confirmed that he transferred millions of dollars to his children after the May 2008 Accident. For example, just seven months after the May 2008 Accident, he transferred \$1.65 million to his daughter, Jennifer Lomma-Gabel, to purchase the Jane St. Apt., in exchange for which he received no consideration. Moreover, while he lists his primary residence in Staten Island, New York, Lomma pays \$6,000 per month to Ms. Lomma-Gabel as "rent" for his use of the Jane St. Apt. *See id.* at ¶ 35.

Discovery in this case has confirmed that just six months prior to the Petition Date, after years of litigation and shortly before verdicts of nearly \$100 million were about to be rendered, Lomma transferred at least \$1.3 million to Ms. Lomma-Gabel to finance the entire purchase price for another residence, this one in Montclair, New Jersey. Lomma received no consideration in exchange. *See id.* at ¶ 36.

Lomma has also improperly transferred property to his insider and business partner FEK. On August 6, 2015, two days after entry of an order by Judge Mendez in the 91st Street Crane Collapse Litigation prohibiting Lomma from "transferring any property other than in the ordinary course of business," Lomma closed a Provident Bank account containing \$156,000 and transferred the balance on hand in that account to FEK. *See id.* at ¶ 37.

The Debtors do not dispute that these transfers occurred; they dispute only whether they were improper and are avoidable.

In addition, three weeks after filing the Amended Disclosure Statement in December 2016 and months after entry of Orders by the Bankruptcy Court directing Lomma to timely file operating reports for all of his real estate, the Debtors supplied the Committee with a draft October 2016 monthly operating report for South Kearny Associates, in which Lomma is a partner and which owns real property located at 81 Hackensack Avenue, South Kearny, New Jersey. That delinquent monthly operating report disclosed for the first time that on October 20, 2016, more than two months before the Amended Disclosure Statement was filed, FEK drew \$600,000 on a personal line of credit with Provident Bank, and on the same day, "repaid" \$455,708.87 to FEK, who has filed a \$5.77 million unsubstantiated proof of claim for pre-Petition Date amounts. *See id.* at ¶ 42. It also disclosed for the first time a new, inexplicable obligation to reimburse FEK at a rate of \$16,666.67 per month, presumably on account of FEK's prepetition equity contribution. *See id.*

The Committee made demands upon Provident Bank, Lomma and FEK to cease and desist this diversion of Lomma's interests in South Kearny Associates, and those diversions of estate interests were halted in December 2016 after the Bankruptcy Court directed Lomma and FEK to cease such practice. The Debtors did not credibly explain or defend these transactions to the Bankruptcy Court. The Committee brought these matters to the attention of the Bankruptcy Court, and as a result of the Committee's efforts, Provident Bank is now prohibited from repaying FEK's personal line of credit draw, and South Kearny Associates is prohibited from reimbursing FEK any amounts on account of that personal line of credit draw.

G. The Debtors' Failures to Comply with the Bankruptcy Court's Orders

The Committee has had to spend considerable time and effort litigating with Lomma and the Debtors as a result of their refusal to comply with their disclosure obligations and the Bankruptcy Court's Orders.

i. Debtors' Failures to Provide Adequate Disclosures

On February 26, 2016, the Bankruptcy Court entered an Order requiring the Debtors to "deliver and make available to the Committee all documents and data in their possession or control concerning their assets and financial affairs upon request." Dkt. No. 87 (the "February 26 Order") at ¶ 8.

As a result of the Debtors' non-compliance with the February 26 Order, the Committee obtained an Order compelling Lomma and the Debtors' compliance with their disclosure obligations. See Dkt. No. 287 (the "Order Compelling Lomma Compliance"). The Order Compelling Lomma Compliance provided that it "appear[ed] that Lomma has failed to comply with the February 26 Order," and ordered Lomma to comply with his disclosure obligations or risk being held in contempt of court and sanctioned. *Id.*

After the Debtors provided inadequate disclosures relating to Lomma's vast real estate interests, the Committee obtained a similar Order compelling performance for FEK, who is responsible for "managing" Lomma's real estate interests. See Dkt. No. 335 (the "Order Compelling FEK Compliance"). The Order Compelling FEK Compliance provided that FEK "has not fully complied with the Subpoena," and directed FEK to comply with the subpoena or risk being held in contempt of court and sanctioned. *Id.*

Lomma's evasion of his disclosure obligations has extended to information concerning family members, who have significant joint interests with Lomma, including real estate and bank accounts, which were not disclosed until Lomma was forced to amend his Schedules several times. For example: (i) Ms. Lomma-Gabel immediately moved to quash a Committee subpoena, and ultimately produced documents (not produced by the Debtors) evidencing transfers that she received totaling more than \$1.4 million from Lomma and FEK just prior to the Petition Date [Dkt. No. 321]; and (ii) other Insiders, including James B. Lomma (Lomma's son), Lauren Lomma (one of Lomma's daughters), Patrick Lomma (Lomma's brother), and Gail Lomma (Lomma's sister-in-law) refused to respond to the Committee's subpoenas to them, forcing the Committee to obtain an Order determining that each of these Insiders "have not complied with the Subpoena[s]" and compelling them to do so [Dkt. No. 473].

As a result of these, and other, failures of disclosure, on December 2, 2016, the Bankruptcy Court entered yet another *Order Directing Debtors' Production of Documents and Information* [Dkt. No. 530] (the "December 2 Order"). During a conference held on December 8, 2016 the Bankruptcy Court "determined that the Debtors failed to comply with the December 2 Order," and on December 28, 2016, the Court entered its *Order Scheduling Hearing* [Dkt. No. 637], and stated that "the [Debtors'] failure to fully comply with the December 2 Order may prevent the Committee and the Court from properly evaluating the Debtors' amended plan and disclosure statement..."

ii. Debtors' Failures to Comply with Monthly Reporting Obligations

Lomma and the Debtors have failed to comply with monthly reporting obligations pursuant to the Bankruptcy Rules and the Orders of the Bankruptcy Court. In light of the Debtors' interests in affiliated, non-Debtor companies, on January 13, 2016, the Court directed that the Debtors file monthly reports for all of Lomma's affiliated entities. *See Transcript of Hearing Held on January 13, 2016* at 16:17-17:8.

Lomma failed to comply with the Court's directive and, instead, produced monthly operating reports that were routinely late, misleading, incomplete, inaccurate, and/or unreliable. *See, e.g.*, Dkt. No. 688 at ¶¶ 44-45. After months of the Debtors failing to file a single operating report for Lomma's affiliates, at the hearing held on July 11, 2016, the Court directed the Debtors to file monthly operating reports for their affiliates consistent with Bankruptcy Rule 2015.3. After months of non-compliance with that Court directive, on November 2, 2016 the Court ordered Lomma to file monthly operating reports for all real estate affiliates. *See* Dkt. No. 474. Thereafter, the Debtors began filing late, incomplete monthly operating reports for Lomma's real estate affiliates, and the Court – for the fourth time – had to yet again order the Debtors to produce these materials pursuant to its December 2 Order.

iii. Debtors' Failures to Pay Committee Professionals

The Debtors have refused to pay the fees and expenses of the Committee's Professionals in the absence of litigation. On July 1, 2016, the Court entered its *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Dkt. No. 312] (the "Interim Compensation Order"). The Interim Compensation Order provides for the service of monthly fee statements ("Monthly Fee Statements") on the Debtors and the U.S. Trustee by, among others, the Committee's Professionals. Following entry of the Interim Compensation Order, the Committee's Professionals each served on the Debtors their first four fee statements for the periods covering February 18, 2016 through June 30, 2016. With the exception of the Togut Firm's first Monthly Fee Statement, the Debtors refused to make any payments to the Committee's Professionals. The Committee moved to compel the Debtors' payment of Committee's Professionals' fees and expenses [Dkt. No. 414], and the Debtors objected [Dkt. No. 422].

On November 17, 2016, the Court granted the Committee's application and entered the *Order Compelling the Debtors to Comply with Interim Compensation Order* [Dkt. No. 508] (the "Order Compelling Interim Compensation Compliance"). Pursuant to the Order Compelling Interim Compensation Compliance, the Debtors paid the Committee's Professionals the outstanding fees and expenses sought in the Monthly Fee Statements served as of the date of the Order Compelling Interim Compensation Compliance.

The Debtors then ceased any further payments to the Committee's professionals in violation of the Interim Compensation Order and Order Compelling Interim Compensation Compliance. On May 4, 2017, the Committee again had to move to

compel the Debtors to pay the fees and expenses of Committee's Professionals pursuant to Monthly Fee Statements covering the period October 2016 through January 2017 [Dkt. No. 829]. The Debtors again resisted payment of those fees and expenses [Dkt. No. 860].

On May 30, 2017, following an evidentiary hearing that included Lomma's sworn testimony, the Court entered the *Order Holding James F. Lomma in Contempt and Imposing Sanctions* [Dkt. No. 876] (the "Contempt Order"), requiring Lomma and the Debtors to, among other things, come current and pay all outstanding fees and expenses of Committee Professionals by June 9, 2017.

On June 9, 2016, the Debtors filed their *Notice of Payments Into the Confirmation Accounts Stipulation and Payment of Professional Fees* [Dkt. No. 909], and advised that they had mailed checks to the Togut Firm and D&P for amounts representing only approximately half of the amounts due to the Togut Firm and D&P under the Contempt Order. No payments were made to the other professionals who were required to be paid under the Contempt Order. As of June 1, 2017, the Debtors had also failed to provide complete information regarding TES equipment, as was required by the Contempt Order.

iv. Debtors' Failures to Substantiate \$32 Million in Administrative Expenses

For approximately one year, Lomma and the Debtors failed to fully substantiate more than \$32 million in administrative expenses of the Debtors, which had been listed in gross amounts without supporting detail in their monthly operating reports, thus preventing creditors from understanding the Debtors' affairs and undermining the reliability of the projections prepared at Lomma's direction and attached to the Debtors' Amended Disclosure Statement. Feltman Decl. at ¶ 44, Ex. 5. The Bankruptcy Court ordered Lomma and the Debtors to provide "[a]ll back-up and breakdowns for all items that have been included as "administrative expenses" in all of the monthly operating reports that have been filed to date by all of the Debtors and Non-Debtor Affiliates." See Dkt. No. 530. The Debtors ultimately provided this information.

v. Debtors' Failures to Provide Disclosures Concerning Lomma's Aircraft

Lomma's defiance of the Bankruptcy Court's Orders forced the Committee and other creditors to spend much of 2016 and 2017 litigating with Lomma over his failure to provide disclosures concerning the 2014 Pilatus PC-12 aircraft (the "Aircraft") owned by LJ Ventures LLC, of which Lomma is the ninety nine (99%) owner.

As authorized by the Confirmation Account Order, on April 20, 2017, the Committee filed an application to employ Dominion Aircraft, Inc. ("Dominion") as broker to sell the Aircraft [Dkt. No. 816], to which the Debtors objected to [Dkt. No. 833]. On May 22, 2017, the Court granted the Committee's application and entered the Dominion retention order [Dkt. No. 870].

On June 12, 2017, Dominion listed the Aircraft for sale in the amount of \$3.8 million and is currently soliciting offers. The Aircraft is subject to a secured Claim of approximately \$2.5 million, and the Debtors assert that the sale of the Aircraft will generate a current tax liability, and they intend to oppose the sale of the Aircraft. All offers are subject to higher and better bids and further order of the Bankruptcy Court.

H. Establishment of the Confirmation Account and the Debtors' Default of Their Obligations Thereunder

On September 9, 2016, following litigation with the Debtors concerning their non-compliance with their disclosure obligations and Bankruptcy Court's Orders, the Committee filed its *Motion for an Order Establishing Confirmation Account* [Dkt. No. 412] (the "Confirmation Account Motion") to begin to set aside funds to pay creditors so that when confirmation of a plan does occur, money will be available to pay creditors. At the time, the Debtors and Non-Debtor Affiliates were amassing profits, had unencumbered funds on hand of approximately \$6 million, and had not yet perfected their Appeals despite having had nine months to do so. *See* Dkt. No. 412 at pp. 2-4.

The Debtors opposed the Confirmation Account Motion [Dkt. No. 421]. After lengthy negotiations with the Debtors and other parties in interest, and multiple hearings, on January 31, 2017, the Court entered the Confirmation Account Order, which among other things, approved the Confirmation Account Settlement Agreement, as modified by the Confirmation Account Order.

As discussed below, pursuant to the Confirmation Account Order, the Debtors have contributed approximately \$17 million in monthly cash contributions, investment accounts, and collections of Aged Accounts Receivables to Confirmation Account Nos. 1 and 2. Under the Plan, the Debtors will be required to transfer these assets to the Plan Administrator Confirmation Account within three (3) Business Days after the Effective Date.

Further, upon occurrence of the Appellate Division Decision Date, additional assets will be sold, in the manner and sequence consistent with the Confirmation Account Order and other Orders which may be entered by the Bankruptcy Court, to the extent needed to make the balance of the Distributable Cash in the Plan Confirmation Account sufficient to pay all Allowed Claims.

The Debtors admittedly defaulted on their obligations under the Confirmation Account Order not long after it was entered. As discussed in more detail in below, in March 2017 the Committee discovered that the Debtors had collected Aged Receivables of more than \$1.5 million that the Debtors were required to deposit into Confirmation Account No. 2. Over the course of two months, the Committee demanded that the Debtors account for and deposit into Confirmation Account No. 2 the Aged Receivables that they had collected, with no response until after the Committee filed its May 4, 2017 *Application in Support of Order to Show Cause and Imposition of Sanctions* [Dkt. No. 829]. Lomma subsequently admitted in sworn testimony on the record during the May 22, 2017 hearing that he directed the Debtors to use Aged Account Receivable collections in violation of the Confirmation Account Order. As a result of Lomma's misconduct, Lomma was held in contempt and sanctioned.

I. Motions to Appoint a Chapter 11 Trustee for Lomma

On November 17, 2016, Bernadette Panzella, who has filed proofs of claim in these Bankruptcy Cases, filed a motion to appoint a Chapter 11 trustee for Lomma pursuant to sections 1104(a)(1) and (2) of the Bankruptcy Code, asserting, among other things, that Lomma breached his fiduciary duties and duties of loyalty to creditors, misappropriated cash of the Estates, and wrongfully transferred the Estates' Assets to Lomma's Non-Debtor Affiliates [Dkt. No. 505] ("Panzella Trustee Motion").

On January 11, 2017, the Committee filed its *Motion for an Order Directing the Appointment of a Chapter 11 Trustee for James F. Lomma* [Dkt. No. 688] ("Committee Trustee Motion"), seeking entry of an order pursuant to sections 1104(a)(1) and (2) of the Bankruptcy Code directing the appointment of a Chapter 11 trustee for Lomma based upon Lomma's fraud, dishonesty, incompetence, mismanagement of the Debtors' affairs, and his conflicts of interest, and on the ground that appointment of a Chapter 11 Trustee is also in the interests of creditors and these Estates.

Specifically, the Committee Trustee Motion asserted that Lomma has: (i) repeatedly demonstrated that he cannot be trusted as a fiduciary to prioritize the interests of these Estates and Creditors above his own self-interests; (ii) misused assets of the Debtors' estates by transferring millions of dollars to Non-Debtor Affiliates, Insiders, and family members; (iii) repeatedly conducted himself in a dishonest manner by hiding assets and defying Bankruptcy Court Orders; and (iv) failed to honor his disclosure, reporting, and record-keeping obligations. *See id.*

The Debtors opposed the Panzella Trustee Motion and Committee Trustee Motion on January 19, 2017 [Dkt. No. 699], asserting that, among other things, (i) failures of disclosure were not material in light of the Debtors' voluminous productions and financial reporting, and not actual concealment or fraud; (ii) the Debtors' amendments to their Schedules were not due to malicious intent, and were immaterial because creditors had been provided with tax returns for prior years and other information with which to adequately assess the Debtors' assets and liabilities; (iii) deficiencies in production could be addressed through remedies short of the appointment of a trustee; and (iv) the Debtors had committed to fund a confirmation account and agreed to enforcement provisions with respect to same.

Following entry of the Confirmation Account Order, the Panzella Trustee Motion and Committee Trustee Motion were adjourned without a hearing date to provide the Debtors with the opportunity to comply with the terms of the Confirmation Account Order. Pursuant to the Confirmation Account Order, the Debtors' failure to comply with the terms of the Confirmation Account Settlement Agreement constitutes grounds for the immediate appointment of a Chapter 11 trustee for the Debtors.

On May 21, 2017, pursuant to the Confirmation Account Order, Ms. Panzella filed a *Five Day Notice to Debtors for the Immediate Appointment of a Chapter 11 Trustee* [Dkt. No. 868] (the "Five Day Notice"), asserting that: (i) the Debtors converted \$1,517,916.69 in Aged Receivables and (ii) Lomma had committed bankruptcy crimes pursuant to 18 U.S.C. § 152.

The Debtors objected to the Five Day Notice on May 31, 2017 [Dkt. No. 877], asserting that: (i) the Aged Receivables in question were not converted but rather deposited in the operating accounts of the Debtors and Non-Debtor Affiliates and utilized in the ordinary course of business by the companies at a time of severe seasonal cash shortages; (ii) would shortly be deposited into Confirmation Account No. 2; and (iii) appointment of a Chapter 11 trustee would not be in the interests of the Debtors or Creditors. The Debtors contend, and have contended, that the appointment of a Trustee could be value-destructive to creditor recoveries as a result of a potential risk of liquidation of the Debtors' businesses and the creation of substantial tax liabilities that would have to be satisfied before payments to the Holders of Allowed Claims.

On June 7, 2017, the Debtors deposited into Confirmation Account No. 2 \$1,517,916.69 on account of the Aged Receivables reportedly collected by the Debtors. As of the date hereof, Lomma and the Debtors have failed to pay in full the professionals' fees and expenses as required by the Contempt Order, and they have otherwise failed to fully comply with the Contempt Order.

A hearing on the Panzella Trustee Motion and the Five Day Notice is scheduled for June 19, 2017 at 2:00 p.m.

On June 13, 2017, the Committee submitted a proposed order directing the appointment of a Chapter 11 trustee for James F. Lomma, as an individual debtor in the Bankruptcy Cases.

J. Decline in the Debtors' Business Performance

Prior to entry of the Confirmation Account Order, which requires the Debtors to set aside monthly cash payments and additional assets, the Debtors had enjoyed strong financial performance. As reported in the Debtors' monthly operating reports, the Debtors and Non-Debtor Affiliates generated more than \$5.5 million and \$11.2 million, respectively, of net profits through August 2016, which by then nearly matched their full year performance of those entities during 2015.

Since entry of the Confirmation Account Order in January 2017, however, the Debtors and their affiliates began a substantial decline in financial performance. The year-over-year decline in financial performance has been significant. Comparing January - April 2016 to January - April 2017, the Debtors and Non-Debtor Affiliates collective revenue, gross profit, EBITDA, and net income have all dramatically declined. D&P's Analysis of the Debtors' business performance is annexed hereto as Exhibit 4.

As the Bankruptcy Court has observed, the Debtors have overseen a "highly suspicious" and dramatic decline in their business performance despite a favorable market for construction, which this Court observed could be due to the Debtors' motivation to avoid having to pay cash to creditors, thus making it harder for them to collect on their claims. *See Transcript of Hearing Held on May 1, 2017 at 43:25-44:6.*

K. Order Holding Lomma in Contempt and Imposing Sanctions

On May 5, 2017, upon the Committee's application, the Court entered an order to show cause [Dkt. No. 832] (the "Order to Show Cause") why Lomma, the Debtors, and the Debtors' financial advisor – Marcum LLP ("Marcum") – should not be sanctioned for their misconduct in failing to (a) pay more than \$1 million in outstanding Professional fees and expenses pursuant to the Interim Compensation Order and Order Compelling Interim Compensation Compliance and (b) deposit not less than \$1,517,916.69 of collections on account of Aged Receivables as reportedly collected by the Debtors into Confirmation Account No. 2.

On May 30, 2017, following an evidentiary hearing that included the sworn testimony of Lomma, the Bankruptcy Court entered the Contempt Order. The Contempt Order ordered that:

James F. Lomma, as an individual debtor and in his capacity as the responsible officer of NY Crane, Lomma NJ, and Lomma Del., is in civil contempt for his knowing violation of and failure to comply with the Orders⁸ by failing to (a) pay professional fees and expenses pursuant to the Interim Compensation Order and Order Compelling Interim Compensation Compliance and (b) deposit not less than \$1,517,916.69 of collections on account of the Aged Receivables as reportedly collected by the Debtors into Confirmation Account 2.

Dkt. No. 876 at 3.

The Contempt Order imposed a number of obligations on Lomma and the Debtors, including a requirement that Lomma deposit into Confirmation Account No. 2 all payments recovered on account of Aged Receivables identified in the Confirmation Account Order, in the minimum amount of \$1,517,916.69, as reportedly collected by the Debtors and (ii) pay in full more than \$1.3 million in unpaid professional fees and expenses of the Committee's Professionals and Marcum that have accrued through March 2017. *See id.* at 3-4.

The Contempt Order also provided that, in the event Lomma or the Debtors failed to timely perform any obligation contained in the Contempt Order or the Orders: (i) Lomma personally shall pay coercive civil sanctions in the amount of \$10,000 per day, and such sanctions shall be deposited daily into Confirmation Account No. 2, and (ii) the Committee and any other party in interest is immediately authorized to submit with the Court an order directing the U.S. Trustee to appoint an operating Chapter 11 trustee for the Debtors. *See id.* at 4.

On June 7, 2017, the Debtors deposited into Confirmation Account No. 2 \$1,517,916.69 on account of the Aged Receivables reportedly collected by the Debtors. As of the date hereof, they have paid only a portion of the professional fees and

⁸ The "Orders" are defined to include the Interim Compensation Order, Order Compelling Interim Compensation Compliance," and Confirmation Account Order.

expenses that are required to have been paid in full on or before June 9, 2017, and they have otherwise failed to fully comply with the Contempt Order.

On June 13, 2017, the Committee submitted a proposed order directing the appointment of a Chapter 11 trustee for James F. Lomma, as an individual debtor in the Bankruptcy Cases.

L. The Debtors' Failure to Propose a Confirmable Plan

The Debtors have failed to propose a confirmable plan and have not made any efforts to negotiate a plan with the Committee or Creditors.

The exclusivity period for the Debtors to file a plan and to solicit acceptances was initially set to expire on May 5, 2016 and July 5, 2016, respectively. *See* 11 U.S.C. § 1121(b). On May 5, 2016, the Debtors filed the first motion to extend the exclusivity period [Dkt. No. 170] (the "First Extension Motion"). The Debtors argued that a 180-day extension of the exclusivity period was necessary because "no plan can be formulated until the appeal is decided, and it is anticipated that the appeal will not be heard until the fall." *Id.* at 2, ¶ 7.

The Committee filed an Objection [Dkt. No. 237] (the "First Objection"), asserting that "the Debtors have failed to comply with Orders and directions of the Court, or otherwise advanced these cases toward plan confirmation" and that:

[d]uring the five months since the Petition Date, the Debtors have not made any progress or proposals for a plan of reorganization, and the Committee is concerned that granting the Debtors' request for a 180-day exclusivity extension will be detrimental to the interest of the Debtors' unsecured creditors because *the Debtors will continue to give short shrift to the Committee's investigation and then seek to waste time and resources attempting to confirm a plan that fails to responsibly address all of their assets and liabilities.*

Id. at 1, 3 (emphasis added). The Debtors' conduct has remained unchanged in the year following the First Objection.

At the hearing held on October 17, 2016, the Court extended the deadline for the Debtors to file their disclosure statement to October 31, 2016. That same day, the Debtors filed a *Notice of Filing of Proposed Draft Joint Plan of Reorganization and Perfection of Appeal* [Dkt. No. 460].

On November 3, 2016, after receiving two extensions, the Debtors filed *Debtors' Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code* [Dkt. No. 489] ("First Disclosure Statement") and *Joint Plan of Reorganization Proposed by the Debtors* [Dkt. No. 488] ("First Plan").

On November 21, 2016, before the Debtors filed the Amended Disclosure Statement, U.S. Steel filed an objection to the Debtors' First Disclosure Statement. *See* Dkt. No. 513.

On December 9, 2016, following two additional extensions, the Debtors filed their Amended Plan and Disclosure Statement. *See* Dkt. Nos. 589-92.

The Committee filed its *Objection to Debtors' Amended Disclosure Statement* [Dkt. No. 671] ("Committee Objection to Amended Disclosure Statement") on January 4, 2017, asserting that the Debtors' Amended Disclosure Statement lacks basic information and cogent descriptions on numerous critical issues that creditors need to evaluate the Amended Plan, including:

- The absence of any valuations or appraisals of the equipment and real property owned by the Debtors and Non-Debtor Affiliates, which would make up the vast majority of the proposed sources of Creditor recoveries under the Debtors' Amended Plan;
- Incomplete and misleading disclosure concerning available insurance coverage that could represent sources of recovery for Creditors;
- The treatment of claims under the Debtors' various scenarios was so convoluted that a reader of the Amended Disclosure Statement could not determine how each class of claims would be treated under each scenario;
- Without any explanation, the Amended Plan and Amended Disclosure Statement proposed a "capped" distribution to one group of unsecured creditors while other unsecured creditors appeared to be projected to be paid in full before others receive any Distribution;
- Unsupported, false, and wholly inadequate disclosure concerning additional assets of the Debtors and their affiliates, including without limitation, litigation concerning Lomma's private aircraft, potential Estate Causes of Action, business operations, and newly-disclosed business locations;
- The Amended Disclosure Statement failed to articulate any coherent mechanism to: (1) estimate Claims; (2) create a reserve for unliquidated and Disputed Claims; or (3) address the timing of Distributions;
- The Amended Disclosure Statement misleadingly made it appear that the approximately \$5.77 million unsubstantiated claim of FEK, an Insider, was fully subordinated when in reality the Debtors had an undisclosed deal with this insider such that FEK's claim was only subordinated to the Amended Disclosure Statement's so-called "Class 1 creditors" and only in situations in just two of the Debtors' five scenarios;
- The absence of any explanation of substantial tax consequences under any of the scenarios contemplated by the Amended Plan;

- No liquidation analysis whatsoever is provided for two of the Debtors (Trucking and Rigging) and wholly unsupported, speculative, and self-serving liquidation analyses for the other two Debtors; and
- The absence of any discussion of Lomma's potential discharge and its effect on creditors under any of the Scenarios contemplated by the Amended Plan.

The Committee Objection to Amended Disclosure Statement also asserted that the Amended Plan was inherently unconfirmable because it improperly manufactured impaired classes of creditors.

Additional parties in interest filed objections to the Debtors' Amended Disclosure Statement echoing these, and additional, deficiencies, including U.S. Steel [Dkt. Nos. 647, 725], Zurich American Insurance Co. ("Zurich") [Dkt. No. 651], Sorbara [Dkt. No. 675], Bernadette Panzella [Dkt. No. 682], and Fulton [Dkt. No. 726].

Not a single party in interest filed a statement in support of the Debtors' Amended Disclosure Statement.

At the hearing held on January 23, 2017, the Court ruled that the Amended Disclosure Statement was inadequate and could not be approved, and the Debtors conceded that their Amended Plan and Amended Disclosure Statement would have to be amended yet again. *See Transcript of Hearing Held on January 23, 2017* at 189:21-190:8; *see also* Dkt. No. 859.

Despite their acknowledgement that their Amended Plan and Amended Disclosure Statement are inadequate, the Debtors have not amended either document. At the hearing held on May 1, 2017, the Bankruptcy Court observed that the Debtors have done "nothing" to advance Confirmation since filing the Amended Plan. *Transcript of Hearing Held on May 1, 2017* at 15:15-20, 53:23-24.

On June 7, 2017, the Bankruptcy Court entered an Order extending the time during which only the Debtor may file a plan to July 7, 2017, but terminated exclusivity in favor of the Committee which was permitted to file a proposed plan on June 8, 2017, and a proposed disclosure statement on June 14, 2017. *See* Dkt. No. 902.

The Committee filed the Plan on June 8, 2017. The Plan provides for, among other things, the appointment of a Plan Administrator to enforce the Bankruptcy Court's orders, liquidate and refinance assets as required by the Confirmation Account Order, Plan, and other Orders of the Bankruptcy Court, and to step in as an independent fiduciary to ensure that Lomma's uncontroverted history of dishonest conduct, misuse of estate assets, and prioritization of his own self-interest over Holders of Allowed Claims does not jeopardize Distributions to creditors pursuant to the Plan.

It is the Committee's hope that installation of a Plan Administrator, as an independent fiduciary, will enable the orderly sale of the Confirmation Account Assets and the refinance of the JLJD equipment fleet as envisioned by the Debtors. The Corporate Debtors and many of their Non-Debtor Affiliates are highly interdependent on operational, cash flow, and tax allocation bases. The failure of one or more of these

operating corporate entities could cause the failure or default of others. In liquidation scenarios, maximum realization rates for the real property contributed to the Confirmation Account may not be captured, and a liquidation of the JLJD fleet could accelerate payment of secured debt of more than \$40 million and give rise to tax liabilities of between \$35 million and \$55 million and fees and expenses of liquidation, all of which would have to be paid before recoveries to the Holders of Allowed Claims.

VI. THE CHAPTER 11 PLAN

THE FOLLOWING SUMMARY HIGHLIGHTS CERTAIN OF THE SUBSTANTIVE PROVISIONS OF THE PLAN, AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE DESCRIPTION OR SUBSTITUTE FOR A FULL AND COMPLETE REVIEW OF THE PLAN. THE COMMITTEE URGES ALL HOLDERS OF CLAIMS AND INTERESTS TO READ AND STUDY CAREFULLY THE PLAN, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT 1.

Section 1123 of the Bankruptcy Code provides that, except for Administrative Claims and Priority Tax Claims, a plan of reorganization must categorize claims against and equity interests in a debtor into individual classes. Although the Bankruptcy Code gives a plan proponent significant flexibility in classifying claims and interests, section 1123 of the Bankruptcy Code dictates that a plan of reorganization must classify a claim or an equity interest with claims or equity interests, respectively, that are substantially similar.

The Plan creates five (5) Classes of Claims and one (1) Class of Interests. These Classes take into account the different nature and priority of Claims against and Interests in the Debtors. Administrative Claims and Priority Tax Claims are not classified for purposes of voting or receiving distributions under the Plan (as is permitted by section 1123 of the Bankruptcy Code) but are treated separately as unclassified Claims.

The Plan provides specific treatment for each Class of Claims and Interests. Only Holders of Claims that are Impaired under the Plan and who will receive Distributions under the Plan are entitled to vote on the Plan.

The following discussion sets forth the classification and treatment of all Claims against or Interests in the Debtors. It is qualified in its entirety by the terms of the Plan, which is attached hereto as Exhibit 1, and which you should read carefully before deciding whether to vote to accept or reject the Plan.

A. General Description of Classification and Treatment of Claims and Interests

Each of the Classes established under the Plan is grounded in factual and legal differences between the Claims and Interests, which comprise the Class. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies with the description of that Class and is classified in other Classes to the extent that any remainder of the Claim or Interest qualifies with the description of such other Classes.

If the Plan is confirmed by the Bankruptcy Court, unless a Holder of an Allowed Claim consents to different treatment, (A) each Allowed Claim in a particular Class will receive the same treatment as the other Allowed Claims in such Class, whether or not the Holder of such Claim voted to accept the Plan and (B) each Allowed Interest in a particular Class will receive the same treatment as the other Allowed Interests in such Class. Such treatment will be in exchange for and in full satisfaction, release, and discharge of, the Holder's respective Claims against or Interest in a Debtor, except as otherwise provided in the Plan. Moreover, upon Confirmation, the Plan will be binding on (A) all Holders of Claims regardless of whether such Holders voted to accept the Plan and (B) all Holders of Interests.

B. Unclassified Claims

All Claims and Interests, except Administrative Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described in the Plan, are not classified in the Plan. Pursuant to the Plan, Administrative Claims and Priority Tax Claims are treated in accordance with sections 1129(a)(9)(A) and 1129(a)(9)(C) of the Bankruptcy Code, respectively.

i. Administrative Claims

1. Overview

Except as specified in the Plan and subject to the bar date provisions herein, unless otherwise agreed by the Holder of an Allowed Administrative Claim and the Plan Administrator, or unless an order of the Bankruptcy Court provides otherwise, each Holder of an Allowed Administrative Claim (other than a Professional Fee Claim) shall receive, in full satisfaction of its Administrative Claim, Cash equal to the Allowed amount of such Administrative Claim on either: (i) the latest to occur of (A) the Effective Date; (B) the date such Claim becomes an Allowed Administrative Claim; and (C) such other date as may be agreed upon by the Plan Administrator and the Holder of such Claim or (ii) on such other date as the Bankruptcy Court may order.

2. Statutory Fees

All fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date shall be paid by the applicable Debtor in accordance therewith until the earlier of the conversion or dismissal of the applicable Bankruptcy Case under section 1112 of the Bankruptcy Code or the closing of the applicable Bankruptcy Case pursuant to section 350(a) of the Bankruptcy Code.

3. Professional Compensation

a. Final Fee Applications

Professionals or other Entities asserting a Professional Fee Claim for services rendered before the Effective Date must file and serve on the Debtors, the Committee or

the Plan Administrator, as the case may be, and such other Entities who are designated by the Bankruptcy Rules, the Fee Order, the Confirmation Order or other order of the Bankruptcy Court, an application for final allowance of such Professional Fee Claim no later than sixty (60) days after the Effective Date.

b. Administrative Claim Reserve Amount

To be eligible to receive payment for unbilled fees and expenses incurred through the Effective Date, the Professionals shall estimate their Professional Fee Claims prior to and as of the Effective Date and shall deliver such estimate in writing to the Debtors, the Plan Administrator (if such Plan Administrator has been appointed), and the Committee no later than five (5) Business Days after entry of the Confirmation Order on the Bankruptcy Court's docket; *provided*, that such estimate shall not be considered an admission with respect to the fees and expenses of such Professional. The Debtors, the Committee and, as applicable, the Plan Administrator, as the case may be, may object to the estimate provided by any Professional. If a Professional does not provide an estimate, the Committee or the Plan Administrator, as the case may be, may estimate the unbilled fees and expenses of such Professional for purposes of estimating the Administrative Claim Reserve. Such amount, whether estimated by the Professional or the Committee or the Plan Administrator, as the case may be, shall serve as a cap on the Professional Fee Claim as it may be ultimately Allowed.

c. Administrative Claim Segregated Account

As described the Plan, on the Effective Date, the Plan Administrator shall establish and fund the Administrative Claim Segregated Account with the amount of Cash equal to the Administrative Claim Reserve Amount. The Administrative Claim Segregated Account shall be maintained in trust for the Professionals and other Entities. The amount of Administrative Claims shall be paid in Cash to such Professionals and other Entities from funds held in the Administrative Claim Segregated Account if, when, and to the extent that such Claims are Allowed by a Final Order. When all Allowed Administrative Claims are paid in full in Cash, amounts remaining in the Administrative Claim Segregated Account, if any, shall be transferred to the Plan Administrator Confirmation Account.

d. Disallowed or Reduced Administrative Claims

To the extent that a Professional Fee Claim is Disallowed or reduced, the Administrative Claim Reserve Amount shall be reduced accordingly and such reduced or disallowed amount shall be transferred to the Plan Administrator Confirmation Account.

4. Bar Dates for Administrative Claims

Except as otherwise provided by the Plan, requests for payment of Administrative Claims (other than Professional Fee Claims, and Administrative Claims based on Liabilities incurred by a Debtor in the ordinary course of its business as described in the Plan) must be filed and served on the Debtors, the Post-Confirmation Oversight Committee, and the Plan Administrator pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later

than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors or their property, including but not limited to any funds in the Plan Administrator Confirmation Account, and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be filed and served on the Plan Administrator, the Debtors, the Post-Confirmation Oversight Committee, and the requesting party no later than the Administrative Claims Objection Deadline.

ii. Priority Tax Claims

Pursuant to the Plan, and unless otherwise agreed by the Holder of a Priority Tax Claim and the Debtors and the Plan Administrator, each Holder of an Allowed Priority Tax Claim shall receive at the option of the Plan Administrator on account of and in full and complete settlement, release and discharge of such Claim, (i) Cash in an amount equal to the amount of such Allowed Priority Tax Claim payable on the Effective Date (or as reasonably practicable thereafter) or (ii) Cash in the aggregate amount of such Allowed Priority Tax Claim payable in annual equal installments commencing on the later of: (a) the Effective Date (or as soon as reasonably practicable thereafter) and (b) the date such Priority Tax Claim becomes an Allowed Priority Tax Claim (or as soon as practicable thereafter); and, in each case, ending no later than five (5) years from the Petition Date.

As of the filing of the Disclosure Statement, an aggregate amount of approximately \$375,717.42 of Priority Tax Claims has been asserted by Creditors. Additional Claims may be filed prior to the Bar Date with respect to such Priority Tax Claims. The Committee, however, cannot predict the amount of such additional Claims at this time. The actual aggregate amount of Priority Tax Claims may vary from the Debtors' estimates and the amount of filed Priority Tax Claims, and the ultimate Allowed amount of Priority Tax Claims.

C. Classified Claims and Interests

i. General

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, Claims and Interests are classified for voting and distribution pursuant to the Plan, as set forth herein. A Claim or Interest shall be deemed classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such other Class. Holders of Allowed Claims may assert such Claims against each Debtor obligated with respect to such Claim, and such Claims shall be entitled to share in the recovery provided for the applicable Class of Claims against each obligated Debtor based upon the full Allowed amount of the Claim. Notwithstanding the foregoing, and except as otherwise specifically provided for herein, the Confirmation Order or other order of the Bankruptcy Court, or required by applicable bankruptcy law, in no event shall the aggregate value of all property received or retained under the Plan on account of an Allowed Claim exceed one

hundred percent (100%) of the underlying amount of the Allowed Claim, exclusive of applicable interest, if any.

Section 1129(a)(1) of the Bankruptcy Code shall be satisfied for the purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims; *provided, however,* that in the event no Holder of a Claim with respect to a specific Class for a particular Debtor timely submits a Ballot in compliance with this Disclosure Statement Order indicating acceptance or rejection of the Plan, such Class will be deemed to have accepted the Plan. The Plan Proponent may seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests.

ii. Class 1 – Secured Claims

1. Claims in Class:

The Plan identifies Class 1 Claims as the Secured Claims. Class 1 consists of Allowed Secured Claims and includes the Secured Claims held by UBS and Fulton. *See* Exhibit 5 (Class 1 Claims Chart).

2. Treatment:

In accordance with the Plan, except to the extent that a Holder of an Allowed Secured Claim agrees to less favorable treatment, on or as soon as practicable after the Effective Date, each Holder of an Allowed Secured Claim shall receive the following treatment at the option of the Plan Administrator: (i) such Allowed Secured Claim shall be Reinstated; (ii) payment in full (in Cash) of any such Allowed Secured Claim; or (iii) satisfaction of any such Allowed Secured Claim by surrendering to the Creditors the collateral securing its Allowed Secured Claim.

The Debtors listed an aggregate amount of approximately \$9.1 million Secured Claims on their Schedules. However, those Secured Claims include Proof of Claim No. 43-1 filed by FEK in Lomma's case, and the Committee has determined that FEK never recorded any lien against any Assets owned by Lomma or in which Lomma has an interest. Consequently, the Committee objects to any portion of an FEK claim being allowed as a Secured Claim, and asserts that the FEK Claim is an Insider Claim that is a Subordinate Claim under the Plan.

3. Voting:

Class 1 is Unimpaired by the Plan. Pursuant to section 1126(f) of the Bankruptcy Code, each Holder of a Secured Claim in Class 1 is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

iii. Class 2 – 91st Street Litigation Claims

1. Claims in Class:

The Plan identifies Class 2 Claims as the 91st Street Litigation Claims. Class 2

consists of Allowed Claims for damages arising from the 91st Street Crane Litigation, including: (1) the Allowed Claims of the Judgment Creditors; (2) Holders of Claims relating to personal injury, property damage, and emotional distress; (3) and other parties involved in the 91st Street Crane Litigation holding Allowed Claims for subrogation or indemnification.

The jury in the 91st Street Crane Litigation apportioned liability: sixty-one percent (61%) to Lomma individually, nineteen percent (19%) to NY Crane, and twenty one percent (20%) to the remaining corporate Defendants (Rigging and Trucking). Since the apportionment to Lomma exceeds fifty percent (50%), Lomma is jointly liable for the entire verdict in the 91st Street Crane Litigation. *See, e.g., Matter of Seagrott Floral Co., Inc.*, 78 N.Y.2d 439, 448 (N.Y. 1991). Article 16 of the NY CPLR, which may narrow the common law rule in certain circumstances, fails to shield Lomma for liability beyond the 61% attributed to him in the 91st Street Crane Litigation, as this situation involves wrongful death damages, *see, e.g., Ryan v. Beavers*, 566 N.Y.S.2d 112, 113 (App. Div. 4th Dep't 1991), and damages arising from "reckless disregard for the safety of others" on the part of the wrongdoer. *See* NY CPLR § 1602(7). For those same reasons, Class 2 includes all Claims seeking damages on account of the 91st Street Crane Litigation.

Included within Class 2 is the Claim filed by Zurich American Insurance Company ("Zurich").⁹ Should the Judgments be sustained, at least as to allocation of liability, and Sorbara is found to have no liability, Zurich has asserted in the Insurance Litigation that it is entitled to recover approximately \$14 million from the Debtors for the defense costs and other costs incurred on their behalf and settlement payments that it has made. *See* Case No. 15-40043 (CEC), Claim No. 35-1; *see also* Exhibit 6 (Claims Chart). The Debtors contest Zurich's Claim. However, the determination by the Bankruptcy Court or another court of competent jurisdiction on this matter is uncertain, and there is a meaningful risk that Creditors' recovery could be materially diluted by the Claim by Zurich.

Claims for personal injury, property damage, and emotional distress relating to the May 2008 Accident totaling \$9.5 million were settled for \$194,596.66 pursuant to an Order of the Bankruptcy Court dated June 2, 2017 [Dkt. No. 898]. Additional Claims for personal injury, property damage, and emotional distress relating to the May 2008 Accident separate and apart from the Claims asserted by the Judgment Creditors have been filed in the Bankruptcy Cases totaling approximately \$25.5 million, which must be liquidated, either through settlements or litigation in non-Bankruptcy Court venues. The ultimate Allowed amounts of these Claims, and their impact upon Creditor recoveries, cannot presently be stated.

Class 2 also includes the following Claims asserted by parties who seek amounts

⁹ Prior to the Petition Date, Zurich issued Sorbara a commercial general liability policy and an umbrella policy (the "Zurich Umbrella Policy") covering activities during the 2008 calendar year. Following the commencement of the 91st Street Crane Litigation, Zurich defended Sorbara. As it did for other defendants in the 91st Street Crane Litigation, Zurich also defended NY Crane as a covered person in connection with the 91st Street Crane Litigation.

based upon claims of common law indemnity and subrogation for damages alleged to have been suffered in connection with the 91st Street Crane Litigation. See Exhibit 6 annexed hereto.

Claim No.	Holder of Claim	Claim Amount
34	Sorbara Construction Corp.	\$11,502,832.46
47	QBE Insurance Co.	\$1,176,500.52
48	Leon D. DeMatteis Construction Corp.	\$3,436,869.51
49	1765 First Associates, LLC	\$326,393.506

Although the Debtors have indicated that they will seek to disallow and/or reduce these Claims, they have not yet done so, and the ultimate Allowed amount of these Claims is not presently quantifiable. The Post-Confirmation Oversight Committee will ask the Plan Administrator to immediately seek mediated resolution of all unliquidated Class 2 Claims in the first instance.

2. Treatment:

Allowed Class 2 Claims will be paid from the Plan Administrator Confirmation Account in full in Cash, together with applicable interest.

3. Voting:

Class 2 is Impaired. Each Holder of an Allowed Claim in Class 2 is entitled to vote to accept or reject the Plan.

iv. Class 3 – Litigation Claims – Other Accidents

1. Claims in Class:

The Plan identifies Class 3 Claims as Litigation Claims – Other Accidents. Class 3 consists of Allowed Claims for personal injury and/or property damages arising out of accidents, events, and occurrences separate and apart from the 91st Street Crane Litigation, including, *inter alia*: (1) the 2013 Long Island City Crane Accident; and (ii) the Claim in favor of U.S. Steel. See Exhibit 7 (Class 3 Claims Chart).

The Debtors have procured a signed stipulation with the Holder of the Claim related to the 2013 Long Island City Crane Accident, which if approved by the Bankruptcy Court, will result in the Creditor who is asserting that Claim waiving all Claims and recourse from the Debtors and their Estates.

U.S. Steel filed identical proofs of claim in Trucking's and Rigging's Bankruptcy Cases for damages associated with a 2014 crane accident on U.S. Steel's premises that resulted in the death of Christopher Casto, an operator of a crane supplied by Trucking, plus significant property damage and business interruption to U.S. Steel during 2014. See Case No. 16-40045 (CEC), Claim No. 18-1; Case No. 16-40044 (CEC), Claim No. 19-1. Casto's decedent estate representative also filed an unliquidated wrongful death claim against the Debtors but that Claim was expunged pursuant to an Order of the

Bankruptcy Court dated January 27, 2017 [Dkt. No. 707]. *See* Case No. 16-40044 (CEC), Claim Nos. 2-1, 3-1. The accident is the subject of prepetition litigation pending in Michigan state court. Pursuant to the Casto Settlement Order, the Claim asserted by Casto has been expunged.

The Debtors are seeking entry of an order estimating the U.S. Steel Claim at \$0 pursuant to section 502(c) of the Bankruptcy Code based upon their belief that insurance coverage is available to address U.S. Steel's claim and the Debtors' contention that they have no liability to U.S. Steel as a matter of law. U.S. Steel contends that estimation is inappropriate because the Debtors have failed to demonstrate that the U.S. Steel Claim is contingent or unliquidated and that fixing the claim will unduly delay the administration of the Bankruptcy Cases.

2. Treatment:

Not later than forty-five (45) days after the Effective Date, the Plan Administrator shall request that the Bankruptcy Court estimate any Class 3 Claim pursuant to section 502(c) of the Bankruptcy Code. The estimated amount will constitute the Allowed amount of such Claim for all purposes under the Plan (including for purposes of Distributions). The amounts of those estimated Class 3 Claims shall be reserved by the Plan Administrator in the Disputed Claims Reserve. Also upon the Effective Date, the automatic stay relating to Class 3 Claims shall be vacated for all purposes so that the Class 3 Claims can be liquidated in the state court actions where they were commenced prior to the Petition Date or, in the first instance, through mediation. The costs of defense for any actions involving Class 3 Claims shall continue to be borne by the Debtors' insurance companies or by insurance companies who provided insurance policies which provide defense and indemnity coverage for the Debtors. Once the Class 3 Claims are liquidated in the state courts, the Allowed Claims shall be paid, first, from Available Insurance Coverage proceeds, with any deficiency to be eligible for Distributions from the Plan Administrator Confirmation Account assets allocable to the amounts that the Debtor against whom the Class 3 Claim is assertable has made deposits to the Plan Administrator Confirmation Account in either event, in full, in Cash, together with applicable interest pursuant to periodic payments made by the Plan Administrator on each Distribution Date. The chart attached hereto as Exhibit 8 lists the Debtors' insurance policies and coverage since 2008. The Debtors' insurance loss run report is attached hereto as Exhibit 9. The Committee can make no representation or assurance that the loss run report supplied by the Debtors is complete or accurate.

3. Voting:

Class 3 is Impaired. Each Holder of an Allowed Claim in Class 3 is entitled to vote to accept or reject the Plan.

v. Class 4 – General Unsecured Claims

1. Claims in Class:

The Plan identifies Class 4 Claims as General Unsecured Claims. Class 4 consists of Allowed Unsecured Claims which are not Class 2 or Class 3 Claims and for which the

Debtors are not jointly and severally liable.

Class 4 Claims include unsecured Claims asserted by various equipment finance entities whose (i) primary obligor is JLJD, (ii) claims are secured against collateral that is owned by JLJD, and (iii) Claims are guaranteed by the Debtors. The Claims filed by those Creditors total \$36,380,167.55. *See* Exhibit 10 (Class 4 Claims Chart).

Class 4 Claims also include Claims asserted by Creditors who provide goods, services, and insurance coverage for the Debtors. Proofs of Claim filed by this group of Class 4 Creditors total \$848,451.78, *see* Exhibit 10 (Class 4 Claims Chart). However, the Debtors have advised the Committee that certain of these claims were paid under the Court's *Interim Order Pursuant to §§ 105, 361, 362, 363, 364, 1107, and 1108 and Fed. R. Bankr. P. 6003 Authorizing Debtors to (I) Maintain Existing Insurance Policies and Pay All Insurance Obligations Arising Thereunder, and (II) To Renew, Revise, Extend, Supplement, Change or Enter New Insurance Policies* [Dkt. No. 87], as amended, as insurance premiums totaling \$715,313.06, leaving a balance of \$133,138.72.

2. Treatment:

Allowed Class 4 Claims will be paid by the Plan Administrator from the Plan Administrator Confirmation Account assets in full, in Cash, together with interest thereon, from the Assets, or liquidation thereof, of the Debtor against which the Holder of an Allowed Class 4 Claim has a Claim.

3. Voting:

Class 4 is Impaired. Each Holder of an Allowed Claim in Class 4 is entitled to vote to accept or reject the Plan.

vi. Class 5 – Subordinated Claims

1. Claims in Class:

The Plan identifies Class 5 as Subordinated Claims. Class 5 consists of all Subordinated Claims against the Debtors, including Inter-Company Claims, Insider Claims, and the Claim of FEK filed amount of \$5,772,347.58, as purportedly secured by a pledge of certain of Lomma's interests in the certain properties.

2. Treatment:

Holders of Allowed Subordinated Claims shall not receive any Distributions on account of such Claims unless and until all Allowed Administrative Claims, Allowed Priority Tax Claims, and all Allowed Claims in Classes 1 through 4 have been paid in full, together with applicable interest, and the FEK Claim, the Inter-Company Claims, and the Insider Claims shall be fully subordinated to all Allowed Claims on the Effective Date.

3. Voting:

Class 5 is Impaired. Each Holder of an Allowed Claim in Class 5 is presumed to reject the Plan and is not entitled to vote to accept or reject the Plan.

vii. Class 6 – Equity Interests

1. Claims in Class:

The Plan identifies Class 6 as Equity Interests. Class 6 consists of the Interests of Lomma (or others) in the Corporate Debtors.

2. Treatment:

Holders of Interests in the Debtors shall neither receive nor retain any property under the Plan until all Allowed Claims are paid in full in Cash, together with applicable interest.

3. Voting:

Class 6 is Impaired. Each Holder of an Allowed Claim in Class 6 is presumed to reject the Plan and is not entitled to vote to accept or reject the Plan.

D. Special Provision Regarding Inter-Company Claims and Insider Claims

For purposes of Distributions under the Plan, all Inter-Company Claims and Insider Claims shall be subordinated to all Allowed Claims, including Administrative Claims and Priority Tax Claims, and no Distributions shall be made on account of Prepetition Intercompany Claims.

E. Special Provision Governing Unimpaired Classes

Except as otherwise provided in the Plan, nothing in the Plan will affect the rights of the Plan Administrator, the Debtors, or the Reorganized Debtors, as the case may be, regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

F. Postpetition Interest on General Unsecured Claims

As required by applicable bankruptcy and applicable non-bankruptcy law, postpetition interest will accrue and be payable on account of any Allowed General Unsecured Claims from the Petition Date until paid in full.

G. Available Insurance Coverage

Notwithstanding anything to the contrary herein, if any Allowed Claim is covered by Available Insurance Coverage, such Claim will first be paid from the proceeds of such Available Insurance Coverage, with the balance, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

H. Sufficiency of Confirmation Account Assets

In the event that all Allowed Claims are not paid in full, together with applicable interest, from the Distributable Cash contained in the Plan Administrator Confirmation Account and/or generated by the Causes of Action, the Plan Administrator may seek authority from the Bankruptcy Court upon written motion, notice, and hearing (a) to sell, liquidate, or refinance all other non-Exempt Assets which are owned in whole or in part by the Debtors, wherever located; or (b) to convert the Bankruptcy Cases to cases under Chapter 7 of the Bankruptcy Code.

VII. CONFIRMATION OF THE PLAN

A. Requirements for Confirmation of the Plan

Among the requirements for Confirmation of the Plan are that the Plan (1) is accepted by all impaired Classes of Claims and Interests or, if rejected by an Impaired Class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Class, (2) is feasible, and (3) is in the “best interests” of creditors and stockholders that are impaired under the Plan.

i. Acceptance of the Plan

A moneyed, business, commercial corporation or trust must satisfy the following requirements pursuant to section 1129(a) of the Bankruptcy Code before the Bankruptcy Court may confirm its reorganization plan:

- The plan complies with the applicable provisions of the Bankruptcy Code.
- The proponent(s) of the plan complies with the applicable provisions of the Bankruptcy Code.
- The plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under a plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable.
- The proponent(s) of a plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor or a successor to the debtor under the plan, and the appointment to, or continuance in, such office of such individual must be consistent with the interests of creditors and equity security holders and with public policy.

- The proponent(s) of the plan has disclosed the identity of any insider (as defined in section 101 of the Bankruptcy Code) that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.
- Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.
- With respect to each impaired class of claims or interests—
 - each holder of a claim or interest of such class (a) has accepted the plan; or (b) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date; or
 - if section 1111(b)(2) of the Bankruptcy Code applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim, property of a value, as of the effective date of the plan, that is not less than the value of such holder’s interest in the estate’s interest in the property that secures such claims.
- With respect to each class of claims or interests, such class has (a) accepted the plan; or (b) such class is not impaired under the plan (subject to the “cramdown” provisions discussed below).
- Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that:
 - with respect to a claim of a kind specified in sections 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of the claim will receive on account of such claim cash equal to the allowed amount of such claim, unless such holder consents to a different treatment;
 - with respect to a class of claim of the kind specified in sections 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive (a) if such class has accepted the plan, deferred cash payments of a value, on the effective date of the plan, equal to the allowed amount of such claim; or (b) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim, unless such holder consents to a different treatment;
 - with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, unless the holder of such a claim consents to a different treatment, the holder of such claim will receive on account of such claim, regular installment payments in cash, of a total value, as of the effective

date of the plan, equal to the allowed amount of such claim over a period ending not later than five (5) years after the date of the order for relief under sections 301, 302, or 303 of the Bankruptcy Code and in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b) of the Bankruptcy Code); and

- with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8) of the Bankruptcy Code, but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in the immediately preceding bullet points above.
- If a class of claims is impaired under the plan, at least one (1) class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider (as defined in section 101 of the Bankruptcy Code).
- Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.
- All fees payable under 28 U.S.C. § 1930, as determined by the Bankruptcy Court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.
- The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to sections 1114(e)(1)(B) or (g) of the Bankruptcy Code, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

The Committee believes that the Plan meets all the applicable requirements of section 1129(a) of the Bankruptcy Code other than those pertaining to voting, which has not yet taken place.

ii. Feasibility

The Committee believes that the Plan Administrator will be able to perform his obligations under the Plan. The Committee makes no representation concerning the future of the Debtors business operations, and this Plan does not contemplate a payment of Allowed Claims based on future net operating profits of the Debtors or their Affiliates. Consequently, and in light of the net operating performance of the Debtors and the Non-Debtor Affiliates during 2017, no operating projects are submitted herewith. In connection with Confirmation of the Plan, the Bankruptcy Court must determine that the Plan is feasible in accordance with section 1129(a)(11) of the

Bankruptcy Code (which requires that the Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors). The Plan contemplates that all Allowed Claims will be paid in full, plus applicable interest, from the liquidation of Confirmation Account Assets or other assets.

iii. Best Interests of Creditors

Section 1129(a)(7) of the Bankruptcy Code requires that any holder of an impaired claim or interest voting against a proposed plan of reorganization must be provided in the plan with a value, as of the effective date of the plan, at least equal to the value that the holder would receive if the debtor's assets were liquidated under Chapter 7 of the Bankruptcy Code. To determine what the Holders of Claims and interests in each impaired class would receive if the debtors' assets were liquidated, the Bankruptcy Court must determine the dollar amount that would be generated from a liquidation of the debtors' assets in the context of a hypothetical liquidation. Such a determination must take into account the fact that secured claims, taxes, and any administrative claims resulting from the original Bankruptcy Cases and from the Chapter 7 cases, would have to be paid in full from the liquidation proceeds before the balance of those proceeds were made available to pay unsecured creditors and make distributions (if any) to holders of interests. As discussed above, a forced liquidation of the Assets and the JLJD equipment, if such were to occur, will likely trigger substantial gains, recapture, and other taxes and costs.

iv. Confirmation Without Acceptance of All Impaired Classes: The "Cramdown" Alternative

The Bankruptcy Code permits confirmation of a plan even if it is not accepted by all impaired classes, as long as (a) the plan otherwise satisfies the requirements for confirmation, (b) at least one impaired class of claims has accepted the plan without taking into consideration the votes of any insiders in such class and (c) the plan is "fair and equitable" and does not "discriminate unfairly" as to any impaired class that has not accepted the plan. These so-called "cramdown" provisions are set forth in section 1129(b) of the Bankruptcy Code.

1. "Fair and Equitable"

The Bankruptcy Code establishes different "cramdown" tests for determining whether a plan is "fair and equitable" to dissenting impaired classes of secured creditors, unsecured creditors and equity interest holders as follows:

- Secured Creditors. A plan is fair and equitable to a class of secured claims that rejects the plan if the plan provides: (a) that each holder of a secured claim included in the rejecting class (i) retains the liens securing its claim to the extent of the allowed amount of such claim, whether the property subject to those liens is retained by the debtor or transferred to another entity, and (ii) receives on

account of its secured claim deferred cash payments having a present value, as of the effective date of the plan, at least equal to such holder's interest in the estate's interest in such property; (b) that each holder of a secured claim included in the rejecting class realizes the "indubitable equivalent" of its allowed secured claim; or (c) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the liens securing the claims included in the rejecting class, free and clear of such liens with such liens to attach to the proceeds of the sale, and the treatment of such liens on proceeds in accordance with clause (i) or (ii) of this paragraph.

- Unsecured Creditors. A plan is fair and equitable as to a class of unsecured claims that rejects the plan if the plan provides that: (a) each holder of a claim included in the rejecting class receives or retains under the plan property of a value, as of the effective date of the plan, equal to the amount of its allowed claim; or (b) the holders of claims and interests that are junior to the claims of the rejecting class will not receive or retain any property under the plan on account of such junior claims or interests.
- Holders of Interests. A plan is fair and equitable as to a class of interests that rejects the plan if the plan provides that: (a) each holder of an equity interest included in the rejecting class receives or retains under the plan property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of (i) any fixed liquidation preference to which such holder is entitled, (ii) any fixed redemption price to which such holder is entitled or (iii) the value of the interest; or (b) the holder of any interest that is junior to the interests of the rejecting class will not receive or retain any property under the plan on account of such junior interest.

The Committee believes the Plan is fair and equitable as to unsecured creditors and Holders of Interests because no Holders of Claims or Interests junior to such parties are receiving any distributions under the Plan on account of such claims or interests. To the extent any of the Debtors' secured creditors are Impaired, the Committee anticipates that they will vote in favor of the plan.

2. "Unfair Discrimination"

A plan of reorganization does not "discriminate unfairly" if a dissenting class is treated substantially equally with respect to other classes similarly situated, and no class receives more than it is legally entitled to receive for its claims or interests. The Committee has designed the Plan, including calculating the distributions to Holders of General Unsecured Claims against each of the Debtors, to ensure recoveries on account of Claims in a particular Class against each of the Debtors did not result in unfair discrimination among similarly situated Classes. The Committee does not believe that the Plan discriminates unfairly against any impaired Class of Claims or Interests.

The Committee believes that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for, "cramdown," or

non-consensual Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code.

B. Alternatives to Confirmation and Consummation of the Plan

If the requisite acceptances are not received or if the Plan is not confirmed, the Committee could attempt to formulate and propose a different plan or plans of reorganization. Such a plan or plan(s) might involve either a reorganization and continuation of the Debtors' businesses or an orderly liquidation of assets.

Further, although the Committee could theoretically solicit votes with respect to an alternative plan if the requisite acceptances are not received, or the Plan is not confirmed and effectuated, a possible result would be the conversion of the Bankruptcy Cases to cases under Chapter 7 of the Bankruptcy Code. As set forth above, in a Chapter 7 liquidation, a trustee is elected or appointed to liquidate the debtor's assets for distribution to creditors in accordance with the priorities established by the Bankruptcy Code. Further, because there are separate Debtors, there could be separate Chapter 7 trustees – one for each Debtor – whose interests and obligations conflict. This, in turn, would result in additional legal and other expenses. It is impossible to predict precisely how the proceeds of a Chapter 7 liquidation would be distributed to the respective Holders of Claims against or Interests in the Debtors. The Committee believes that in a liquidation under Chapter 7, before prepetition unsecured creditors received any distribution, additional administrative expenses incurred by a trustee or trustees and attorneys, accountants, and other professionals to assist such trustee(s) would cause a substantial diminution in the value of the Estates. Additionally, the Committee believes that conversion of the Debtors from Chapter 11 to Chapter 7 of the Bankruptcy Code would result in (i) substantial tax claims senior to the Holders of General Unsecured Claims; (ii) significant delay in distributions to all creditors who would have received a distribution under the Plan and (iii) diminished recoveries for Holders of Impaired Claims. Accordingly, the Committee believes the Plan is superior to a Chapter 7 liquidation because of the greater and faster return that is anticipated to be provided by the Plan.

VIII. MEANS OF IMPLEMENTATION OF THE PLAN

A. The Confirmation Account Order

The Confirmation Account Order shall continue in full force and effect until all Allowed Claims are satisfied and paid in full, in Cash, together with applicable interest.

B. The Plan Administrator

In accordance with the Plan, on or before the Effective Date, the Plan Administrator Agreement shall be executed by the Plan Proponent and the Plan Administrator, and it shall become effective and operable without further action by

any party. The Plan Administrator shall be selected by the Committee and identified prior to the Confirmation Hearing as part of the Plan Supplement.

The Plan Administrator shall be appointed for the purpose of carrying out the Debtors' obligations pursuant to the Confirmation Account Order and to otherwise administer the Confirmation Account Assets and to carry out and fulfill all of his or her obligations and responsibilities under the Plan, the Confirmation Order, and the Plan Administrator Agreement.

The Plan Administrator shall have standing to enforce and implement the provisions of the Confirmation Order, the Plan, the Confirmation Account Order, the Confirmation Account Settlement Agreement, and all orders of the Bankruptcy Court in the Bankruptcy Cases, including, without limitation, conveying title to all Confirmation Account Assets to third-parties pursuant to Order(s) of the Bankruptcy Court upon a written motion, notice, and hearing and collecting amounts due to Lomma and the Debtors from, without limitation, from JLJD and JK Crane. For the avoidance of doubt, the Plan Administrator may execute such deeds, affidavits, and other documents which the Plan Administrator may deem reasonably necessary to transfer and convey title and interests in the Confirmation Account Assets to third-parties.

Pursuant to the Plan, the powers, rights, and responsibilities of the Plan Administrator, all of which shall become operable upon the occurrence of the Effective Date, shall be specified in the Plan Administrator Agreement and shall include, but not be limited to: (i) collect and liquidate the Confirmation Account Assets under the jurisdiction of the Bankruptcy Court; (ii) assert, prosecute, pursue, compromise and settle in accordance with the Plan Administrator's reasonable business judgment, all Claims and Causes of Action, including any Causes of Action for which the Committee has obtained standing to prosecute, and assert and enforce all legal or equitable remedies and defenses belonging to the Debtors or their Estates, including, without limitation, setoff, recoupment and any rights under section 502(d) of the Bankruptcy Code; (iii) object to and estimate Claims in accordance with the Plan Administrator's reasonable business judgment and pursuant to the Plan; and (iv) take all other actions required under the Plan.

The Plan Administrator shall be authorized to take such actions as he or she deems appropriate in the Plan Administrator's reasonable business judgment against any Person with respect to a Cause of Action, to the extent set forth in the Plan Administrator Agreement.

The Plan Administrator shall be entitled to proceed with and employ all discovery devices permitted under applicable law, including Bankruptcy Rule 2004 and orders of the Bankruptcy Court, to investigate any potential Cause of Action, and to investigate all aspects of the acts, conduct, assets, liabilities, and financial condition of the Debtors and any Affiliate of the Debtors, the operation of the Debtors' businesses and the desirability of the continuance of such businesses.

The Plan Administrator shall be authorized to enter into a settlement with any party upon terms and conditions, which he or she deems appropriate in the Plan Administrator's reasonable business judgment, to the extent set forth in the Plan

Administrator Agreement and, except as provided herein or in the Plan Administrator Agreement or the Confirmation Order, without further order of the Bankruptcy Court.

The Plan Administrator shall be authorized to take or cause to be taken all actions pursuant to the provisions of the Confirmation Account Order and the Confirmation Order, as necessary to secure the effective implementation of the Plan.

The Plan Administrator may employ professionals or other persons to assist him in carrying out his duties hereunder, including former counsel and advisors to the Committee, and may compensate and reimburse the expenses of those professionals and other persons, on terms to be agreed to by the Plan Administrator and such professionals and other persons without Bankruptcy Court approval upon consultation with the Post-Confirmation Oversight Committee.

The Plan Administrator shall report to the Post-Confirmation Oversight Committee.

In the event that the Plan Administrator dies, is terminated, or resigns for any reason, a successor shall be designated in accordance with the Plan Administrator Agreement; *provided, however,* that under no circumstance shall the Plan Administrator be Lomma or a past, current, or future director, officer, Insider or Affiliate of any Debtor or Non-Debtor Affiliate.

C. The Post-Confirmation Oversight Committee

The current members of the Committee shall become the members of the Post-Confirmation Oversight Committee on the Effective Date. The Plan Administrator shall report to the Post-Confirmation Oversight Committee on or after the Effective Date.

D. The Plan Administrator Confirmation Account

In accordance with the Plan, within three (3) Business Days after the Effective Date, the Debtors shall transfer all accounts and balances on hand in Confirmation Account Nos. 1 and 2 to the Plan Administrator Confirmation Account, and thereafter, all monthly payments required to be made by the Debtors and the Non-Debtor Affiliates pursuant to the Confirmation Account Order shall be made by them to the Plan Administrator Confirmation Account.

The Confirmation Account Assets may be transferred subject to certain liabilities, as provided in the Plan or the Plan Administrator Agreement. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar Tax, pursuant to section 1146(a) of the Bankruptcy Code.

Consistent with the Confirmation Account Order and the June __, 2017 Order of the Bankruptcy Court authorizing the retention of Keen, Keen may immediately market and attempt to sell the following properties: (i) owned by Till the End LLC, located at 280 Central Avenue, Kearny, New Jersey; (ii) owned by 125 Doremus Avenue LLC, located at 87-125 Doremus Avenue, Newark, New Jersey 07105; (iii) owned by 4301 Boston Post Road LLC, located at 4301 Boston Post Road, Pelham, New York 10803;

and (iv) the boat slips located at (a) slips 112 and 311, Brielle, New Jersey, and (b) slip YC-043, Point Pleasant, New Jersey.

Consistent with the Confirmation Account Order, upon occurrence of the Appellate Division Decision Date, the following actions shall be taken to the extent needed to make the balance of the Distributable Cash in the Plan Confirmation Account sufficient to pay all Allowed Claims.

- (i) The following additional deposits shall be made into the Plan Administrator Confirmation Account from the following liquidation and refinancing activities, as the case may be:
 - (A) The inventory and assets of TES will be sold or liquidated, and the real property upon which TES is situated shall be sold, and the proceeds deposited in Confirmation Account No. 2. If the business of TES is to be continued, it will be continued in TES or some other business entity owned one hundred percent (100%) by Lomma.
 - (B) JLJD shall sell, liquidate, or refinance equipment in order to repay (i) its loan obligation of not less than \$15,151,147 owed to Lomma and (ii) all the excess rent collected by JLJD and NY Crane and Rigging beyond JLJD's actual and documented cash requirements for the equipment that it has leased to NY Crane and Rigging subsequent to the Petition Date, as agreed by the Committee or, after the Effective Date, the Plan Administrator and the Debtors or, if the Committee or, after the Effective Date, the Plan Administrator and the Debtors are unable to agree, as determined by the Bankruptcy Court, which will be deposited into the Plan Administrator Confirmation Account.
 - (C) JK Crane will repay its loan obligation to the Plan Administrator in the amount of \$400,000 to the extent not already paid, which amount will be deposited into Confirmation Account No. 2 or the Plan Administrator Confirmation Account if paid after the Effective Date.
- (ii) Immediately following the occurrence of the Appellate Division Decision Date, the following real property will be sold and the proceeds will be deposited into the Plan Administrator Confirmation Account by the real estate broker(s) retained by the Committee pursuant to the Orders of the Bankruptcy Court prior to the Effective Date or real estate brokers, if any, retained by the

Plan Administrator after the Effective Date:

- (A) first, property owned by South Kearny Associates located at 81 Hackensack Avenue, South Kearny, New Jersey; and then
- (B) second, 11900 Steele Creek Road, Charlotte, North Carolina; and then
- (C) third, the Jane St. Apt.; *provided, however*, that if the net sale proceeds of the Jane St. Apt. exceed \$1,612,500 (net sale proceeds of the Jane St. Apt. shall equal all sale proceeds minus all customary costs of sale including all capital gains and similar taxes incurred with the sale), and are deposited in Confirmation Account No. 2, then the Debtors, the Committee, and the Plan Administrator shall release all claims against Jennifer Lomma Gabel solely with regard to the house and real property owned by Jennifer Lomma-Gabel located at 102 Lorraine Avenue, Montclair, New Jersey which give rise to any cause of action related to the Montclair property or the Jane St. Apt; and then
- (D) fourth, all other real estate owned in whole or in part by the Debtors and the Non-Debtor Affiliates and located in Kearny, New Jersey; South Kearny, New Jersey; Charlotte, North Carolina; or elsewhere including without limitation the real estate listed in the Lomma Amended Schedule A-1.2 [Dkt. No. 310-1] and listed in the chart that is annexed to the *Stipulation and Order Resolving Committee Motion for a Confirmation Account* as Exhibit "1" and which was approved by the Confirmation Account Order.

The Plan Administrator Confirmation Account shall be administered by the Plan Administrator according to the Confirmation Account Order, the Plan Administrator Agreement, the Confirmation Order, and the Plan. In the event of any inconsistency between the Plan, the Confirmation Order, and the Plan Administrator Agreement, the Confirmation Order shall govern.

E. Objections to Claims

The Plan Administrator shall have all rights and defenses, both legal and equitable, to object to the allowance to any Claims, Administrative Claims or Professional Fee Claims. From and after the Effective Date, the Plan Administrator shall be deemed to be the successor in interest to the Debtors with respect to all such rights and defenses, and he shall have the standing and right to object to and/or seek estimation of any and all Claims, including Administrative Claims, Secured Claims, Priority Claims, and Professional Fee Claims. The Debtors shall cooperate with the

Plan Administrator in connection with objections to Claims.

Any objection to the allowance of a Claim not filed prior to the Claims Objection Deadline, as may be extended by an Order of the Bankruptcy Court, shall be deemed waived, and the Claim shall be an Allowed Claim in the amount set forth on the Proof of Claim filed by the holder of such Claim. The Plan Administrator, in his/her reasonable discretion, pursuant to order(s) of the Bankruptcy Court obtained by written motion, notice, and a hearing, may make Distributions to the Holders of Allowed Claims within any particular Class before all Disputed Claims within that particular Class become Allowed or disallowed in full or in part.

F. Disputed Claims

i. Procedures for Treating and Resolving Disputed Claims

No payments or Distributions will be made with respect to all, or any portion, of a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or otherwise resolved by a Final Order, and the Disputed Claim has become an Allowed Claim.

ii. Disputed Claim Reserve

To the extent practical, the Plan Administrator will establish a Disputed Claims Reserve from the funds to be distributed under the Plan to address Disputed Claims that remained unresolved as of the Effective Date. The Plan Administrator may also request orders from the Bankruptcy Court estimation for any Disputed Claim that is contingent or unliquidated as part of the process of establishing a Disputed Claims Reserve.

G. Distributions

Following the Effective Date, in accordance with the Plan, the Plan Administrator shall make Distributions to Creditors on account of their Allowed Claims, at such times and in such amounts as determined by the Plan Administrator in accordance with the authority provided to him/her in the Plan Administrator Agreement. The Debtors shall not retain any interest in the Plan Administrator Confirmation Account and/or Distributable Cash unless and until all Allowed Claims are paid in full, plus applicable interest.

Distributable Cash will not include (i) Cash reserved pursuant to the Plan Administrator Agreement to fund the activities of the Plan Administrator and his/her retained professionals, (ii) such amounts as are allocable to or retained on account of Disputed General Unsecured Claims in accordance with the Plan, and (iii) such additional amounts as are reasonably necessary to (A) meet contingent liabilities and to maintain the value of the Confirmation Account Assets during liquidation, (B) pay reasonably incurred or anticipated expenses (including, but not limited to, any Taxes imposed on or payable by the Plan Administrator Confirmation Account or in respect of the Confirmation Account Assets), or (C) as are necessary to satisfy other liabilities incurred or anticipated by the Plan Administrator Confirmation Account in accordance

with the Plan, the Confirmation Order, or the Plan Administrator Agreement.

The Plan Administrator shall not be required to make a Distribution unless the amount of Distributable Cash on hand equals or exceeds \$100,000. Notwithstanding the foregoing, the Plan Administrator may determine, in his/her sole discretion after consultation with the Post-Confirmation Oversight Committee, (i) to make a Distribution that is less than \$100,000 in the aggregate of Distributable Cash, or (ii) that the Plan Administrator shall not make a Distribution to the Holder of a Claim on the basis that the Plan Administrator has not yet determined whether to object to such Claim and such Claim shall be treated as a Disputed Claim for purposes of Distributions under the Plan until the Plan Administrator (x) determines not to object to such Claim (or the Claims Objection Bar Date has passed), (y) agrees with the Holder of such Claim to Allow such Claim in an agreed upon amount or (z) objects to such Claim, or objects to the Holder of such Claim's request for allowance of such Claim, and such Claim is Allowed by a Final Order.

On each Distribution, the Plan Administrator shall only distribute Cash to a Creditor if the amount of Cash to be distributed on account of such Claim is greater than or equal to \$100,000 in the aggregate unless a request therefore is made in writing to the Plan Administrator. Any Distributions withheld because they are below \$100 with respect to any particular holder of an Allowed Claim will be aggregated and distributed when the aggregate amount exceeds \$100,000 or on the final Distribution Date.

Distributions to Holders of Allowed Class 1 – Secured Claims shall be made by the Plan Administrator in accordance with the provisions of Section 3.2.3(a) of the Plan.

Distributions to Holders of Allowed Class 2 – 91st Street Litigation Claims shall be made by the Plan Administrator in accordance with the provisions of Section 3.2.3(b) of the Plan.

Distributions to Holders of Allowed Class 3 – Litigation Claims – Other Accidents shall be made by the Plan Administrator in accordance with the provisions of Section 3.2.3(c) of the Plan.

Distributions to Holders of Allowed Class 4 – General Unsecured Claims shall be made by the Plan Administrator in accordance with the provisions of Sections 3.2.3(d) of the Plan.

Distributions, if any, to Holders of Allowed Class 5 – Subordinated Claims shall be made by the Plan Administrator in accordance with the provisions of Section 3.2.3(e) of the Plan.

Distributions, if any, to Holders of Allowed Class 6 – Equity Interests shall be made by the Plan Administrator in accordance with the provisions of Section 3.2.3(f) of the Plan.

i. Distributable Cash Reserved

1. Amounts Retained on Account of Disputed Claims

From and after the Effective Date, and until such time as all Disputed Claims have been compromised and settled or determined by order of the Bankruptcy Court, the Plan Administrator shall retain for the benefit of each holder of a Disputed Claim, Distributable Cash in an amount equal to the Distribution(s) which would have been made to the holder of such Disputed Claim if it were an Allowed Claim, plus the amount of interest that would accrue on the Disputed Claim until it is Allowed, which amount should be equal to the lesser of (i) the Disputed Claim Amount, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code for purposes of allowance, which amount, unless otherwise ordered by the Bankruptcy Court, shall constitute and represent the maximum amount in which such Claim may ultimately become an Allowed Claim or (iii) such other amount as may be agreed upon by the Holder of such Disputed Claim and the Plan Administrator. No payments or distributions shall be made with respect to all or any portion of any Disputed Claim pending the entire resolution thereof by Final Order.

2. Allowance of Disputed Claims

At such time as a Disputed Claim becomes an Allowed Claim, the Plan Administrator shall pay to the Holder thereof the Distributions, if any, to which such Holder is then entitled under the Plan, together with any applicable interest that has accrued on the amount of Cash, but only to the extent that such interest is attributable to the amount of the Allowed Claim. Such Distribution, if any, shall be made as soon as practicable after an order or judgment of the Bankruptcy Court is entered allowing such Disputed Claim becomes a Final Order but in no event more than ninety (90) days thereafter (net of any expenses, including any taxes imposed on or with respect to the Disputed Claims Reserve relating to such Claim).

ii. Delivery of Distributions

Subject to Bankruptcy Rule 9010, any Distribution or delivery to a Holder of an Allowed Claim shall be made at: (i) at the address set forth on the Proof of Claim filed by such Holder, or (ii) at the addresses reflected in the Schedules, if neither a Proof of Claim nor a written notice of change of address has been filed.

If a distribution to any Creditor is returned as undeliverable without a forwarding address, no Distributions shall be made to such Holder unless the Plan Administrator is notified of such Holder's then current address within one hundred twenty (120) days after such Distribution was returned. After such date, if such notice was not provided, a Holder shall have forfeited its right to such Distribution, and the undeliverable Distributions shall be reallocated and redistributed to holders of Allowed Claims in accordance with the Plan.

iii. Time Bar to Cash Payments

Checks issued in respect of Allowed Claims shall be null and void if not negotiated within one hundred twenty (120) days after the date of issuance thereof.

Requests for reissuance of any voided check shall be made directly to the Plan Administrator by the Holder of the Allowed Claim to whom such check was originally issued. Any Claim in respect of such voided check shall be made on or before the first anniversary of the date on which such Distribution was made. If no Claim is made as provided in the preceding sentence, any Claims in respect of such void check shall be discharged and forever barred and such unclaimed Distribution shall be reallocated and distributed to those holders of Allowed Claims as set forth in the Plan.

iv. Unclaimed Distributions at Closing of Bankruptcy Cases

In the event that any unclaimed Distributions exist on the date that the Bankruptcy Court enters a Final Order and decree closing the Bankruptcy Cases pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022, the Plan Administrator shall deliver such unclaimed Distributions to Lomma.

v. Costs and Expenses of the Confirmation Account

The reasonable costs and expenses of the Plan Administrator Confirmation Account, including the fees and expenses of the Plan Administrator and its retained professionals and any applicable insurance policies required by the Confirmation Account, shall be paid solely from the Confirmation Account Assets.

vi. Compensation of the Plan Administrator

The individual(s) serving as or comprising the Plan Administrator shall be entitled to reasonable compensation in an amount consistent with that of similar fiduciaries in similar roles, the payment of which shall not be subject to the approval of the Bankruptcy Court and shall be made solely from the funds contained in the Plan Administrator Confirmation Account.

vii. Indemnification of Plan Administrator

The Plan Administrator, and the Plan Administrator's employees, agents and professionals, shall not be liable to the Creditors or Debtors for actions taken or omitted as part of their efforts to implement the terms of the Plan, the Confirmation Order, the Plan Administrator Agreement, and the Confirmation Account Order, except those acts that are determined in a Final Order to have constituted willful misconduct, gross negligence, or an illegal act, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all actions or inactions in their capacity, except for any actions or inactions involving willful misconduct, gross negligence, or an illegal act. Any indemnification claim of the Plan Administrator (and the other parties entitled to indemnification under this subsection) shall be satisfied solely from the Plan Administrator Confirmation Account and the Assets and shall be entitled to a priority Distribution therefrom, ahead of the Allowed Claims and any other claim to or interest in such Assets. The Plan Administrator shall be entitled to rely, in good faith, on the advice of their retained professionals.

viii. Setoffs and Recoupment

Except as otherwise provided in the Plan, the Debtors and the Plan Administrator may, but shall not be required to, setoff against or recoup from any Claim or Claims of any nature whatsoever that the Debtors may have against the Creditor holding such Claim(s) and such Creditor shall have the right to object to any such setoff or recoupment made by the Debtors or Plan Administrator, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Plan Administrator of any such Claim it may have against such Creditor.

ix. Expungement or Adjustment to Paid, Satisfied or Superseded Claims and Interests

Any Claim that has been paid, satisfied or superseded or any Claim that has been amended or superseded, may be adjusted or expunged on the claims register at the direction of the Plan Administrator without a claim objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

H. Dissolution of the Committee

In accordance the Plan, unless otherwise provided herein, upon the Effective Date, the current and former members of the Committee and any other creditor, equity or other committee appointed in the Bankruptcy Cases pursuant to section 1102 of the Bankruptcy Code, and their respective officers, employees, counsel, advisors and agents, shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to and arising from and in connection with the Bankruptcy Cases. The Committee shall be dissolved, and the retention or employment of the Committee's respective attorneys, accountants, and other agents shall terminate.

I. Preservation of Causes of Action and Pursuit of Avoidance Actions

All Causes of Action, rights of setoff and other legal and equitable defenses of the Debtors and the Estates are preserved for the benefit of the Estates as set forth herein unless expressly released, waived, or relinquished under the Plan, the Confirmation Order, or other order of the Bankruptcy Court. No Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as an indication that the Debtors will not pursue a Cause of Action against them.

The Plan Administrator shall have standing to assert all Causes of Action, in consultation with the Post-Confirmation Oversight Committee, and may pursue such Avoidance Actions under Chapter 5 of the Bankruptcy Code as may become necessary in order to satisfy in full all Allowed Claims, together with applicable interest. Notwithstanding the possible commencement of the filing Avoidance Actions, the Plan provides for the repayment in full of all loans owed to Lomma by JLJD and JFL, and the sale of the Jane St. Apt. pursuant to the Confirmation Account Order, the terms of which are self-effectuating without the need for the commencement of an Avoidance Action or an adversary proceeding.

No preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, Claim preclusion, estoppel (judicial,

equitable, or otherwise), Claim splitting, or laches shall apply to such Claims or Causes of Action by virtue of or in connection with the Confirmation, consummation, or effectiveness of the Plan.

J. Preservation of Records

The Debtors and the Committee shall preserve for the benefit of the Plan Administrator and the Estates all documents and files necessary to the prosecution of the Causes of Action, and the Debtors shall provide unfettered access to such documents and files to the Plan Administrator and his agents.

K. Committee *Lis Pendens* and Security Agreement

The Plan Administrator shall succeed to the rights of the Committee as to all *lis pendens*, liens, and security agreements that were recorded and executed by the Committee pursuant to the Confirmation Account Order, and the Committee and the Plan Administrator are authorized to execute, deliver, and record such documents as they may reasonably determine may be necessary to transfer such liens and security interests to the Plan Administrator without further Order of the Bankruptcy Court, and all recording officers, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title, or state of title in or any of the properties that are identified in the *lis pendens*, consent judgments and the security agreements that are executed and delivered pursuant to the Confirmation Account Order, the Confirmation Account Settlement Agreement and the Plan are directed to accept and record any and all documents and instruments necessary and appropriate to consummate the transactions contemplated herein and in the Confirmation Account Order, the Confirmation Account Settlement Agreement, and the Confirmation Order.

L. Substantial Consummation

Substantial consummation of the Plan under section 1101(2) of the Bankruptcy Code shall be deemed to have occurred on the Effective Date.

IX. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

In accordance with the Plan, on the Effective Date, all executory contracts and unexpired leases of the Debtors shall be deemed assumed by the Debtors pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code, except: (a) any executory contracts and unexpired leases that are the subject of separate motions to assume or assume and assign filed pursuant to section 365 of the Bankruptcy Code by the Debtors before the Effective Date; (b) shall have expired or been terminated on or

prior to the Effective Date (and not otherwise extended) pursuant to their own terms; (c) contracts and leases listed in the "Schedule of Assumed and Assumed and Assigned Executory Contracts and Unexpired Leases" to be filed by the Debtors or the Committee with the Bankruptcy Court before the entry of the Confirmation Order; (d) all executory contracts or unexpired leases assumed or assumed and assigned under this Plan or by order of the Bankruptcy Court entered before the Effective Date; (e) any executory contract or unexpired lease that is the subject of a dispute concerning the amount or manner of cure pursuant to the next section hereof or for which the Debtors or the Plan Administrator makes a motion to reject such contract or lease based upon the existence of such dispute filed at any time; and (e) are listed on the schedule of rejected contracts to be filed on or before the Effective Date, which may be modified to include or exclude any executory contract at any time which is not later than ninety (90) days after the Effective Date, unless such time is extended by the Bankruptcy Court. Any order entered post-Confirmation by the Bankruptcy Court, after notice and a hearing, authorizing the rejection of any executory contract or unexpired lease shall cause such rejection to be a pre-petition breach under sections 365(g) and 502(g) of the Bankruptcy Code, as if such relief were granted and such order were entered pre-Confirmation.

B. Cure

Pursuant to the Plan, at the election of the Debtors or Plan Administrator, monetary defaults under each executory contract and unexpired lease to be assumed under this Plan shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code: (a) by payment of the default amount in Cash on the Effective Date or as soon thereafter as practicable; or (b) on such other terms as agreed to by the parties to such executory contract or unexpired lease. In the event of a dispute regarding: (x) the amount of any cure payments; (y) the ability to provide adequate assurance of future performance under the contract or lease to be assumed or assigned; or (z) any other matter pertaining to assumption or assignment, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving assumption or assignment, as applicable. Notice is hereby given that the cure amounts for each such contract and lease shall be zero dollars (\$0) unless otherwise noticed on a schedule filed by the Debtors hereafter.

C. Claims Arising from Rejection, Expiration, or Termination

Claims created by the rejection of executory contracts or unexpired leases or the expiration or termination of any executory contract or unexpired lease must be filed with the Bankruptcy Court and served on the Debtors and the Plan Administrator (a) in the case of an executory contract or unexpired lease rejected by the Debtor prior to Confirmation, in accordance with the Bar Date Notice, or (b) in the case of an executory contract or unexpired lease that (i) was terminated or expired by its terms prior to Confirmation, or (ii) is rejected pursuant to Section __ hereof, no later than (A) thirty (30) days after Confirmation; and (B) the date that the Plan Administrator gives written notice of the rejection of an executory contract. Any such Claims for which a proof of Claim is not filed and served within such time will be forever barred from assertion and shall not be enforceable against the Debtors, their Assets, or the Plan Administrator.

D. Benefit Plans

All union contracts involving any of the Debtors with Locals 282 and 15 (NY Crane), Local 825 (NY Crane and Rigging) and Local 11 (Trucking) shall be deemed assumed to the extent not previously assumed or rejected by the Debtors as of the Effective Date. Notwithstanding the foregoing, if substantially all of the Assets of NY Crane are liquidated, then NY Crane's union contracts shall be rejected, with such rejection to be effective as of the date immediately prior to the Petition Date.

X. EXCULPATION

To the extent permitted by applicable law and approved by the Bankruptcy Court, the Committee and its respective agents, members, managers, officers, directors, employees and Professionals (acting in such capacity), shall not have any liability to any Person for any act taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, administration, confirmation or consummation of the Plan, the Disclosure Statement, Plan Supplement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan, or any act taken or omitted to be taken with respect to, or any contract, instrument, release or other agreement or document created or entered into in connection with, the Debtors during the Bankruptcy Cases; *provided, however*, the foregoing releases and exculpations shall not extend to acts determined by a Final Order to constitute willful misconduct, gross negligence, or an illegal act.

XI. DISCHARGE AND DISCHARGEABILITY

A. Discharge

Pursuant to the Plan, Lomma shall not be discharged from liability for any Allowed Claim. Without limiting the right of the Committee and any Creditors or other parties in interest, pursuant to section 727 of the Bankruptcy Code, applicable bases of objections to discharge include: (i) Lomma transferred Debtor property within one year before the Petition Date with the intent to hinder, delay, or defraud creditors or officers of the Bankruptcy Court; (ii) Lomma made false oaths or accounts; (iii) Lomma withheld from an officer of the estate recorded information; and (iv) Lomma refused to obey lawful Orders of the Bankruptcy Court.

The Debtors, other than Lomma, shall be discharged from all Allowed Claims after all Allowed Claims have been paid in full, in Cash, together with applicable interest.

B. Dischargeability of Certain Claims

Pursuant to various Orders of the Bankruptcy Court, the deadline for Creditors to object to the dischargeability of certain Claims pursuant to section 523 of the Bankruptcy Code is currently July 7, 2017.

XII. EXEMPTIONS

Pursuant to Bankruptcy Code section 522, individual Debtors are permitted to assert exemptions to retain certain property of their estate. Lomma has asserted exemptions, which are set forth in Schedule C of his Amended Schedules [Dkt. No. 310-2].

XIII. CONDITIONS PRECEDENT TO THE CONFIRMATION DATE AND EFFECTIVE DATE

A. Conditions to Confirmation of the Plan

The Plan may not be confirmed unless each of the conditions set forth below is satisfied or duly waived pursuant to the Plan:

- (a) The Disclosure Statement Order shall have been entered and become a Final Order; and
- (b) The Debtors, the Committee, or the Plan Administrator shall request that the Bankruptcy Court estimate the amount of the Guaranty Claims at \$0 pursuant to section 502(c) of the Bankruptcy Code, and the Bankruptcy Court's ruling on such applications shall have become a Final Order.

B. Conditions to Effective Date of the Plan

The Effective Date of the Plan will not occur unless each of the conditions set forth below is satisfied or duly waived pursuant to the Plan:

- (a) The Confirmation Order shall have been entered and become a Final Order;
- (b) The Plan Administrator Confirmation Account shall be established pursuant to the Plan; and
- (c) The Debtors shall have deposited into the Administrative Claim Segregated Account the Administrative Claim Reserve Amount.

C. Waiver of Conditions Precedent

Other than the requirements set forth in Sections 9.1(a) and 9.2(a) of the Plan, the requirement that a particular condition set forth in Sections 9.1 and 9.2 of the Plan be satisfied may be waived or modified, in whole or in part, by the Committee. Any such waiver or modification of a condition precedent in Sections 9.1 and 9.2 of the Plan may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any other formal action.

XIV. MISCELLANEOUS PROVISIONS OF THE PLAN

A. Binding Effect of the Plan

The provisions of the Plan shall be binding upon all parties and inure to the

benefit of the Debtors' estates and their respective predecessors, successors, assigns, agents, officers and directors. The terms of the Plan shall be enforceable against the Debtors, its Creditors and all parties-in-interest.

B. Term of Injunctions or Stays

Except as expressly set forth in the Plan, all injunctions or stays pursuant to section 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the close of the Bankruptcy Cases. Except as otherwise expressly provided in the Plan, in an Order of the Bankruptcy Court, or to the extent necessary to enforce the terms and conditions of the Plan, all Creditors who have held, hold, or may hold Claims against the Debtors, are permanently enjoined, on and after the Effective Date, from (i) commencing or continuing in any manner, any action or other proceeding of any kind with respect to any such Claim; (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or Order against the Debtors, on account of any such Claim; (iii) creating, perfecting or enforcing any encumbrance of any kind against the Debtors; and (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors, or against the property or interests in property of the Debtors.

C. Corporate Action

Prior to, on and after the Effective Date, all matters provided for under the Plan that otherwise would require approval of the shareholders or directors of the respective Debtors shall be deemed to have occurred and shall be in effect prior to, on and after the Effective Date pursuant to the applicable general business law of the states of incorporation of the respective Debtors without any requirement of further action by the shareholders or directors of the respective Debtors.

D. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising in, arising under or related to the bankruptcy case for, among other things, the following purposes:

(a) Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the priority, amount, or allowance of Claims;

(b) Decide and resolve all matters related to the granting and denying, in whole or in part, of any Professional Fee Claims;

(c) Resolve any matters related to the assumption, assignment, or rejection of any executory contract or unexpired lease to which a Debtor is or was party and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an executory contract or unexpired lease, cure obligations pursuant to section 365 of the Bankruptcy Code, or any other matter related to such executory

contract or unexpired lease;

(d) Ensure that distributions to holders of Allowed Claims are effectuated pursuant to the provisions of the Plan;

(e) Adjudicate any motions, adversary proceedings, Causes of Action, applications or contested matters relating to the Debtors and the Estates;

(f) Enter and implement such Orders as may be necessary or appropriate to execute, implement, enforce or consummate the provisions of the Plan, including fixing the amount, scope or timing of the liquidation or refinancing of assets as necessary following conclusion of the Appeals, and to enforce the provisions of the Confirmation Account Order and the Confirmation Account Settlement Agreement;

(g) Adjudicate any and all disputes arising from or relating to allowance of Claims under the Plan, the amount of deferred payment obligations, or any transactions contemplated herein;

(h) Consider any modifications of the Plan to cure any defect or omission, or to reconcile any inconsistency with the Confirmation Order;

(i) Determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

(j) Enter an Order concluding or closing the Bankruptcy Cases.

E. Headings

The headings of the sections, and subparagraphs of the Plan are inserted for convenience only and shall not affect the interpretation of any provision of the Plan.

F. Time

Whenever the time for the occurrence or happening of an event as set forth in the Plan falls on a day that is not a Business Day, then the time for the next occurrence or happening of said event shall be extended to the next day which is a Business Day.

G. Severability

Should any provision of the Plan be determined to be unenforceable after the Effective Date such determination shall in no way limit or affect the enforceability and operative effect of any and all of the other provisions of the Plan.

H. Confirmation Order is Controlling

In the event any provision of the Plan is inconsistent with the provisions of the Confirmation Order, the Confirmation Order shall control and take precedence.

I. Successors and Assigns

The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

J. Entire Agreement

The Plan constitutes the entire agreement and understanding among the Debtors and their Creditors relating to the payment and treatment of all Allowed Claims in these Bankruptcy Cases.

K. Modification of Plan

The Plan Proponent reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to entry of the Confirmation Order, in consultation with the Committee. After the entry of the Confirmation Order, the Plan Administrator may, upon Order of the Bankruptcy Court, amend or modify the Plan in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

L. Revocation or Withdrawal

The Committee reserves the right to revoke or withdraw the Plan at any time prior to the Effective Date.

M. Notices

Pursuant to Bankruptcy Rule 2002 and any applicable local Bankruptcy Rules, notice of all post-confirmation matters for which notice is required to be given shall be deemed sufficient if served upon the U.S. Trustee's Office, counsel to the Debtors, counsel to the Committee or the Oversight Committee, the Plan Administrator (as the case may be), and all Persons on the Debtors' Bankruptcy Rule 2002 service list. With the exception of the Debtors, the Committee, and the U.S. Trustee, any Person desiring to remain on the Debtors' Bankruptcy Rule 2002 service list shall be required to file a request for continued service and to serve such request upon counsel to the Debtors and the Committee on or before the Effective Date. Persons shall be notified of such continued notice requirements in the notice of entry of the Confirmation Order. Persons who do not file a request for continued service shall be removed from the Bankruptcy Rule 2002 service list. Any notice required or permitted to be provided to the Debtors, the Plan Administrator, or the Post-Confirmation Oversight Committee under the Plan shall be in writing and served by (a) (i) certified mail, return receipt requested, (ii) hand delivery; or (iii) overnight delivery service; and (b) electronic mail, to be addressed as follows:

If to the Debtors:

Kevin Nash, Esq.
Goldberg Weprin Finkel Goldstein LLP
1501 Broadway, 22nd Floor
New York, New York 10036
knash@gwfglaw.com

If to the Post-Confirmation Oversight Committee:

Neil Berger, Esq.
Togut, Segal & Segal LLP
One Penn Plaza, Suite 3335
New York, New York 10119
neilberger@teamtogut.com

If to the Plan Administrator: [Forthcoming]

N. Quarterly Fees

All fees payable pursuant to 28 U.S.C. § 1930 after the Effective Date, together with any applicable interest thereon, will be paid by the Plan Administrator in accordance therewith until the earlier of the conversion or dismissal of the Bankruptcy Case under section 1112 of the Bankruptcy Code, or the closing of the case under section 350(a) of the Bankruptcy Code.

O. Post-Confirmation Reports

After Confirmation, the Plan Administrator shall file quarterly status reports, and schedule such status conferences as may be necessary until the Bankruptcy Cases are closed, converted or dismissed, whichever occurs first.

P. Closing the Case

Within fourteen (14) days following the full administration of the Estates, the Plan Administrator shall file, on notice to the U.S. Trustee and the Debtors, an application and proposed Order for a final decree to close these Bankruptcy Cases pursuant to Bankruptcy Rule 3022.

XV. RECOMEMNDATION AND CONCLUSION

The Committee believes that, absent appointment of a Chapter 11 Trustee for Lomma, the confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, absent appointment of a Chapter 11 Trustee for Lomma or any other Debtor, the Committee urges all parties entitled to vote to accept to Plan and to evidence their acceptance by completing and returning their Ballots so that they will

be received on or before the Voting Deadline. The Committee reserves the right to supplement, revise or withdraw this Plan if a trustee is appointed for Mr. Lomma or any other Debtor.

DATED: New York, New York
June 14, 2017

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS
By its attorneys,

TOGUT, SEGAL & SEGAL LLP
By:

/s/Neil Berger
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