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

In Re:	§	**Chapter 11**
	§	
A WHALE CORPORATION	§	**Case No. 13-33741**
B WHALE CORPORATION	§	**Case No. 13-33742**
C WHALE CORPORATION	§	**Case No. 13-33743**
D WHALE CORPORATION	§	**Case No. 13-33744**
E WHALE CORPORATION	§	**Case No. 13-33745**
G WHALE CORPORATION	§	**Case No. 13-33746**
H WHALE CORPORATION	§	**Case No. 13-33747**
A DUCKLING CORPORATION	§	**Case No. 13-33748**
F ELEPHANT INC	§	**Case No. 13-33750**
A LADYBUG CORPORATION	§	**Case No. 13-33751**
C LADYBUG CORPORATION	§	**Case No. 13-33752**
D LADYBUG CORPORATION	§	**Case No. 13-33754**
A HANDY CORPORATION	§	**Case No. 13-33755**
B HANDY CORPORATION	§	**Case No. 13-33756**
C HANDY CORPORATION	§	**Case No. 13-33757**
B MAX CORPORATION	§	**Case No. 13-33758**
NEW FLAGSHIP INVESTMENT CO. LTD	§	**Case No. 13-33759**
RORO LINE CORPORATION	§	**Case No. 13-33760**
UGLY DUCKLING HOLDING CORPORATION	§	**Case No. 13-33761**
GREAT ELEPHANT CORPORATION	§	**Case No. 13-33762**
TMT PROCUREMENT CORPORATION	§	**Case No. 13-33763**
	§	
Debtors.	§	**Jointly Administered as**
	§	**Case No. 13-33763**

DISCLOSURE STATEMENT FOR LENDER SETTLEMENT PLAN

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THIS PROPOSED DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING ADEQUATE INFORMATION WITHIN THE MEANING OF BANKRUPTCY CODE SECTION 1125(A). THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS OF THE PLAN WILL NOT BE SOLICITED UNTIL THE BANKRUPTCY COURT HAS APPROVED THIS PROPOSED DISCLOSURE STATEMENT. THE DEBTORS RESERVE THE RIGHT TO AMEND OR SUPPLEMENT THIS PROPOSED DISCLOSURE STATEMENT AT OR BEFORE THE HEARING TO CONSIDER THIS PROPOSED DISCLOSURE STATEMENT.

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Where this Disclosure Statement refers to [update status], it means that the status of the relevant matter will be updated based on the Bankruptcy Court's adjudication of the matters scheduled to be heard on September 25, 2017, and before this Disclosure Statement in final form is sent to the holders of Claims and Interests.

ARTICLE I
INTRODUCTION, EXECUTIVE SUMMARY, AND DISCLAIMERS

PLEASE READ THIS INTRODUCTION

Section 1.01 Introduction

This is the Disclosure Statement for the *Lender Settlement Plan of Liquidation for All Debtors* (the "Plan"). The Plan is attached as Exhibit A. In accordance with Bankruptcy Code § 1125(a), the purpose of this Disclosure Statement is to provide information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtors and the condition of the Debtors' books and records, that will enable holders of Claims and Interests to make an informed judgment about the Plan." Capitalized terms in this Disclosure Statement and in the Plan are defined in Section 2.02 of the Plan.

No materials other than this Disclosure Statement and the Exhibits hereto have been authorized by the Debtors for use in soliciting acceptances or rejections of the Plan. Although the Plan is styled as a plan of liquidation "for all Debtors," this is for convenience only and the Plan should be construed as encompassing Separate Plans of liquidation for each of the Debtors. As a result, it is possible that some but not all of the Separate Plans are confirmed. You are therefore urged to vote to accept (or to reject) each Separate Plan for which you are the holder of a Claim or Interest and for which votes are being solicited.

The views expressed in this Disclosure Statement are solely attributable to the Debtors and not attributable in any manner to Mr. Su, the Committee, or the Lenders. Notwithstanding the foregoing, this Disclosure Statement includes in various places the views expressed by Mr. Su, as conveyed to the Debtors. Mr. Su's views are solely attributable to Mr. Su.

Section 1.02 Executive Summary of the Plan

Prior to the Petition Date, the Debtors owned 16 Vessels and provided worldwide sea borne transportation for various sectors of maritime transportation, including the bulk, ore, oil, and vehicle sectors. Mr. Nobu Su is a direct or indirect shareholder of each of the Debtors and was the authorized agent of the Debtors for the first year of the Chapter 11 Cases. He resigned as of May 12, 2014 and was replaced by Mr. Esben Christensen, who is the "Designee" with sole authority over the Debtors from May 12, 2014 at 6:00 p.m. to present (*see* ECF 1554). All 16 Vessels were sold during the course of the Chapter 11 Cases, such that the Debtors' current primary asset is Cash. Some, but not all, of the Debtors have Cash available for distribution. Specifically, there are 3 types of Debtors that have Cash available for distribution, referred to as the "Cash Debtors." The first type of Cash Debtor is those Debtors with excess proceeds from the sale of their respective Vessels (and certain other available Cash), consisting of A Duckling Corporation, A Ladybug Corporation, A Handy Corporation, B Handy Corporation, and F Elephant Inc. The second type of Cash Debtor is those Debtors who will receive a Cash distribution from other Debtors as a result of Debtor Affiliate Claims against such Debtors, consisting of C Handy Corporation and RoRo Line Corporation. The third type of Cash Debtor is Great Elephant Corporation, which received the proceeds of an insurance settlement. The remaining Debtors do not have any Cash available for distribution at this time.

The Plan establishes a "Plan Account," that will be managed by a "Plan Administrator," to make distributions from time-to-time of the Cash held by the Cash Debtors as of the Effective Date or received by the Debtors after the Effective Date. The estimated distributions by Debtor under the Plan, subject to the Risk Factors identified in this Disclosure Statement, are set forth in the Liquidation Analysis attached to this Disclosure Statement as Exhibit B.

In addition to Cash on hand as of the Effective Date, it is also possible that one or more of the Debtors might receive net recoveries after the Effective Date from certain Causes of Action that are preserved under the Plan ("Preserved Causes of Action"). The Preserved Causes of Action are described in ARTICLE X below. The Plan Administrator will be appointed as the Debtors' representative with exclusive authority and standing to analyze and potentially pursue Preserved Causes of Action. To be conservative but not as an admission, this Disclosure Statement assumes that there will not be any net proceeds recovered from Preserved Causes of Action. However, the Debtors believe that some of the Preserved Causes of Action may be available as a defense and/or offset against some of the Claims against and Interests in the Debtors.

The Plan has three primary purposes. First, the Plan is based on the "Lender Settlement", which is a global settlement between the Debtors, the Committee, and the Lenders. The Lender Settlement is described in ARTICLE XV below. The Lender Settlement grants to the Lenders a release of all Causes of Action the Debtors have or may have against the Lender Release Persons, in exchange for a release by the Lenders of all Causes of Action the Lenders have or may have against the Estate Releases Persons. Second, the Plan proposes the "Proposed Su Parties Settlement" (described in ARTICLE XVI below), which would result in the release by the Debtors and all of the Lenders other than the BWAC Lender (collectively, the "Proposed Su Parties Settlement Lenders") of all actual and potential Causes of Action they have or may have against the Su Release Persons in exchange for a release by the Su Parties of all actual and potential Causes of Action they have or may have against the Estate Release Persons and the Debtor Releases. The Proposed Su Parties Settlement also includes a distribution from FEI and AHC to or for the benefit of the Su Parties in the amount of $1,000,000. Third, once all Claims and Expenses with potential priority ahead of unsecured Claims are resolved, the Plan proposes to distribute the remaining Cash on hand to the holders of those Claims to the extent they are Allowed, together with the potential distribution of a portion of any net recoveries from Preserved Causes of Action to the holders of Allowed Claims against the Debtor(s) receiving any such recoveries. There are also unsecured Claims held by one Debtor against another Debtor, all of which are treated as subordinated. There are also certain unsecured Claims held by a Non-Debtor Affiliate of Mr. Su that are treated as subordinated due to the contractual subordination provisions in the Lender Facilities for Lenders who have not been paid in full.

Section 1.03 Disclaimers

ALL HOLDERS OF CLAIMS OR INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN ARE ENCOURAGED TO READ CAREFULLY THIS DISCLOSURE STATEMENT, PARTICULARLY INCLUDING THE RELEASES, EXCULPATIONS, LIMITATIONS OF LIABILITY, AND INJUNCTIONS IN THE PLAN SUMMARIZED IN THE APPLICABLE SECTIONS OF ARTICLE XIV THROUGH ARTICLE XVI BELOW AND SET FORTH IN THEIR ENTIRETY IN THE PLAN.

THE STATEMENTS AND ESTIMATED DISTRIBUTIONS CONTAINED IN THIS DISCLOSURE STATEMENT HAVE BEEN MADE AS OF THE DATE OF THIS DISCLOSURE STATEMENT UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT CANNOT ASSUME AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH IN THIS DISCLOSURE STATEMENT SINCE THE DATE OF THIS DISCLOSURE STATEMENT OR THE DATES OTHERWISE NOTED. EACH HOLDER OF A CLAIM OR INTEREST ENTITLED TO VOTE ON THE PLAN SHOULD CAREFULLY REVIEW THE PLAN IN ITS ENTIRETY BEFORE CASTING A BALLOT. THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. ENTITIES DESIRING SUCH ADVICE OR ANY OTHER ADVICE SHOULD CONSULT WITH THEIR OWN ADVISORS. THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE LIQUIDATION ANALYSIS, HAS NOT BEEN THE SUBJECT OF AN AUDIT.

ARTICLE II
IMPORTANT DATES

- Date by which Ballots must be received: [●], 2017 at 4:00 p.m., prevailing Central Time.

- Deadline by which objections to Confirmation of the Plan must be filed and served: [●], 2017 at 3:00 p.m. prevailing Central Time. Deadline by which objections to the Plan Supplement must be filed and served: the later of (i) [●], 2017 at 3:00 p.m. prevailing Central Time and (ii) the 10th calendar day after the Plan Supplement is actually filed. Unless objections are timely served and filed, they might not be considered by the Bankruptcy Court.

- Hearing on Confirmation of the Plan: The Bankruptcy Court has scheduled the Confirmation Hearing with respect to the Plan to commence on [●], 2017 at 9:00 a.m. prevailing Central Time before the Honorable Marvin Isgur, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, 515 Rusk Street, Houston, Texas 77002. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment of the Confirmation Hearing.

ARTICLE III
BACKGROUND

Section 3.01 Introduction

This ARTICLE III provides general background information as to the Debtors. Mr. Su disagrees with the disclosures in this ARTICLE III and/or believes that such disclosure should be supplemented. In the event the Plan is confirmed, Mr. Su may express his views to the Plan Administrator so that s/he will be able to consider such views as part of the performance of her/his duties under the Plan, including the potential investigation and pursuit of Preserved Causes of Action.

Section 3.02 The Debtors' Former Businesses

The Debtors, together with certain of the Non-Debtor Affiliates, were affiliated entities commonly referred to as part of "TMT." The Debtors provided worldwide sea borne transportation for various sectors of maritime transportation, including the bulk, ore, oil, and vehicle sectors.

Section 3.03 Corporate Structure

The Debtors are directly or indirectly owned, in whole or in part, by Mr. Su and/or members of his family.

Section 3.04 The Filing of the Chapter 11 Cases

Due to a number of market, creditor, and other intervening factors, the Debtors commenced the Chapter 11 Cases on June 20, 2013. For more information on the Debtors' commencement of the Chapter 11 Cases and on the status of the Debtors in general on the Petition Date, see the *Declaration of Lisa Donahue* at ECF 15. The "ECF" is the electronic docket maintained by the Bankruptcy Court. Any Person wishing to review an ECF document or any other document or pleading referred to in this Disclosure Statement or the Plan should request same in an email to evan.flaschen@bracewell.com.

Section 3.05 Formation of the Official Committee of Unsecured Creditors

On July 9, 2013, the US Trustee, pursuant to its authority under Bankruptcy Code § 1102, appointed the Committee to represent the interests of all unsecured creditors in the Chapter 11 Cases (*see* ECF 84). The Committee currently consists of the following creditors: China Shipping Car Carrier; Hyundai Samho Heavy Industries Co., Ltd.; KPI Bridge Oil Limited and KPI Bridge Oil Singapore Pte Ltd; Omega Bunker S.R.L.; China Ocean Shipping Agency Shanghai d/b/a Penavico Shanghai; Songa Shipping Pte, Ltd.; and Universal Marine Service Co., Ltd. In addition, Scandinavian Bunkering AS was appointed as an alternate, non-voting member of the Committee.

Section 3.06 Retention of Estate Professionals

Prior to the Petition Date, the Debtors retained Bracewell as their general bankruptcy and restructuring counsel and AlixPartners as their financial advisor, and such engagements have continued in the Chapter 11 Cases. The retention applications and related affidavits filed by Bracewell and AlixPartners also disclose certain other engagements from time-to-time between such Estate Professionals and one or more of the Non-Debtor Affiliates. The Debtors also engaged various special counsel in local jurisdictions relevant to certain of the Vessels, either as "special counsel" or "ordinary course Estate Professionals."

The Committee retained Kelley, Drye & Warren LLP as its principal investigation / litigation counsel, Seward & Kissel LLP as its principal bankruptcy / restructuring / maritime counsel, and FTI Consulting as its financial advisor. Mr. Su alleged that Seward & Kissel had, and had failed to disclose, certain conflicts of interest. Pursuant to ECF 2359, the Bankruptcy Court permitted Seward & Kissel to withdraw as Committee counsel on April 2, 2015. As part of its withdrawal, Seward & Kissel volunteered (and the Bankruptcy Court approved) certain disgorgements and payments to reimburse the Debtors and Mr. Su for fees and expenses incurred

in connection with the alleged conflict, and also agreed to waive fees and expenses that had not yet been paid on an interim basis. *See* Seward & Kissel's final fee application (ECF 2460). Concurrent with Seward & Kissel's withdrawal, expanded Kelley, Drye & Warren's mandate to include representation of the Committee as to all matters in the Chapter 11 Cases.

Section 3.07 Management of the Debtors

For the first year of the Chapter 11 Cases, the "debtors in possession" managed each of the Debtors. As part of overall discussions on a variety matters, Mr. Su resigned as an officer and director of each of the Debtors on May 12, 2014 and was replaced by the Designee, as recognized by the Bankruptcy Court in the Sole Authority Order. As a result of Mr. Su's resignation and the appointment of the Designee, neither Mr. Su nor any of the Non-Debtor Affiliates have any voting rights or other authority or control with respect to the Debtors. Because the Debtors are no longer conducting business but remain authorized by the Bankruptcy Code to serve as the debtors-in-possession under the management of the Designee pursuant to the Sole Authority Order, the Debtors have not maintained their "active" status in the relevant jurisdiction for each Debtor. The exception to this is TPR, which remains active due to its status as the account holder for the 345 Account. It is also possible that Mr. Su, as the authorized Person pursuing the BMC arbitration described in Section 3.09(7) below, has maintained BMC in good standing. To the extent there is a requirement in the future for a Debtor to return to "active" status or the Plan Administrator otherwise believes it is beneficial, the Debtors have the right, upon information and belief, to restore such status by paying any past-due amounts and relevant charges and penalties.

Section 3.08 Books, Records and Servers

Prior to the appointment of the Designee, the Debtors' corporate books, records and servers (including email communications) were maintained in Asia by, upon information and belief, TMT Group personnel. The Debtors' Estates Professionals were not given and do not have access to such books, records and servers, if they still exist. Instead, after the appointment of the Designee, the books, records and servers that the Debtors continue to have access to are maintained by the Debtors' Estate Professionals in the United States.

Section 3.09 Transactions and Litigation During the Chapter 11 Cases

There have been a number of transactions, adversary proceedings and contested matters in the Chapter 11 Cases. As relevant to the Plan, the most significant matters are described below.

(1) Vessel Sales.

For various reasons, the Debtors did not reorganize, leading to sales of the Vessels in the Bankruptcy Court or actual or pending sales in local admiralty courts. The following chart shows (i) the net book value for each Vessel as identified in the relevant Debtors' Schedules as of June 20, 2013 and (ii) the actual or anticipated results of each sale (000s omitted).

Vessel (year built)	Scheduled Amount	Gross Purchase Price[1]	Remaining Estimated Excess Sale Proceeds[2]
A Whale (2010)	$102,617	$66,500	$0
B Whale (2010)	$90,708	$61,250	$0
C Whale (2010)	$111,670	$58,742	$0
D Whale (2010)	$111,728	$61,250	$0
E Whale (2010)	$111,729	$61,000	$0
G Whale (2011)	$114,763	$61,250	$0
H Whale (2011)	$114,760	$62,000	$0
Fortune Elephant (2011)	$78,079	$78,123	$6,646
A Duckling (1999)	$15,473	$20,801	$1,014
A Ladybug (2011)	$85,000	$56,000	$5,963
C Ladybug (2011)	$92,500	$53,600	$0
D Ladybug (2012)	$92,500	$55,000	$0
A Handy (2011)	$22,000	$18,504	$953
B Handy (2011)	$22,000	$18,000	$360
C Handy (2011)	$21,900	$17,600	$0
B Max (2011)	$22,600	$24,000	$0

(2) Conduct of the Sales of the Whale Vessels.

(i) Mr. Su's Views. When the Debtors filed their motions to approve the sale of the various Whale Vessels (other than the *M/V E Whale*, which was sold in a South African admiralty auction), Mr. Su objected. The numerous grounds for Mr. Su's objection can best be considered by reviewing Mr. Su's substantially similar briefs in the Sale Order Appeals.[3] With reference to the brief filed in the Sale Order Appeal with respect to the *M/V*

[1] For Vessels sold pursuant to Bankruptcy Code § 363, the "gross purchase price" reflects the amount of the "Winning Bid" as set forth in the Bankruptcy Court's order approving the sale. These amounts do not reflect closing adjustments for broker's commissions, Estate Professional fees, port charges, and various other expenses required to be paid before the payment of the Lender Facility securing the Vessel. For Vessels sold in local admiralty proceedings, the "gross purchase price" reflects the purchase price for the Vessel as reported by the relevant Lender to the Debtors.

[2] Meaning the amount of Vessel sale proceeds after deducting all third party payments out of Vessel sale proceeds previously approved by court order. These amounts do not reflect repayments to the 345 Account of individual Debtor borrowings under the Intercompany Loans feature of the DIP Facility, nor are they adjusted for the payment of Estate Professional fees from time to time, nor do they reflect potential claims to the sale proceeds. As a result, these amounts substantially overstate the amount of Cash available for distribution under the Separate Plans for each of the Cash Debtors, as well as the total Cash currently on hand for all Debtors. Holders of Claims and Interests are referred to the Liquidation Analysis for estimates of actual available Cash by Debtor under the Plan.

[3] The arguments presented by Mr. Su in the Sale Order Appeals can be found at (i) District Court case no. 4:14-cv-2172, Dkt. Nos. 40 & 50 (A Whale); (ii) District Court case no. 4:14-cv-2172,

H Whale, Mr. Su's objections included the following: (i) there was a "web of connections working against Mr. Su"; (ii) "the sale was orchestrate to benefit the lenders—the 'whale' clients of the brokers and professionals—not the Estate or unsecured creditors"; (iii) the broker was conflicted and intentionally failed to disclose its conflicts on a timely basis; (iv) the law firm for the agent was conflicted; (v) Bracewell was conflicted and intentionally failed to disclose its conflicts on a timely basis; (vi) AlixPartners was conflicted and intentionally failed to disclose its conflicts on a timely basis; (vii) the credit bid was improper; (viii) "the Broker failed to adequately market the Vessels"; (ix) "the Broker chilled the market"; (x) "the Broker then chilled bidding"; (xi) "the Brokers refused to meet with Mr. Su"; and (xii) "the facts show the collusive actions which were taken to ensure that the estate professionals' clients (or their clients' affiliates) obtained the Vessel for a minimum price".

(ii) The Debtors' Views. The Debtors' views as to the conduct of the sales of the Whale Vessels can be summarized by the following sentence from the Debtors' brief on appeal: "In sum, either the whole world colluded against Su or the Vessels simply were not worth what Su thinks they are worth. The market spoke and the overwhelming evidence in the record, other than the defamatory testimony of Su himself, speaks for itself." *Consolidated Brief of Appellees*, District Court case no. 4:14-cv-2172, Dkt. No. 43. Any holders of Claims and Interests interested in a fuller understanding of the Debtors' views are referred to the foregoing brief, which can be obtained by request sent to Bracewell.

(iii) The Courts' Views. The Bankruptcy Court conducted a 3-day trial on July 15-17, 2014 with respect to the Debtors' sale motions for the Whale Vessels and Mr. Su's objections. The Bankruptcy Court considered lengthy testimony from (i) Mr. Su (on day 1); (ii) Mr. Su's alleged expert on vessel auctions; (iii) Mr. Su's alleged expert on the bid amounts that should have been received for the Whale Vessels but for the improper sales processes; (iv) Mr. Su again (on day 3); (v) the two brokers; and (vi) the Designee. At the end of the third day, the Bankruptcy Court held that the sales of the Whale Vessels were approved and the sales processes were conducted in good faith. In the words of the Bankruptcy Court, it could not find "even a scintilla of evidence that anything other than the right things were done here." Hr'g Tr. July 17, 2014 at 320:18-23. With respect to Mr. Su's allegations against the brokers, AlixPartners and Bracewell, the Bankruptcy Court stated: "The criticisms that were levied against the professionals …should not have been made, are not accurate, and are rejected." *Id.* at 321:17-19. The transcripts for all 3 days can be obtained by request sent to Bracewell.

(3) Sale Order Appeals.

(i) Appeals and Denial by Three Courts of Stay Pending Appeal. Mr. Su appealed to the District Court the Bankruptcy Court's orders approving the sale of the Vessels owned by AWAC, BWAC, CWAC, DWAC, GWAC, and HWAC. Mr. Su then sought a stay of the Vessel sales while his appeal was being considered. The Bankruptcy

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Dkt. Nos. 41 & 49 (B Whale); (iii) District Court case no. 4:14-cv-1799, Dkt. Nos. 19 & 40 (C Whale); and District Court case no. 4:14-cv-2172, Dkt. Nos. 39 & 48 (D Whale, G Whale & H Whale). The Debtors' arguments in response can be found in the dockets for the same cases.

Court denied Mr. Su's request for a stay pending appeal: "[T]here is no likelihood of a success on the merits." Hr'g Tr. July 28, 2014 at 237:12-13. *See also Order Denying Motions for Stay Pending Appeal* (ECF 2040). In upholding the Bankruptcy Court's Order, the District Judge held that: "The probability of Su's success on appeal is in the single digits." The United States Court of Appeals for the Fifth Circuit also denied Mr. Su's request for a stay pending appeal. *See* Case No. 14-20490 (5th Cir. July 30, 2014).

(ii) Debtors' Views. While the results of an appeal can never be assured, the Debtors think it is highly unlikely that the Sale Order Appeals will be successful, for the reasons set forth in the Debtors' appeal brief referred to in Section 3.09(2)(ii) above. If, nevertheless, the Sale Order Appeals are successful, the District Court expressed the view at ECF 2051 that the results would be that "the users of [Mr. Su's] technology can pay him a reasonable fee for lost royalties." If that is the correct analysis, it would have no effect on the Debtors' estates.

(4) DIP Financing. Each of the Debtors other than BWAC was jointly and severally liable on the DIP Facility with Macquarie Bank Ltd., the proceeds of which were used to fund the Chapter 11 Cases (other than the Chapter 11 Case for BWAC). The DIP Facility was repaid out of four sources, as discussed in Section 4.02(3) below. The DIP Facility was decreed to be fully, finally, and indefeasibly paid in full pursuant to the Vantage Settlement Order.

(5) Vantage Settlement

(i) F3-Vantage Shares. Pursuant to the Bankruptcy Court's *Order* dated July 23, 2013, the Debtors were required to "cause non-estate property ... with a fair market value of $40,750,000 to be provided to the Estates." ECF 134. Pursuant to the Order Regarding Shares, the Debtors satisfied this requirement by causing F3 Capital to deposit 26,007,142 Vantage Shares into the Bankruptcy Court registry. Pursuant to the Addendum Order, the Debtors were required to cause and did cause F3 Capital to deposit an additional 4,000,000 Vantage Shares into the Bankruptcy Court registry. As a result, F3 Capital deposited a total of 30,007,142 Vantage Shares (defined in the Plan as the "F3-Vantage Shares") for potential application by the Debtors or the Bankruptcy Court in accordance with the Order Regarding Shares and the Addendum Order. Vantage appealed the Order Regarding Shares and the Addendum Order (together with several other orders), and Vantage's appeal was sustained by the Fifth Circuit Decision.

As a result of the Fifth Circuit Decision, all Cash in the Debtors' estates and all of the F3-Vantage Shares remaining after repayment of the DIP Facility were effectively frozen. Pursuant to ECF 2530, the Debtors moved for Bankruptcy Court authority to purchase additional Vantage Shares. Pursuant to ECF 2540, Mr. Su and F3 Capital objected to the proposed purchase. Pursuant to ECF 2544, the Bankruptcy Court granted the Debtors' motion and the Debtors purchased in the open market an additional 11,282,771 Vantage Shares, such that the Debtors once again hold 30,007,142 Vantage Shares. The additional share purchases occurred between August 11, 2015 and September 1, 2015, with a total purchase price for the additional shares, including broker's commissions and SEC fees, was $1,692,850.46. *See Notice as to Completion of Share Purchases* (ECF 2551).

(ii) Settlement. Pursuant to the Vantage Settlement Order, the Debtors paid $250,000 to Vantage and resolved all open issues with Vantage. This resulted in an "unfreezing" of the estates' Cash and the F3-Vantage Shares. In turn, this enabled the Debtors to proceed with the Plan, now that the Cash is available for distribution with respect to the Cash Debtors.

(6) GEC Insurance Settlement. Prior to the Petition Date, GEC had submitted a claim, and commenced litigation to enforce such claim, for insurance proceeds related to a vessel previously owned by GEC that was disposed of prior to the Petition Date. The claim was settled, resulting in a payment of the GEC Insurance Settlement to the 345 Account.

(7) BMC Arbitration. Pursuant to an agreed Motion (ECF 2179) and Order (ECF 2187), Mr. Su was granted authority to pursue certain arbitration claims on behalf of BMC. Mr. Su advises that further investigation by him since the filing of the arbitration suggests there may be additional claims that BMC, Mr. Su, and/or other Non-Debtor Affiliates entities may have which could be asserted regarding the handling of BMC issues with a soybean shipment.

(8) A Ladybug Salvage Claim Settlements. ALAC commenced litigation against Cathay Century Insurance Co., Ltd. in London, asserting that Cathay Century wrongly denied a salvage claim in the approximate amount of $1.7 million. The litigation was settled on October 11, 2016, with Cathay Century making a payment on December 5, 2016 to ALAC in the amount of $400,000 (minus broker's commission) (*see* settlement approval order at ECF 2645). ALAC also asserted claims under a mortgagees' interest insurance policy with respect to the same salvage event. The litigation was settled on September 30, 2016, with the underwriters making a payment on January 4, 2017 to ALAC in the amount of $325,000 (minus broker's commission) (*see* settlement approval order at ECF 2689).

(9) Findings of Violation Issued Against BWAC.

(i) 2013 OFAC Subpoena. On November 14, 2013, the Department of the Treasury, Office of Foreign Assets Control (OFAC) issued an administrative subpoena addressed to Mr. Su as the owner and chief executive officer of TMT USA Shipmanagement LLC, a Non-Debtor Affiliate, concerning a potential violation of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560, related to the *B Whale*. The subpoena was directed to various of the Debtors and Non-Debtor Affiliates. The Debtors, working with the Debtors' Estate Professionals, fully cooperated with the subpoena and subsequent requests.

(ii) 2014 Finding of Violation. On September 24, 2014, OFAC issued a "Finding of Violation" that the *B Whale* had received a ship-to-ship transfer of condensate crude oil from an Iranian vessel on OFAC's "List of Specially Designated Nationals and Blocked Persons." In terms of a sanction, the Finding stated that OFAC "has determined that the issuance of this Finding of Violation, in lieu of a civil monetary penalty, is the appropriate enforcement response...."

(iii) 2017 Finding of Violation. It appears that, in response to the Finding of Violation, Mr. Su provided additional responses to OFAC on December 30, 2014, May 29,

2015, and January 13, 2016. Neither the Debtors nor the Debtors' Estate Professionals were involved in, were aware of, or have seen, any of such additional responses. On January 18, 2017, OFAC issued a new Finding of Violation, which again did not impose sanctions beyond the Finding of Violation itself. The Finding of Violation further stated that it was "a final enforcement response, unless OFAC later learns of additional related violations or other relevant facts...." Mr. Su continues to disagree with OFAC's findings.

(10) Motions to Convert.

(i) First Su Motion to Convert. Mr. Su filed his first Su Motion to Convert (ECF 2415) on May 1, 2015. The Bankruptcy Court declined Mr. Su's request to convert the Chapter 11 Cases but ordered that the interim appointment of the Examiner (*see* Section 3.09(12) below) be made a permanent appointment. *See Order* at ECF 2547 and *Memorandum Opinion* at ECF 2546.

(ii) US Trustee Motion to Convert. The US Trustee filed the US Trustee Motion to Convert on July 6, 2017. The US Trustee Motion to Convert is scheduled to be heard at the same time as the hearing on this Disclosure Statement. [update status]

(iii) Second Su Motion to Convert. Mr. Su filed his second Su Motion to Convert (ECF 2794) on August 10, 2017, and the Non-Debtor Affiliates filed a joinder (ECF 2797). [update status]

(11) Avoidance Actions. One of the allegations in the Su Motion to Convert was that "[t]here may also be Chapter 5 causes of action which have neither been investigated nor approved by the Estate Professionals."

(i) Debtor Avoidance Actions. The Debtors commenced avoidance actions against Shanghai Commercial and Savings Bank and Bank Sinopac. *See* ECFs 2503 & 2504. Based on further investigation as well as additional information provided to the Debtors, the Debtors ultimately dismissed such actions.

(ii) Potential Other Avoidance of Actions. In lieu of commencing litigation, the Debtors negotiated Avoidance Action tolling agreements with the other potential defendants (certain Lenders, Debtors, and trade creditors). Based on further investigation as well as additional information provided to the Debtors, the Debtors ultimately decided not to pursue such Avoidance Actions, and the relevant tolling agreements expired on July 31, 2017.

(iii) Non-Debtor Affiliate Avoidance Actions. The Committee was vested with standing to pursue the Non-Debtor Affiliate Avoidance Actions on June 19, 2015 (*see* ECF 2506). The Committee commenced the Non-Debtor Affiliate Avoidance Actions because the defendants in those actions did not initially agree to enter into tolling agreements. The parties agreed to abate further proceedings in the Non-Debtor Affiliate Avoidance Actions. A status conference with respect to the Non-Debtor Affiliate Actions was held at the same time as the hearing of this Disclosure Statement. [update status]

(12) Examiner Appointment. Pursuant to ECFs 2479, 2480, 2507, and 2547, the Examiner was appointed to review Estate Professional Fees and to provide a report as to the Non-Debtor Affiliate Avoidance Actions. The Plan provides for the continuation of the Examiner's responsibility to review the professional fees and expenses of the Plan Administrator and the termination of all other responsibilities, including that the governance of Bankruptcy Code § 1104 will no longer apply.

(13) Mediation.

(i) Winter 2013/14. Pursuant to ECF 697, as modified by ECF 939, the Bankruptcy Court ordered mediation among various of the Debtors, the Committee, and the Lenders. Pursuant to ECF 1005, the mediation was abated as a result of, among other things, the transfer of various obligations from prior Lenders to new Lenders.

(ii) Winter 2014/15. The Debtors, the Committee and Mr. Su exchanged term sheets and discussed potential mediation over the winter of 2014/2015. The term sheet discussions terminated and the possibility of mediation was not pursued at the time. Mr. Su advises that Mr. Su and F3 Capital also engaged in mediation of issues in the Chapter 11 Cases with one of the Lenders in 2015. Mr. Su states that the mediation reached an impasse.

(iii) Winter 2016/17. Pursuant to ECF 2666, the Debtors, the Committee and the Su Parties engaged in the 2017 Mediation. As a result of the 2017 Mediation, the Debtors, the Committee, and the Su Parties agreed to the plan of liquidation that was filed at ECF 2767. That plan is no longer pending for the reasons discussed in Section 3.16 below.

Section 3.10 F3 Capital ORS Claims

(1) Description of Claims. Pursuant to the Order Regarding Shares and the Addendum Order, the Bankruptcy Court set forth certain priorities in respect of potential expenses and claims that, if Allowed, could be asserted against the F3-Vantage Shares. Pursuant to the Order Regarding Shares, F3 Capital is entitled to assert the F3 Capital ORS Claims under certain circumstances. F3 Capital contends that its F3 Capital ORS Claims exceed the amount of Cash on hand at all Debtors. The Debtors disagree with F3 Capital's contention. If F3 Capital succeeds in litigating the Allowance against all Debtors of the F3 Capital ORS Claims, there will be no Cash for distribution to holders of General Unsecured Claims under the Plan. The Debtors' views with respect to the F3 Capital ORS Claims are discussed in Section 16.07(3)(iv) below.

(2) Motion to Satisfy Claims. The Committee filed a motion (ECF 2633) to satisfy all F3 Capital ORS Claims, if any, by delivering the F3 Vantage Shares to F3 Capital, including the additional 11,282,771 Vantage Shares acquired by the Debtors as referred to in the second paragraph of Section 3.09(5)(i) above. F3 Capital opposes the motion and believes it does not have merit. The Debtors disagree. A status hearing on the Committee's motion was held on September 25, 2017. [update status]

Section 3.11 Objections to Non-Debtor Affiliate Claims

(1) In General. Various Non-Debtor Affiliates asserted Claims against various of the Debtors in the approximate aggregate amount of $530,000,000. The Committee filed an omnibus objection to the Allowance of such claims (ECF 2627). The details of the Non-Debtor Affiliates, their claim amounts, and the Debtors against which they have asserted their claims, are summarized in Exhibit A to ECF 2627.

(2) Appearing Defendants; Settlement. The following Non-Debtor Affiliates appeared by counsel and objected to the relief requested in the Committee's omnibus objection to Non-Debtor Affiliate Claims: TMT Co., Ltd.; Taiwan Maritime Transportation Co., Ltd.; NOS Ship Agency PTE, Ltd.; and NOS Ship Management Co., Ltd. The Non-Debtor Affiliate Claims of these parties are identified on Exhibit B to ECF 2687.

(3) Non-Appearing Defendants. The remaining Non-Debtor Affiliates did not appear in response to the objection at ECF 2627. As a result, the Bankruptcy Court at ECF 2687 disallowed their Claims, totaling approximately $518 million in the aggregate, pursuant to the order at ECF 2687. The disallowed Claims are identified on Exhibit A to ECF 2687.

(4) Lender Joinders. Various Lenders filed *Joinders* to the Committee's objection with respect to the appearing defendants at ECFs 2758, 2760, & 2761.

(5) Subordinated Non-Debtor Affiliate Claims. Each Lender Facility provides that, after the occurrence of an event of default, all advances of money by shareholders and by Affiliates of Mr. Su to the borrower under such Lender Facility are subordinated to the repayment of the obligations under such Lender Facility. The Lender Facilities for the following Debtors have not been paid in full and, therefore, the relevant Claims against these Debtors have been classified as Subordinated Non-Debtor Affiliate Claims that, if Allowed, are entitled to receive distributions only after the applicable Lender Deficiency Claims and AWAC Deficiency Claim are paid in full: AWAC, BMC, BWAC, CHC, CLAC, CWAC, DLAC, DWAC, EWAC, GWAC, HWAC, and NFI. The Debtors note that the treatment of such Claims as subordinated is consistent with Mr. Su's subordinated treatment of such Claims against BWAC, GWAC, and HWAC in his proposed plans of reorganization for such Debtors. See ECFs 1793, 1797 & 1798.

(6) Unsubordinated Non-Debtor Affiliate Claims. The Lender Facilities for the following Debtors have been repaid in full and, therefore, the relevant Claims against these Debtors have been classified as Non-Debtor Affiliate Claims that, if Allowed, are entitled to receive distributions on a pro rata basis with General Unsecured Claims: ADX, AHC, ALAC, BHC, FEI, RRL, and TPR.

(7) September 25, 2017. [update status]

Section 3.12 Claims Against and By Lenders

(1) Sections 506(c) Claims. The Debtors have reserved the right to bring Section 506(c) Claims against various Lenders with respect to funds expended to preserve the value of various Vessels. Any such claims would be asserted on a Debtor-by-Debtor basis. The relevant Lenders dispute the validity of any potential Section 506(c) Claims. The Debtors actually filed one such

motion seeking recovery from the Lenders to CWAC (ECF 1663). The CWAC motion was withdrawn without prejudice. If the Plan is confirmed, the Section 506(c) Claims will be released as part of the Lender Settlement. A fuller discussion of the Section 506(c) Claims, including the Debtors' analysis, is set forth in Section 15.06(4) below.

(2) Section 507(b) Claims. Various Lenders (or their agents) have filed Section 507(b) Claims against various of the Debtors at ECFs 2757, 2759, & 2762 for asserted shortfalls in the adequate protection provided to such Lenders during the course of the Chapter 11 Cases. If the Plan is confirmed, the Section 507(b) Claims will be released as part of the Lender Settlement. A fuller discussion of the Section 506(c) Claims, including the Debtors' analysis, is set forth in Section 15.06(1) below.

(3) Deficiency Claims. Various of the Lenders also assert unsecured claims resulting from the sale of the relevant Vessels for less than the amounts owing under the Lender Facilities. A discussion of the deficiency claims, including the Debtors' analysis, is set forth in Section 15.06(2) below.

Section 3.13 Vessel Proceeds Orders

Three orders were entered allocating the proceeds of certain Vessel sales, in each case subject to potential developments with respect to the DIP Facility or Mr. Su's Patent Litigation, as the case may be.

(1) A Duckling and A Ladybug. The Plan takes into account the sale proceeds allocation orders at ECF 1480 and 2183, including the freeing-up of remaining Cash at these two Debtors after the DIP Facility was repaid in full.

(2) Fortune Elephant. The sale of the *Fortune Elephant* generated approximately $6.7 million in excess proceeds. Mr. Su commenced litigation against FEI in the Chapter 11 Cases. The Complaint is at Adv. Proc. No. 14-03276, Dkt. No. 1. The reference of that litigation to the Bankruptcy Court was withdrawn to the District Court, where the litigation remains pending. The Complaint alleges that Mr. Su's asserted patents related to the *Fortune Elephant* remained the property of Mr. Su and could not be transferred to the purchaser of that Vessel without Mr. Su's consent in connection with the transfer. Therefore, Mr. Su asserts Su FEI Claims in an amount greater that the amount of the FEI excess proceeds and, therefore, a right to ownership or payment of the entire FEI excess proceeds. The Debtors dispute both that they transferred Mr. Su's asserted patents to the Vessel purchaser and that Mr. Su is entitled to any recovery on the Su FEI Claims in any event. However, to preserve his rights pending disposition of the litigation, the entire amount of the FEI excess proceeds including the amount applied in repayment of FEI's Intercompany Loan on an interim basis, remain subject to the rights of Mr. Su, if any, "in the same manner, priority, and extent as if the funds had not been so deposited [into the 345 Account]." ECF 2094 at ¶ 2.C.

Section 3.14 Other Patent Litigation

In addition to the Patent Litigation against FEI, Mr. Su commenced Patent Litigation against the relevant Debtors and Lenders with respect to the Vessels owned by AWAC, BWAC, CWAC, DWAC, GWAC and HWAC. The Debtors and the relevant Lenders dispute the validity

of the Patent Litigation to which they are a party; their motions to dismiss or for summary judgment with respect to the Patent Litigation remain pending in the District Court.

Section 3.15 Prior Filed Plans

(1) Handy Debtors. AHC, BHC, and CHC confirmed a joint plan of reorganization on April 8, 2014, see confirmation order at ECF 1355. However, the "effective date" under the joint plan did not occur and, pursuant to ECF 1445, the plan was terminated, followed by the sale of the Vessels owned by AHC, BHC, and CHC.

(2) Mr. Su. On July 2, 2014, Mr. Su filed plans of reorganization for BWAC (ECF 1797), GWAC (ECF 1792) and HWAC (ECF 1795). The plans could not proceed, however, because the Vessels owned by BWAC, GWAC and HWAC were sold shortly after the Plans were filed.

(3) All Debtors. On April 10, 2015, the Debtors filed two joint plans of reorganization at ECF 2374 and 2375. Proceedings on the plans and related disclosure were postponed and, ultimately, the Debtors withdrew the plan pursuant to ECF 2671.

(4) Su Parties Settlement Plan. As a result of the 2017 Mediation, the Debtors filed the Su Parties Settlement Plan, which incorporated a settlement in principle among the Debtors, the Committee, and the Su Parties. The most recent version of the Su Parties Settlement Plan is at ECF 2767. The Debtors and the Committee, in the exercise of their business judgment and their fiduciary duties, decided not to pursue the Su Parties Settlement Plan. The reasons for the Debtors' and the Committee's decision is discussed in Section 3.16 below.

Section 3.16 Reasons for Not Pursuing the Su Parties Settlement Plan

(1) Initial Disclosure Statement Hearing with Respect to the Su Parties Settlement Plan. On June 13, 2017, the Bankruptcy Court held a hearing on the disclosure statement at ECF 2769 with respect to the "Su Parties Settlement Plan" at ECF 2767. Various of the Lenders objected to the disclosure statement, the Bankruptcy Court found merit with several of the objections, and the Bankruptcy Court continued the hearing on the disclosure statement to September 25, 2017. As relevant here, the three concerns with the Su Parties Settlement Plan that the Bankruptcy Court expressed were as follows:

(i) First, the Bankruptcy Court did not accept the separate classification of the Lender Deficiency Claims from General Unsecured Claims. Given this, together with the opposition of various Lenders to the Su Parties Settlement Plan and the quantum of the Lender Deficiency Claims, this meant that the Debtors could not count a separate vote of the holders of General Unsecured Claims as the requisite Class of accepting, Impaired Claims, without counting the votes of Insiders for Debtors against which Lenders have asserted deficiency claims. This requirement is discussed in Section 12.04(9) below.

(ii) Second, the Bankruptcy Court required that all Section 507(b) Claims had to be filed and adjudicated prior to the approval of the Disclosure Statement. The Court's requirement was based on a Bankruptcy Code mandate that a chapter 11 plan had to pay all Administrative Expenses on the effective date, so that if a Section 507(b) Claim was

Allowed against any Debtor who could not pay it, such Debtor's Separate Plan would not be capable of Confirmation.

(iii) Third, the Bankruptcy Court required that the Non-Debtor Affiliate Claims and the Subordinated Non-Debtor Affiliate Claims be adjudicated prior to the approval of this Disclosure Statement. He also authorized other parties-in-interest to object to such Claims, which various of the Lenders did at ECFs 2758, 2760 and 2761. In the Debtors' view and as discussed in Section 12.04(9) below, the separate Class for Debtor Affiliate Claims (which also included the Subordinated Non-Debtor Affiliate Claims) could have served as the requisite accepting, Impaired Class, if the Bankruptcy Court agreed with the Debtors that the holders of such Claims are not Insiders.

(2) Debtors' Analysis as to the Results of the June 13, 2017 Hearing.

(i) Although the Su Parties Settlement Plan was a single document, the Su Parties Settlement Plan (like the current Plan) set forth a separate plan for each Debtor. Therefore, unless all or substantially all of the separate plans were confirmed, it could result in the failure to achieve important purposes of the Su Parties Settlement Plan. The Su Parties have refused to confirm that they will continue to support the Su Parties Settlement Plan if one or more of the separate plans are not confirmed.

(ii) The Bankruptcy Court's views as to Section 507(b) Claims could implicate those purposes. A primary motivation for Mr. Su with respect to the Su Parties Settlement Plan was that he would receive between 35% and 50% of recoveries available to unsecured creditors, and 100% of the recoveries thereafter. Such recoveries were predicated on Mr. Su's view that the Causes of Action preserved under the Su Parties Settlement Plan would result in substantial recoveries. (The Debtors disagree.) Among the most important of those Causes of Action were against the Lenders to AWAC, BWAC, CWAC, DWAC, EWAC, GWAC, and HWAC (discussed at ECF Exh. C ¶¶ 4 and 13). Because the Lenders to each of the Whale Debtors filed a Section 507(b) Claims, the Allowance of all or any portion of those Section 507(b) Claims would result in the failure to confirm the Separate Plan for each Whale Debtor. In that case, because Mr. Su's alleged Causes of Action against the Whale Lenders were critical to his agreement to the settlement embodied in the Su Parties Settlement Plan, it appeared unlikely that the Su Parties Settlement Plan would achieve its intended results. Alternatively, even if the foregoing did not implicate the Su Parties Settlement Plan, the need to adjudicate Section 507(b) Claims could be cost-prohibitive, as discussed in Section 15.06(1) below.

(iii) The Debtors believed that the separate classification of Lender Deficiency Claims would likely have resulted in the acceptance of the Su Parties Settlement Plan by the Class of General Unsecured Creditors, and that such acceptance would satisfy the requirement for an accepting, Impaired Class. The Bankruptcy Court's requirement that the two Classes be combined for the purposes of counting votes means that it is now highly unlikely the combined Classes under the Su Parties Settlement Plan would satisfy this requirement for all Debtors.

(iv) As noted in Section 3.16(1)(ii) above, the Debtors believed that the separate Class of combined Non-Debtor Affiliate Claims and Subordinated Non-Debtor Affiliate Claims could also have satisfied the requirement for an accepting, Impaired Class, although the issue is not free from doubt. Further, while the Committee's pending objection to those Claims (see ECF 2727) raises substantial issues, the Committee was prepared to include the Claims in the settlement with Mr. Su. However, because various Lenders have now filed their own Non-Debtor Affiliate Claim Objections, the Lenders are entitled to adjudication of their objections regardless of the Committee's agreement to settle its objection. [update status].

(v) It is also apparent that the Su Parties themselves effectively abandoned the Su Parties Settlement Plan. In the *Objection of Hsin Chi Su and F3 Capital to Approval of Debtors' Omnibus Disclosure Statement for (I) Su Parties Settlement Plan and (II) Lender Settlement Plan* (ECF 2839), Mr. Su objects strenuously to the separate Classes in the Plan, yet the Class structure is identical to what Mr. Su agreed to in the Su Parties Settlement Plan. He also objects to other provisions that are similar to the provisions in the Su Parties Settlement Plan. By arguing that the Lender Settlement Plan is "patently unconfirmable" based on those provisions, he is inevitably conceding that, if his arguments were to be sustained, the Su Parties Settlement Plan was also unconfirmable and, therefore, he abandoned it. (As an aside and as discussed elsewhere, the Debtors note that the Plan addresses the deficiencies that invalidated the Su Parties Settlement Plan and, therefore, Mr. Su's objections fail. For example, separate classification under the Plan is discussed in Section 7.14 below.)

(vi) Each of the above considerations, by itself, did not ensure that the Su Parties Settlement Plan would not be confirmable, because the Debtors had counter-arguments and it is possible that the Bankruptcy Court could have ruled in favor of the Debtors on each issue. However, the Debtors and the Committee also needed to consider the magnitude of the Estate Professional Fees that would have been incurred in defending against the Lenders' objections.

(vii) If the Debtors were to proceed with both the Su Parties Settlement Plan and the Lender Settlement Plan, the Debtors would have been faced both with the Lenders' objections to the Su Parties Settlement Plan and the Su Parties' objections to the Lender Settlement Plan, as foreshadowed by their August 25, 2017 objections to the prior version of this Disclosure Statement. Addressing both sets of objections at the Disclosure Statement hearing and, potentially, the Confirmation Hearing, would result in a substantial drain on the Debtors' limited remaining Cash resources.

(viii) Given the substantially changed circumstances from when the Su Parties Settlement Plan was agreed to, and taking into account all of the considerations in this Section 3.16 and applying a cost-benefit analysis and a fiduciary duty analysis, the Debtors and the Committee concluded that proceeding with the Su Parties Settlement Plan would not be a prudent use of the Debtors' limited Cash resources or consistent with the Debtors' fiduciary duties. This would be true even if the Debtors, the Committee, and the Lenders had not reached agreement on their own settlement plan (meaning the Plan accompanying this Disclosure Statement). As a result, but for the agreement with the Lenders resulting in

the Lender Settlement Plan, it is likely that the Debtors and the Committee would have consented to the US Trustee Motion to Convert rather than incur the substantial expense and uncertainty of continuing to pursue the Su Parties Settlement Plan.

Section 3.17 The Lender Settlement Plan

As a result of the Bankruptcy Court's comments on June 13, 2017 as discussed in Section 3.16(1) above, the Debtors approached the Lenders and the Committee as to a potential settlement that could lead to an alternative plan. The parties reached agreement, and the Plan encompasses the agreement they reached. In an effort to make the Plan fully consensual, the Plan incorporates a proposed settlement with Mr. Su (the "Proposed Su Parties Settlement') that provides the same $1,000,000 to the Su Parties that had been included in the Su Parties Settlement Plan. If the Su Parties do not accept the Proposed Su Parties Settlement, there will be considerable Estate Professional Fees incurred in litigating the confirmability of the Plan with the Su Parties. However, in the Debtors' view, such Estate Professional Fees will be materially lower than would have been incurred in litigating the Su Parties Settlement Plan with the Lenders as discussed in Section 3.16(2)(v) above. The Debtors also believe that, more likely than not, the Lender Settlement Plan is confirmable even if the Su Parties do object. Taking into account the likely lower expense and likely greater prospects for Confirmation, the Debtors have concluded that proceeding with the Plan will, if the Plan is confirmed, result in the same or better recoveries (depending on the Debtor involved) than would be received by creditors in a Chapter 7.

Section 3.18 The Debtors and the Plan Administrator

The Debtors are the debtors and debtors-in-possession in the Chapter 11 Cases and the Designee has sole authority with respect to the management of the Debtors. The Designee's appointment with respect to the Debtors will terminate as of the Effective Date. After the Effective Date, the Plan Administrator will succeed the Designee as administrators of the Debtors after the Effective Date, and will be the appointed representative(s) of the estates pursuant to Bankruptcy Code §§ 1123(b) and 1129(a)(5). The role, responsibilities, and indemnification of the Plan Administrator are summarized in Section 9.02(4) below.

Section 3.19 Mr. Su's Views

(1) Debtor Causes of Action. Mr. Su believes that the Debtors have or may have various Causes of Action against various Lenders, Estate Professionals, ship brokers, bidders, purchasers, charterers, insurers, managers, and other Persons. Mr. Su asserts that the Causes of Action related to various activities both before and after the Petition Date, depending on the Person involved. The questioned activities include the administration of Lender Facilities; the performance by the Debtors' Estate Professionals of their Estate Professional services to the Debtors; compliance with applicable laws, rules and regulations; the management of the Vessels by third parties; the arrests of various of the Vessels; the sales of the Vessels; and the performance of various other contractual requirements. In part B of Exhibit C to an earlier disclosure statement (ECF 2718) that is no longer being proposed, Mr. Su described the alleged Causes of Action in detail and believes that holders of Claims and Interests should understand such alleged Causes of Action fully before deciding whether to accept the Plan. If any holders of Claims or Interests would like a copy of that exhibit, they can request same in an email to Bracewell.

(2) The Su Letter. In connection with the earlier disclosure statement filed at ECF, Mr. Su filed a letter with the Bankruptcy Court at ECF 2738. The letter provided comments as to many of Mr. Su's allegations, and also made certain other allegations. In the *Case Management Order* at ECF 2749, the Bankruptcy Court concluded that the letter was inappropriate for inclusion in the materials to be distributed to holders of Claims and Interests. The Bankruptcy Court permitted Mr. Su to file a revised letter that did "not contain statements that, if made by the Debtors, would subject the Debtors to claims for libel." ECF 2749 at ¶ 9. Mr. Su filed a *Notice* at ECF 2795 informing the Bankruptcy Court that, "Mr. Su has elected not to submit a revise letter given the subsequent changes in the case, the pending motions to convert, and the competing plans." If any holders of Claims or Interests would like a copy of the letter that Mr. Su filed, they can request same in an email to Bracewell.

(3) Debtors' Views. With respect to the views of Mr. Su summarized or referred to in Section 3.19(1) above and Section 3.19(2) above, the Debtors do not believe and cannot assert in good faith that the alleged Causes of Action encompassed by such views have any merit or value to the Debtors' estates or to holders of Claims and Interests. For example, Mr. Su's assertions as to all of the Debtors, Lenders, Estate Professionals, brokers, bidders, and other third parties involved in the sales processes for the Whale Debtors have, in the Debtors' view, already been rejected by the Bankruptcy Court and are baseless in any event. See discussion of the sales processes at Section 3.09(2) above The Debtors have also done an appropriate review of the Mr. Su's allegations against the Lenders as they relate to the Chapter 11 Cases and have concluded that such allegations have no merit, as well as many of them being barred by res judicata decisions by the Bankruptcy Court, by jurisdictional issues, and by applicable statutes of limitation. The Debtors have also been informed by various of the potential defendants with respect to the alleged Causes of Action that they also do not believe that such alleged Causes of Action have any merit and they will vigorously defend against any such allegations. In consideration of the limited Cash resources remaining in the estates and the undoubtedly high expense that would be involved in involved in litigation Mr. Su's alleged Causes of Action, the Debtors believe that abandoning the Lender Settlement in order to preserve such alleged Causes of Action is not appropriate based on a cost-benefit analysis, particularly when compared to the savings in fees and expenses as a result of continuing with the Lender Settlement.

(4) Estate Professionals. The Debtors note in particular that the Su Parties have repeatedly objected to the purported releases of Estate Professionals under the Lender Settlement Plan. *See*, *e.g.*, the Su Affiliates' pleading at ECF 2833, which asserts 3 times that, under the prior version of the Lender Settlement Plan (ECF 2768), "no claims have been preserved against the Debtors' professionals."

(i) Objections with Respect to Estate Professional Fees Are Preserved Under Applicable Law. Pursuant to the Plan, as in any Chapter 11 Cases, the Estate Professionals are required to final fee applications. Pursuant to controlling authority the right to object to final fee applications, including the right to assert Causes of Action of any nature against the Estate Professionals such as those asserted by Mr. Su, are fully available to all parties-in-interest. *See In re Intelogic Trace, Inc.*, 200 F.3d 382 (5th Cir. 2000) (state law Causes of Action can be included in objections to final fee applications, including allegations of (1) violation of the duty to exercise ordinary care and diligence; (2) negligence; (3) gross negligence; (4) professional negligence; (5) breach of warranty; (6) breach of contract;

and (7) deceptive trade practices); *see also In re Frazin*, 732 F.3d 313 (5th Cir. 2013) (same as to state law Causes of Action for malpractice and breach of fiduciary duty, and the Bankruptcy Court has jurisdiction to adjudicate same).

(ii) The Prior Lender Settlement Plan Preserved Claims Against Estate Professionals. The Lender Settlement Plan at ECF 2768 did not, in fact, provide a release to Estate Professionals; it only provided permissible releases to the Fiduciary Release Persons (the Designee, the Examiner, and the Committee members). *See* ECF 2768 at § 10.03. Although claims against Estate Professionals are preserved as a matter of law in connection with final fee applications, the ability to object to final fee applications of the Estate Professionals, which includes the ability to include in the object any alleged Causes of Action, was made explicit in the prior Lender Settlement Plan. *See* ECF 2768 at § 13.04(3).

(iii) The Current Lender Settlement Plan Preserves Claims Against Estate Professionals. Again, the current Plan only provides releases by the Debtors of the Fiduciary Release Persons, not Estate Professionals. *See* Plan § 10.03. Again, although automatically preserved at law, the ability to object to final fee applications of the Estate Professionals, which includes the ability to include in the objection any alleged Causes of Action, is made explicit in the current Plan. *See* Plan § 13.04(2). Further, although automatically preserved at law and made explicit in Plan § 13.04(2), the current Plan also makes explicit that any Causes of Action against Estate Professionals are fully preserved. *See* Plan § 6.08(2). Further, the relevant bar date language in Plan § 13.04 is identical to what the Su Parties already agreed to in the Su Parties Settlement Plan, to remove any final doubt that the language is appropriate.

(5) Direct Causes of Action. Mr. Su contends that he and/or his Affiliates have or may have direct Causes of Action against one or more Persons involved in the Chapter 11 Cases, including the Su Parties Claims Against Lenders and certain of the Su Parties Claims Against Debtors, that are not property of the Debtors' estates or derivative of the Debtors' rights and, therefore, belong personally to Mr. Su and/or his Affiliates. Without limiting the foregoing, and with respect to the patent matters discussed in Section 3.14 above, Mr. Su contends that he has other patents or pending patents that may or have been granted since the sale of the Vessels that could give rise to direct Causes of Action against various Persons. The Debtors express no view as to the views of Mr. Su summarized in Section 3.19(3) above. because such Causes of Action assert direct Causes of Action that are not assertible by the Debtors and would not result in any recoveries by the Debtors, even if successful.

ARTICLE IV
FUNDS AND CLAIMS RECONCILIATION; ESTIMATED RECOVERIES

Section 4.01 Introduction

The bulk of the Debtors' funds are held in the "345 Account," which is an account maintained at Whitney Bank in the name of TPR. The Debtors also hold funds in various Lender Accounts, and various other funds are held in the Escrow Account. The Lender Accounts and the Escrow Account are discussed in Section 18.05 below. Although the 345 Account and the Escrow

Account are single accounts, the funds are separately accounted for based on the sources and uses of the funds.

Section 4.02 DIP Facility

(1) Source. The DIP Facility was funded in the aggregate amount of $20,000,000, to which was added a forbearance fee of $200,000 as set forth in ECF 1170. The DIP Facility carried an interest rate of 9.00% per annum, with a LIBOR floor of 1.50%. After the DIP Facility was terminated, a default rate of 12.50% was applied starting on February 11, 2014. Total interest for the life of the DIP Facility was approximately $2,100,000. The DIP Facility also included the DIP Lender's Estate Professional fees, which aggregated approximately $2,200,000. The DIP Facility was funded into the 345 Account.

(2) Uses. The DIP Facility funds were used for two purposes. First, $600,000 was paid to the DIP Lender as commitment fees. Second, Intercompany Loans were made to individual Vessel Debtors as needed to fund operating expenses and their share of "overhead" expenses in the Chapter 11 Cases.

(3) Payment. Principal, interest, and fees in the aggregate amount of approximately $24,500,000 were paid on the DIP Facility from four sources: (i) approximately $2,950,000 in proceeds from the repayment of various Intercompany Loans and cash on hand; (ii) $1,750,000 of the proceeds from the sale of the *M/V A Duckling* (*see* ECF 1480); (iii) $900,000 from a postpetition financing to BMC (*see* ECF 1203); and (iv) approximately $18,900,000 from the sale of 11,282,771 of the F3-Vantage Shares (*see* ECF 1442).

Section 4.03 Intercompany Loans

(1) Concept. To the extent a Vessel Debtor other than BWAC (because it was not a borrower under the DIP Facility) had insufficient revenues from its Vessel to pay its expenses, the DIP Funds were treated as having been loaned to the Debtor at the same interest rate as the DIP Facility to cover the shortfall. The Debtors have described these as "synthetic" loans because, typically, they were reflected by accounting entries related to funding out of the 345 Account, rather than an actual flow of funds to a Vessel Debtor.

(2) Uses. The Intercompany Loan to each Debtor was calculated based on four categories of expenses. The first category was Vessel operating expenses to the extent of revenue shortfall, including the expense of releasing several of the Vessels from arrest. The second category was DIP Facility payments, including principal, interest, and fees (the second category does not apply to BWAC, because it was not a borrower under the DIP Facility). The third category was Estate Professional Fees for the Debtors and the Committee. The fourth category was US Trustee Fees.

(3) Net Effect. Some of the Vessel Debtors fully repaid their Intercompany Loans, while others have only been able to make partial or no payments. Those who have been or will be unable to pay in full (or at all) consist only of CHC (which can make a partial repayment after receiving a distribution on its Subordinated Debtor Affiliate Claims) and the Non-Cash Debtors. Accordingly, any remaining repayment obligations are uncollectable and have not been included

in the either Liquidation Analysis as receivables owing to TPR (all repayments were made into the 345 Account).

Section 4.04 Proofs of Claim

Proofs of Claims were filed against the Debtors in an aggregate amount in excess of $900 million. These include General Unsecured Claims; the Non-Debtor Affiliate Claims and Subordinated Non-Debtor Affiliate Claims discussed in Section 3.11 above; Lender Deficiency Claims (including Derivatives Claims), the AWAC Deficiency Claim and the GEC Deficiency Claim; and Claims under guarantees issued by a Debtor with respect to Claims asserted by another Debtor. As a result of the Committee's omnibus objection to Non-Debtor Affiliate Claims, the aggregate amount of such Claims was reduced by approximately $518 million.

Section 4.05 Claims Reconciliation

(1) Cash Debtors. The Debtors have engaged, and the Plan Administrator will continue to engage, in the reconciliation of Claims against the Cash Debtors. The Plan includes a Specific Bar Date by which the Plan Administrator will be required to assert any additional Claims objections.

(2) Non-Cash Debtors. The Non-Cash Debtors do not currently have any funds for distribution. As a result, other than with respect to various of the Non-Debtor Affiliate Claims, the Debtors have not engaged in, and the Plan Administrator will not engage in, Claims reconciliation as to the Non-Cash Debtors and there is no Specific Bar Date for objections to such Claims. However, if the Plan Administrator receives Cash after the Effective Date for distribution on behalf of the Non-Cash Debtors, the Plan Administrator will be entitled to engage in Claims reconciliation at such time.

Section 4.06 Estimated Recoveries

The Liquidation Analysis at Exhibit B provides an estimate of creditor recoveries (if any) under the Plan on a Debtor-by-Debtor basis. The Liquidation Analysis includes "Low" and "High" columns for each Debtor. Where these columns relate to the Proposed Su Parties Settlement, the "High" Column assumes that the Su Parties accept the Proposed Su Parties Settlement, while the "Low" column assumes that the Su Parties do not accept the Proposed Su Parties Settlement. Where those columns relate to the Lender Accounts and the Escrow Accounts, the "Low" column assumes the minimum amount recoverable from the Lender Accounts and the Escrow Account, while the "High" column assumes the maximum amount recoverable, in each case as reasonably estimated by the Debtors. Where those columns relate to the Non-Debtor Affiliate Claims and the Subordinated Non-Debtor Affiliate Claims, the "Low" column assumes that all such Claims are not Allowed, while the "High" column assumes that all such Claims are Allowed. [update status] HOLDERS OF CLAIMS ARE ENCOURAGED TO REVIEW THE DISCLAIMERS AND NOTES ACCOMPANYING THE LIQUIDATION ANALYSIS, WHICH INCLUDE IMPORTANT ASSUMPTIONS SUCH AS THE ASSUMPTION (TO BE CONSERVATIVE BUT NOT AS AN ADMISSION) THAT THERE WILL BE NO RECOVERIES FROM PRESERVED CAUSES OF ACTION.

ARTICLE V
EXPENSES AND UNCLASSIFIED CLAIMS

In accordance with Bankruptcy Code § 1123(a)(l), the following Expenses and Claims are not classified under the Plan and thus are excluded from the Classes of Claims and Interests designated below. These unclassified Expenses and Claims are the same under the Plan and are treated as follows:

Section 5.01 Administrative Expenses

As defined, "Administrative Expenses" do not include Estate Professional Fees, any of the Su Parties Claims Against Debtors, Section 507(b) Claims, or Indemnification Claims. The Debtors do not believe there are or will be any Allowed Administrative Expenses against any of the Debtors other than US Trustee Fees and any remaining pre-Effective Date fees and expenses of the Examiner. To the extent there are any Allowed Administrative Expense Claims, the Plan Administrator will pay such Allowed Administrative Expense Claims in full in Cash out of the Plan Account on the later of the Effective Date or the date on which such Administrative Expense Claim becomes Allowed.

Section 5.02 US Trustee Fees; Examiner Fees

On and after the Effective Date, US Trustee Fees for each Debtor will continue to be paid by the Plan Administrator until the closing of the Chapter 11 Case for such Debtor. As set forth in the Plan, the Examiner will be required to file a final fee application for Examiner fees and expenses incurred prior to the Effective Date. For Examiner fees and expenses incurred after the Effective Date, the Plan Administrator will pay such fees and expenses when due out of the Plan Account.

Section 5.03 Priority Tax Claims

The Debtors do not believe there are or will be any Allowed Priority Tax Claims against any of the Debtors. To the extent there are any Allowed Priority Tax Claims, the Plan Administrator will pay such Allowed Priority Tax Claims in full in Cash out of the Plan Account on the basis set forth in Bankruptcy Code § 1129(a)(9)(C) or as the holder of such Claim and the Plan Administrator otherwise agree.

Section 5.04 Estate Professional Fees

Estate Professional Fees, when and to the extent Allowed, will be paid in full out of the Plan Account. Accrued and estimated future Estate Professional Fees are included in the Liquidation Analyses. As discussed in Section 17.01(1) below, the Liquidation Analysis does not attempt to estimate the Estate Professional Fees that will be incurred if the Confirmation of the Plan if contested. As discussed in Section 17.01(4) below, the Liquidation Analysis also does not include potential litigation fees and expenses after the Effective Date.

Section 5.05 Other Priority Claims

The Debtors do not believe there are or will be any Allowed Other Priority Claims against

any of the Debtors. To the extent there are any Allowed Other Priority Claims, the Plan Administrator will pay such Allowed Other Priority Claims in full in Cash out of the Plan Account on the later of the Effective Date or the date on which such Other Priority Claim becomes Allowed.

Section 5.06 Indemnification Claims

The treatment of Indemnification Claims is discussed in Section 11.02(5) of the Plan.

ARTICLE VI
CLASSIFICATION OF CLAIMS AND INTERESTS

Section 6.01 Introduction

(1) In General. The categories of Claims and Interests set forth below classify Claims and Interests for all purposes, including for purposes of voting, confirmation, and distribution pursuant to the Plan and Bankruptcy Code §§ 1122 and 1123(a)(l).

(2) Methodology and Empty Classes. For purposes of consistency, there are five identical Classes for each Debtor. In some cases, however, a Class is an Empty Class. Empty Classes are disregarded for vote solicitation and Plan acceptance purposes.

Section 6.02 Summary of Classes

(1) Class 1. Class 1 for each Debtor consists of Allowed General Unsecured Claims and Allowed Non-Debtor Affiliate Claims. Each Class 1 Class is further designated with the acronym for the particular Debtor, for example, Class 1 for ADX is designated as Class 1ADX. There are no Empty Classes in Class 1.

(2) Class 2. Class 2 for each Debtor consists of Allowed Lender Deficiency Claims (including Derivatives Claims). Each Class 2 Class is further designated with the acronym for the particular Debtor, for example, Class 2 for ADX is designated as Class 2ADX. The AWAC Deficiency Claim is also included in Class 2AWAC, and the GEC Deficiency Claim is also included in Class 2GEC. Classes 2AHC, 2BHC, 2CHC, 2ALAC, 2FEI, and 2TPR are Empty Classes.

(3) Class 3. Class 3 for each Debtor consists of Allowed Subordinated Debtor Affiliate Claims, if any. Each Class 3 Class is further designated with the acronym for the particular Debtor, for example, Class 3 for BHC is designated as Class 3BHC. Classes 3AWAC, 3FEI, 3GEC, 3HWAC, 3TPR, and 3UDH are Empty Classes. The Plan treats all Claims by one Debtor against another Debtor as Subordinated Debtor Affiliate Claims, in order to maximize recoveries to third party unsecured creditors of the obligor Debtors.

(4) Class 4. Class 4 for each Debtor consists of Allowed Subordinated Non-Debtor Affiliate Claims, if any. Each Class 4 Class is further designated with the acronym for the particular Debtor, for example, Class 4 for AWAC is designated as Class 4AWAC. Class 4ADX, 4AHC, 4ALAC, 4BHC, 4FEI, 4RRL, 4TPR, and 4UDH are Empty Classes. The reason for treating these Claims as subordinated are discussed in Section 3.11(5) above. To the extent the Bankruptcy Court (i) Allows all or some of the Subordinated Non-Debtor Claims and (ii) does not agree that the

contractual subordination provisions should be forced, all Allowed Subordinated Unsecured Claims will be reclassified as Class 1 Claims and entitled to the same treatment as other Class 1 Claims.

(5) Class 5. Class 5 for each Debtor consists of Allowed Interests. Each Class 5 Class is further designated with the acronym for the particular Debtor, for example, Class 5 for ADX is designated as Class 5ADX.

(6) Voting. As set forth in Section 7.14 below, for the purposes of determining Plan acceptance, Class 1 and Class 2 will vote together, and Class 3 and Class 4 will vote together.

ARTICLE VII
TREATMENT OF CLAIMS AND INTERESTS

Section 7.01 Cash Management

(1) Effective Date Cash. All Effective Date Cash will be transferred out of the 345 Account to the Plan Account on the Effective Date, subject to the right of the Plan Administrator to convert and continue the 345 Account to the Plan Account.

(2) Post-Effective Date Cash. All Cash received as a result of the exercise by the Plan Administrator of its powers after the Effective Date will be deposited into the Plan Account.

Section 7.02 Three Different Distribution Waterfalls

(1) In General. Because the Plan is actually 21 Separate Plans, and because special provisions are needed for AHC and FEI as the funders of most of the Indemnification Claims and the Indemnification Reserve, and the funders of the Proposed Su Parties Settlement, if accepted, the Plan includes three different distribution waterfalls (the 'Distribution Waterfalls"). The Distribution Waterfalls are further complicated because of the need to provide separate priorities depending on whether the Su Parties accept or reject the Proposed Su Parties Settlement.

(2) Priority Classes Under All Three Distribution Waterfalls. The first, second, third, and fourth priorities under each Distribution Waterfall are for Expenses and Claims that are entitled to priority treatment under the Bankruptcy Code, including (i) US Trustee Fees; the payment (or reserve for payment of) expenses of the Plan Administrator and the Plan Account (including the fees and expenses of the Examiner); Allowed Estate Professional Fees; and Allowed Priority Tax Claims, if any.

Section 7.03 Cash Distributions Other Than FEI Net Cash and AHC Net Cash

(1) All Cash in the Plan Account from time to time attributable to a particular Debtor, other than the FEI Net Cash and the AHC Net Cash, will be applied by such Debtor as follows based on the Cash Debtors Pro Rata Shares:

(2) First, Second, Third and Fourth Priorities. See Section 7.02(2) above.

(3) Fifth Priority. With respect to ALAC only, if and only if the Su Parties do not accept the Proposed Su Parties Settlement, ALAC's portion of the Indemnification Reserve under Section 11.02(5)(iii)(a)(B) of the Plan. If the Su Parties accept the Proposed Su Parties Settlement, this "Fifth Priority" shall be disregarded.

(4) Sixth Priority. If and only if the Su Parties do not accept the Proposed Su Parties Settlement, the Allowed Amount (if any) of the F3 Capital ORS Claims Amount against the Debtor distributing the Cash. If the Su Parties accept the Proposed Su Parties Settlement, this "Sixth Priority" will be disregarded.

(5) Seventh Priority Allowed Pari Passu Unsecured Claims, subject to (i) the waiver of the right to receive Cash distributions on the Lender Deficiency Claims embodied in the Lender Settlement, and (ii) the special treatment for the AWAC Deficiency Claim and the GEC Deficiency Claim set forth in Section 11.02(6) of the plan; provided that if the Su Parties accept the Proposed Su Parties Settlement, Allowed Non-Debtor Affiliate Claims will not be included because they will be encompassed in the Proposed Su Parties Settlement.

(6) Eighth Priority. On a pro rata basis, (i) Allowed Subordinated Debtor Affiliate Claims and (ii) if and only if the Su Parties do not accept the Proposed Su Parties Settlement, Allowed Subordinated Non-Debtor Affiliate Claims.

(7) Ninth Priority, If and only if the Su Parties do not accept the Proposed Su Parties Settlement, Allowed Interests.

Section 7.04 Cash Distributions of AHC Net Cash

All Cash in the Plan Account from time to time attributable to AHC will be applied by AHC as follows based on the Cash Debtors Pro Rata Shares:

(1) First, Second, Third and Fourth Priorities. See Section 7.02(2) above.

(2) Fifth Priority. If and only if the Su Parties accept the Proposed Su Parties Settlement Plan, the amounts required to be paid by AHC on Indemnification Claims under Section 11.02(5)(ii) of the Plan. If this Su Parties do not accept the Proposed Su Parties Settlement, this "Fifth Priority" will be disregarded.

(3) Sixth Priority. If and only if the Su Parties accept the Proposed Su Parties Settlement, the Proposed Su Parties Settlement Amount in an amount equal to the lesser of:

(i) $500,000, and

(ii) The sum of:

(a) the actual "Total Assets and Distributions Available for Distribution" for AHC, with the estimate of such amount being set forth in the corresponding line item on the Liquidation Analysis, minus

(b) the Allowed Amount of Pari Passu Unsecured Claims and

Subordinated Debtor Affiliate Claims against AHC.

If the Su Parties do not accept the Proposed Su Parties Settlement, this "Sixth Priority" will be disregarded.

(4) Seventh Priority. If and only if the Su Parties do not accept the Proposed Su Parties Settlement, AHC's portion of the Indemnification Reserve under Section 11.02(5)(iii)(a)(A) of the Plan. If the Su Parties accept the Proposed Su Parties Settlement, this "Seventh Priority" will be disregarded.

(5) Eighth Priority. If and only if the Su Parties do not accept the Proposed Su Parties Settlement, the Allowed Amount (if any) of the F3 Capital ORS Claims Amount against AHC. If the Su Parties accept the Proposed Su Parties Settlement, this "Eighth Priority" will be disregarded.

(6) Ninth Priority. Allowed Pari Passu Unsecured Claims; provided that if the Su Parties accept the Proposed Su Parties Settlement, Allowed Non-Debtor Affiliate Claims will not be included because they will be encompassed in the Proposed Su Parties Settlement.

(7) Tenth Priority. If and only if the Su Parties do not accept the Proposed Su Parties Settlement, Allowed Interests.

Section 7.05 Cash Distributions of FEI Net Cash

All FEI Net Cash in the Plan Account from time to time attributable to FEI will be applied by FEI as follows based on the Cash Debtors Pro Rata Shares:

(1) First, Second, Third and Fourth Priorities. See Section 7.02(2) above.

(2) Fifth Priority. If and only if the Su Parties accept the Proposed Su Parties Settlement, the Proposed Su Parties Settlement Amount in an amount equal to the sum of:

(i) $1,000,000, minus

(ii) The amount of the Proposed Su Parties Settlement Amount payable by AHC pursuant to the "Sixth Priority" described in Section 7.04(3) above.

If the Su Parties do not accept the Proposed Su Parties Settlement, this "Fifth Priority" will be disregarded.

(3) Sixth Priority. If and only if the Su Parties do not accept the Proposed Su Parties Settlement, FEI's portion of the Indemnification Reserve under Section 11.02(5)(iii)(a)(C) of the Plan.

(4) Seventh Priority. If and only if the Su Parties do not accept the Proposed Su Parties Settlement, the Allowed Amount (if any) of the F3 Capital ORS Claims Amount against FEI. If the Su Parties accept the Proposed Su Parties Settlement, this "Seventh Priority" will be disregarded.

(5) Eighth Priority. Allowed Pari Passu Unsecured Claims; provided that if the Su Parties accept the Proposed Su Parties Settlement, Allowed Non-Debtor Affiliate Claims will not be included because they will be encompassed in the Proposed Su Parties Settlement.

(6) Ninth Priority. If and only if the Su Parties do not accept the Proposed Su Parties Settlement, Allowed Interests.

(7) Su FEI Claims. This Section 7.05(7) applies if and only if the Su Parties do not accept the Proposed Su Parties Settlement, otherwise this Section 7.05(7) will be disregarded. Notwithstanding anything in this Section 7.05 to the contrary, prior to making any distributions under Section 11.02(5)(iii)(a)(C) of the Plan and this Section 7.05 except for the payment if US Trustee Fees, the Su FEI Claims must first be resolved, whether by District Court ruling on the Su FEI Claims, Bankruptcy Court approval of a settlement, Bankruptcy Court adjudication, or Bankruptcy Court estimation of the Su FEI Claims, in each case unless and for so long as there is an appeal and a stay of distributions under this Section 7.05 or a stay of the implementation of this Plan in general. In the event such un-stayed approved settlement, adjudication or estimation results in Allowed Su FEI Claims (either finally if settled or adjudicated, or for purposes of distribution if estimated), the priorities under this Section 7.05 will be adjusted to include the priority approved or determined by the District Court or the Bankruptcy Court with respect to such Allowed Su FEI Claims.

Section 7.06 Distribution of Proposed Su Parties Settlement Amount

If and only if the Su Parties accept the Proposed Su Parties Settlement, (i) the Plan Administrator's sole responsibility with respect to the distribution of the Proposed Su Parties Settlement Amount is to deliver such Cash to or at the direction of Mr. Su and/or his designee(s), as the distribution agent for the Su Parties, and (ii) $500,000 of the Proposed Su Parties Settlement Amount will be distributed to the Hoover Slovacek LLP trust account for fees and expenses incurred prior to Hoover Slovacek LLP's withdrawal as counsel to Mr. Su and F3 Capital..

Section 7.07 Allocations

(1) In General. The Chapter 11 Cases have not been substantively consolidated. Therefore, the Debtors have accounted for assets and liabilities on a Debtor-by-Debtor basis. At the same time, the Debtors (other than BWAC) were jointly and severally liable on the DIP Facility, and many Expenses (such as DIP Facility repayment and Estate Professional Fees) were incurred for the benefit of the Debtors generally. The remainder of this Section 7.07 describes how the Plan allocates Expenses and how the Plan Administrator will be allocating any recoveries received after the Effective Date.

(2) Expenses. The Debtors have paid various "overhead" expenses from time to time during the Chapter 11 Cases. These include, for example, repayment of the DIP Facility and payment of Estate Professional Fees that have been Allowed on an interim basis. Expenses attributable to a particular Debtor, such as fees incurred by ALAC in negotiating and consummating the settlements that are described in Section 3.09(8) above, are allocated to that Debtor. All other expenses are allocated to the Cash Debtors based on their respective Cash Debtors Pro Rata Shares.

(3) Recoveries. If the Plan Administrator recovers Cash incremental to the Effective Date Cash and Cash dividends on the Subordinated Debtor Affiliate Claims against AHC, such Cash is either allocated (i) to the specific Debtor entitled to the recovery, or (ii) if the incremental Cash derives from a general recovery (meaning a recovery that benefits the estates generally), first to the Cash Debtors based on their Cash Debtors Pro Rata Shares and, thereafter, to all of the Debtors that have not theretofore paid (or have sufficient Cash to reserve payment for) all Allowed Pari Passu Unsecured Claims. For the avoidance of doubt, all recoveries out of the Lender Accounts and Escrow Account pursuant to Section 18.05 below are treated as "general recoveries" as a result of Intercompany Loan repayments.

Section 7.08 Distribution and Allocation Determinations

The Plan Administrator will determine in good faith, in accordance with the Distribution Waterfalls and Section 7.07 above, all distributions and allocations to be made pursuant to the Plan. The Plan Administrator will be entitled but will not be required to seek Bankruptcy Court approval of any such distributions and/or allocations after notice and a hearing, which approval (in the case of allocations) can be included in the orders that grant the recoveries. In any event, the Plan Administrator will include in each quarterly report that he is required to file pursuant to the Plan reasonable detail as to all distributions and allocations made during such quarter.

Section 7.09 Class 1—General Unsecured Claims and Non-Debtor Affiliate Claims

(1) Impairment and Voting. Classes 1AWAC, 1BWAC, 1CWAC, 1DWAC, 1EWAC, 1GWAC, 1HWAC, 1ADX, 1FEI, 1ALAC, 1CLAC, 1DLAC, 1AHC, 1BHC, 1CHC, 1BMC, 1NFI, 1RRL, 1UDH, 1TPR, and 1GEC are Impaired under this Plan. Each holder of an Allowed Class 1 Claim is entitled to vote to accept or reject this Plan.

(2) Distribution. All Allowed Class 1 Claims will receive one or more distributions from the Plan Account from time to time pursuant to the applicable priority for Pari Passu Unsecured Claims set forth in the Distribution Waterfalls, depending on the Debtor making the distributions; provided that if the Su Parties accept the Proposed Su Parties Settlement, Allowed Non-Debtor Affiliate Claims will not receive a distribution in Class 1 because they will be encompassed in the Proposed Su Parties Settlement.

Section 7.10 Class 2—Lender Deficiency Claims, AWAC Deficiency Claim, and GEC Deficiency Claim

(1) Impairment and Voting. Classes 2AWAC, 2BWAC, 2CWAC, 2DWAC, 2GWAC, 2HWAC, 2CLAC, 2DLAC, 2BMC, 2UDH, and 2GEC are Impaired under this Plan. Each holder of an Allowed Class 2 Claim is entitled to vote to accept or reject this Plan.

(2) Distribution: Lender Deficiency Claims. As a result of the Lender Settlement, all Allowed Class 2 Claims will receive the benefits of the Lender Settlement in lieu of and as a waiver of any Cash distributions they would otherwise receive absent the Lender Settlement.

(3) Distribution: AWAC and GEC Deficiency Claim. As a result of the Lender Settlement and as provided in Section 11.02(6) of the Plan, the Allowed AWAC Deficiency Claim in Class 2AWAC and the Allowed GEC Deficiency Claim in Class 2GEC will receive one or more

distributions from the Plan Account from time to time pursuant to Section 7.03(5) above; provided that, in the case of Class 2GEC, Section 11.02(6)(iii)(e) of the Plan will also apply.

Section 7.11 Class 3—Subordinated Debtor Affiliate Claims

(1) Impairment and Voting. Classes 3ADX, 3AHC, 3ALAC, 3BMC, 3BHC, 3CHC, 3CLAC, 3CWAC, 3DLAC, 3DWAC, 3EWAC, 3GWAC, 3RRL, and 3NFI are Impaired under this Plan. Each holder of an Allowed Class 3 Claim is entitled to vote to accept or reject this Plan.

(2) Distribution. Allowed Class 3 Claims will receive one or more distributions from the Plan Account from time to time pursuant to Section 7.03(6) above.

Section 7.12 Class 4—Subordinated Non-Debtor Affiliate Claims

(1) Impairment and Voting. Classes 4AWAC, 4BMC, 4BWAC, 4CHC, 4CLAC, 4CWAC, 4DLAC, 4DWAC, 4EWAC, 4GWAC, 4HWAC, and 4NFI are Impaired under this Plan. Each holder of an Allowed Class 4 Claim is entitled to vote to accept or reject the Plan.

(2) Distribution if Su Parties Accept the Proposed Su Parties Settlement. If the Su Parties accept the Proposed Su Parties Settlement and in lieu of any other recovery, the holders of Class 4 Claims will receive their share of the Proposed Su Parties Settlement Amount.

(3) Distribution if Su Parties Do Not Accept the Proposes Proposed Su Parties Settlement. If the Su Parties do not accept the Proposed Su Parties Settlement, the holders of Class 4 Claims will receive one or more distributions pursuant to Section 7.03(6) above.

(4) If Allowed But Not Subordinated. As noted in Section 6.02(4) above, if there are any Allowed Subordinated Non-Debtor Affiliate Claims but the Bankruptcy Court does not enforce the contractual subordination provisions, all Allowed Subordinated Unsecured Claims will be reclassified as Class 1 Claims and entitled to the same treatment as other Class 1 Claim. [update status]

Section 7.13 Class 5—Interests

(1) Impairment and Voting. Classes 5AWAC, 5BWAC, 5CWAC, 5DWAC, 5EWAC, 5GWAC, 5HWAC, 5ADX, 5FEI, 5ALAC, 5CLAC, 5DLAC, 5AHC, 5BHC, 5CHC, 5BMC, 5NFI, 5RRL, 5GEC, and 5UDH are Impaired under this Plan. Each holder of an Allowed Class 5 Interest is entitled to vote to accept or reject this Plan.

(2) Distribution if Su Parties Accept the Proposed Su Parties Settlement. If the Su Parties accept the Proposed Su Parties Settlement and in lieu of any other recovery, the holders of Allowed Class 5 Interests will receive their share of the Proposed Su Parties Settlement Amount.

(3) Distribution if Su Parties Do Not Accept the Proposed Su Parties Settlement. If the Su Parties do not accept the Proposed Su Parties Settlement, the holders of Allowed Class 5 Interests will receive one or more distributions from the Plan Account from time to time pursuant to the applicable priority for Allowed Interests in the Distribution Waterfalls, depending on the Debtor making the distributions.

Section 7.14 Counting of Votes to Determine Class Acceptance

(1) Classes 1 and 2. The separation of Class 1 and Class 2 is for convenience only, and Class 1 and Class 2 for each Debtor will be treated as a single Class for the purposes of tallying all Class 1 and Class 2 Ballots and determining whether, together as a single voting Class, Class 1 and Class 2 have accepted the Plan.

(2) Classes 3 and 4. The separation of Class 3 and Class 4 is for convenience only, and Class 3 and Class 4 for each Debtor will be treated as a single Class for the purposes of tallying all Class 3 and Class 4 Ballots and determining whether, together as a single voting Class, Class 3 and Class 4 have accepted the Plan.

(3) Appropriateness of Classifications. As noted in Section 3.16(2)(v) above, Mr. Su asserts that it is impermissible to separate classify Classes 1 and 2, and Classes 3 and 4. Mr. Su argues that courts frequently reject separate classifications if the intention is to manufacture an impaired accepting class. In fact, the Bankruptcy Court already acknowledged this in its *Case Management Order* (ECF 2749), but the Court did not require that the Debtors place General Unsecured Claims and Lender Deficiency Claims into a single class for all purposes, which is what Mr. Su's Objection asserts must be done. Instead, the Bankruptcy Court required that the votes of the two separate Classes should be combined only for voting purposes. As can be seen in this Section 7.14, by combining Classes 1 and 2 for voting purposes, and Classes 3 and 4 for voting purposes, the Plan does exactly what the Bankruptcy Court said it should do.

ARTICLE VIII
PROCEDURES FOR SOLICITATION OF VOTES

The following procedures describe how the Debtors will be soliciting votes on the Plan.

Section 8.01 Solicitation Package and Voting Instructions

(1) Solicitation Package. The "Solicitation Package" with respect to the Debtors' solicitation of votes on the Plan consists of: (i) this Disclosure Statement; (ii) the Plan; (iii) the notice of, among other things, the time for submitting Ballots to accept or reject either or the Plan, the date, time, and place of the hearing to consider Confirmation of the Plan and related matters, and the time for filing objections to Confirmation of the Plan; and (iv) if applicable, a Ballot or Ballots (and return envelope(s)) that you may use in voting to accept or to reject either or the Plan. After carefully reviewing the Solicitation Package, including the detailed instructions accompanying your Ballot(s), please indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on your Ballot(s).

(2) Ballot Recipients. Only holders of Claims and Interests eligible to vote in favor of or against the Plan will receive a Ballot(s) as part of their Solicitation Package. Such holders will only receive a Ballot in respect of each Class in which such holder holds a Claim or Interest. The omnibus Ballot for each Subordinated Debtor Affiliate Claim, Ugly Duckling Holding Corporation, and New Flagship Investment Co., Ltd. will be sent to the Designee. The omnibus Ballot for each Non-Debtor Affiliate Claim, Subordinated Debtor Affiliate Claim, Interest held by a Non-Debtor Affiliate, will be sent to counsel for Mr. Su. If you did not receive a Ballot and

believe that you should have, please contact the Voting Agent at the address or telephone number set forth in Section 8.02 below.

(3) Ballot Coding. Each Ballot has been coded to reflect the Class of Claims or Interests it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot or Ballots sent to you.

(4) Questions. If you have any questions about the procedure for voting your eligible Claim or with respect to the Solicitation Package that you have received, please contact the Voting Agent (as identified in Section 8.02 below). If any holder of a Claim or Interest, or other party-in-interest, desires to review the Ballots sent to the Voting Agent or to confirm the Voting Agent's tabulation methodology and results, please contact the Voting Agent. Any Ballots sent to the Bankruptcy Court or the Debtors' former claims agent will not be counted.

(5) Voting Deadline. In order for your vote on the Plan to be counted, your vote must be actually received by the Voting Agent on or before 4:00 p.m., prevailing Central Time, on [●], 2017. Except to the extent allowed by the Bankruptcy Court or determined otherwise by the Debtors in accordance with the Plan and the tabulation procedures, Ballots received after the Plan voting deadline will not be accepted or used in connection with the Debtors' request for Confirmation of either or the Plan or any modification thereof. Upon checking the appropriate box on the Ballot, you will be permitted to submit your vote as a PDF attachment to an email sent to the Voting Agent. Doing so will constitute authorization to the Voting Agreement to accept and rely on the emailed Ballot as an original Ballot for all purposes.

Section 8.02 Voting Agent

The Voting Agent for the submission of Ballots is the following. Any Ballots sent to the Bankruptcy Court or the Debtors' former claims agent will not be counted.

Evan D. Flaschen
Bracewell LLP
CityPlace I, 34th Floor
Hartford, Connecticut 06103
USA
Evan.Flaschen@bracewell.com
Phone: +1 (860) 760-6789

Section 8.03 Agreements Upon Furnishing Ballots

The delivery of an accepting Ballot to the Voting Agent by a holder of a Claim pursuant to one of the procedures set forth above will constitute the agreement of such holder to accept (i) all of the terms of, and conditions to, the solicitation and voting procedures, and (ii) the terms of the Separate Plan related to the Ballot; provided, however, all parties in interest retain their right to object to Confirmation of the Plan pursuant to Bankruptcy Code § 1128.

ARTICLE IX
MEANS OF IMPLEMENTATION OF THE PLAN

Section 9.01 Cancellation of Securities and Agreements; Continuing Security Interests

On the Effective Date, except to the extent provided in the Plan with respect to Lender security interests, all instruments, certificates, and other documents evidencing Claims against or Interests in the Debtors in effect prior to the Effective Date will be cancelled, and the obligations of the Debtors thereunder, or in any way related thereto, will be discharged.

Section 9.02 Post-Effective Date Debtors and Administration

(1) Nature. The Debtors will continue as debtors-in-possession after the Effective Date and will continue to have all of the rights, powers, and duties set forth in Bankruptcy Code § 1107(a), including the legal and corporate standing and right to commence litigation in the name of the Debtors in the Bankruptcy Court and any other relevant court. The Debtors will be authorized to operate on the basis set forth below and will remain subject to the jurisdiction of the Bankruptcy Court until their respective Chapter 11 Cases are closed. All references in this Disclosure Statement and the Plan to "the Debtors" after the Effective Date will be deemed to be references to "the Debtors as administered by the Plan Administrator."

(2) Vesting. Except as otherwise provided in this Plan or the Confirmation Order and notwithstanding anything in Bankruptcy Code § 1141(b) or other applicable law to the contrary, all assets, Preserved Causes of Action, liabilities, rights, and responsibilities of the Debtors will remain vested in the Debtors as the continuing debtors-in-possession after the Effective Date.

(3) Pleadings and Other Filings. The Lead Case will remain as the Lead Case after the Effective Date. All pleadings and other filings after the Effective Date will be in the name of the relevant Debtor(s) for whose estate the pleading is filed.

(4) Plan Administrator; Plan Administration Agreement. On the Effective Date, the Plan Administrator will replace the Designee as the representative of the Debtors' estates pursuant to Bankruptcy Code §§ 1123(b) and 1129(a)(5). The role, rights, and responsibilities of the Plan Administrator are set forth in the Plan. More detail about the Plan Administrator's role is also set forth in the Plan Administration Agreement attached as Exhibit D. In the event of an irreconcilable conflict between the Plan Administration Agreement and a Plan, the Plan Administration Agreement will control in all respects.

(5) Plan Administrator and Adviser Fees and Expenses. The Plan Administrator and any professionals and other advisers retained by it will bill for their services based on their customary hourly rates and terms, including reimbursement for their reasonable out-of-pocket expenses, without any incentive, bonus, success, percentage, or other incremental compensation; provided that this will not preclude the Plan Administrator from engaging counsel on a full or partial contingency fee basis in his or her discretion. The initial Plan Administrator's current customary hourly rate is $450 (subject to annual adjustments). The Plan Administrator's fees and expenses will be subject to review by the Examiner prior to payment.

(6) Potential Employment of Estate Professionals. Subject to the entry into of new engagement letters, the Plan Administrator will be entitled but not required to retain one or more of the Estate Professionals after the Effective Date on the basis and subject to the exceptions set forth in Section 6.02(6) if the Plan.

Section 9.03 Resignation and Removal of the Plan Administrator

The Plan provide mechanisms for the resignation or the removal of the Plan Administrator.

Section 9.04 Insurance for the Plan Administrator

The Plan Administrator will be entitled to obtain appropriate insurance for the performance of her/his responsibilities, such as D&O and/or E&O insurance.

Section 9.05 Limitation of Liability, Indemnification, and Injunction with Respect to Plan Administrator

The Plan Administrator will be entitled to the limitation of liability, indemnification, and injunction provisions set forth in the Plan and summarized in Section 14.06 below.

Section 9.06 Pending Bankruptcy Court Matters

Except to the extent included in the Preserved Causes of Action, any objection, motion or other pleading seeking relief against any Person that has been filed in the Bankruptcy Court by any Person and has not been either adjudicated or withdrawn with prejudice prior to the Effective will be dismissed with prejudice, in each case as of the Effective Date.

Section 9.07 Executory Contracts and Unexpired Leases

The Debtors do not believe they have any executory contracts or unexpired leases that need to be assumed or rejected. To the extent there are any such contracts or leases, they will be deemed rejected as of the Effective Date.

Section 9.08 Nonconsensual Separate Plans and Confirmation

If any Separate Plan for which Ballots are solicited does not include at least one Impaired Class that has accepted such Separate Plan, the Debtors, in consultation with the Committee, will move to dismiss or convert the Chapter 11 Case for the Debtor under such Separate Plan or will request such other relief as may be appropriate under the circumstances, such as continuation of the Chapter 11 Case. If there is an accepting Impaired Class but one or more non-accepting classes, the Debtors reserve the right, in consultation with the Committee, to seek Confirmation of the relevant Separate Plan(s) pursuant to Bankruptcy Code § 1129(b).

Section 9.09 Setoffs

The Plan permits the Debtors to set off distributions on any Allowed Claim, Interest or Expense against any Causes of Action of any nature (including Preserved Causes of Action) that the Debtors may hold against the holder of such Allowed Claim, Interest or Expense.

Section 9.10 US Trustee Fees

US Trustee Fees for each Debtor will continue to be paid by the Plan Administrator until the closing of the Chapter 11 Case for such Debtor.

ARTICLE X
PRESERVATION OF CAUSES OF ACTION

Section 10.01 Preserved Causes of Action Under the Plan

IMPORTANT NOTICE. IN CONSIDERING THE PLAN, ALL INTERESTED PERSONS ARE PARTICULARLY URGED TO READ CAREFULLY THIS ARTICLE X, AS IT MAY PROVIDE DISCLOSURE CONCERNING PRESERVED CAUSES OF ACTION WITH RESPECT TO SUCH PERSON.

(1) Requirement for Specific and Unequivocal Disclosure. The Bankruptcy Code permits Debtors to reserve the right to prosecute Causes of Action after the Effective Date. "For a reservation to be effective, it 'must be specific and unequivocal'— blanket reservations of 'any and all claims' are insufficient...." Though the degree of specificity involved in a plan's reservation of claims will often vary, the reservation must, at a minimum, be specific enough to put 'creditors on notice of any claim [the debtor] wishes to pursue after confirmation.'" *In re SI Restructuring Inc. (Wooley v. Haynes & Boone LLP)*, 714 F.3d 860, 864 (5th Cir. 2013). The "plan need not identify the prospective defendants...." *In re Texas Wyoming Drilling, Inc.*, 647 "F.3d 547, 552 (5th Cir. 2011) (reference to "[v]arious pre-petition shareholders" was sufficient; individual shareholders did not need to be named). This ARTICLE X is intended to provide such disclosure.

(2) PRESERVED CAUSES OF ACTION AGAINST THE SU PARTIES AND THEIR ASSOCIATED PERSONS. IF THE SU PARTIES DO NOT ACCEPT THE PROPOSED SU PARTIES SETTLEMENT OR IF IT IS NOT APPROVED BY THE BANKRUPTCY COURT, ALL "DEBTOR CLAIMS AGAINST SU PARTIES" (AS DEFINED AND DESCRIBED IN SECTION 12.02(2) THE PLAN) WILL BE "PRESERVED CAUSES OF ACTION" UNDER THIS PLAN AS AGAINST THE SU PARTIES AND THEIR ASSOCIATED PERSONS.

(3) PRESERVED CAUSES OF ACTION AGAINST ESTATE RELEASE PERSONS. SUBJECT TO THE RELEASES FOR THE BENEFIT OF THE FIDUCIARY RELEASE PERSONS INCLUDED IN SECTION 14.03 BELOW, "PRESERVED CAUSES OF ACTION" INCLUDE ALL POTENTIAL CAUSES OF ACTIONS OF THE DEBTORS AGAINST ESTATE RELEASE PERSONS, INCLUDING THE ESTATE PROFESSIONALS.

(4) EXCLUSIVE STANDING. THE PLAN ADMINISTRATOR WILL HAVE EXCLUSIVE STANDING, ON BEHALF OF AND IN THE NAME OF THE RELEVANT DEBTOR(S) AS THEIR APPOINTED REPRESENTATIVE, TO PROSECUTE PRESERVED CAUSES OF ACTION. NO OTHER PERSON (OTHER THAN A SUCCESSOR PLAN ADMINISTRATOR APPOINTED PURSUANT TO THE PLAN ADMINISTRATION AGREEMENT) WILL HAVE OR BE ENTITLED TO SEEK OR BE GRANTED SUCH STANDING (WHETHER IN THE NAME OF THE DEBTORS OR AS PURPORTED ASSIGNEE), EVEN IF THE PLAN ADMINISTRATOR DECLINES TO PROSECUTE A

PRESERVED CAUSE OF ACTION AGAINST ANY PERSON OR SETTLES ANY PRESERVED CAUSE OF ACTION ON TERMS WITH WHICH ANY PARTY DISAGREES.

(5) PRESERVATION OF OBJECTIONS TO CLAIMS. EXCEPT TO THE EXTENT OTHERWISE RELEASED PURSUANT TO THE LENDER SETTLEMENT AND, IF ACCEPTED, THE PROPOSED SU PARTIES SETTLEMENT, ALL POTENTIAL OBJECTIONS TO THE ALLOWANCE OF CLAIMS, INCLUDING, WITHOUT LIMITATION, ESTATE PROFESSIONAL FEES, WILL BE PRESERVED UNTIL THE SPECIFIC BAR DATE APPLICABLE TO SUCH OBJECTIONS.

(6) PRESERVATION OF OMNIBUS OBJECTION FOR UNVERIFIED ADDRESSES. THE OMNIBUS OBJECTION DESCRIBED IN SECTION 11.02(2) BELOW) WITH RESPECT TO ALL CLAIMS FOR WHICH AN ADDRESS CANNOT BE VERIFIED WILL BE PRESERVED UNTIL THE SPECIFIC BAR DATE APPLICABLE TO CLAIMS OBJECTIONS.

(7) ORIGINAL AND EXCLUSIVE JURISDICTION, EXCEPTION. THE BANKRUPTCY COURT WILL HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PRESERVED CAUSES OF ACTION TO THE MAXIMUM EXTENT PERMITTED BY LAW, INCLUDING ANY PRESERVED CAUSES OF ACTION UNDER STATE LAW OR OTHER APPLICABLE NON-BANKRUPTCY LAW. NOTWITHSTANDING THE FOREGOING, IF THE BANKRUPTCY COURT CONCLUDES IT IS WITHOUT JURISDICTION OVER A PRESERVED CAUSE OF ACTION, THEN THE PLAN ADMINISTRATOR WILL BE ENTITLED TO PURSUE SUCH PRESERVED CAUSE OF ACTION IN ANOTHER COURT (BUT NOT OTHERWISE).

(8) NON-RELIANCE. NO PERSON MAY RELY ON THE ABSENCE OF A SPECIFIC REFERENCE TO THAT PERSON IN THIS DISCLOSURE STATEMENT, THE PLAN, THE PLAN SUPPLEMENT, OR ANY EXHIBIT TO ANY OF THE FOREGOING, AS ANY INDICATION THAT THE DEBTORS WILL NOT PURSUE ANY AND ALL AVAILABLE PRESERVED CAUSES OF ACTION AGAINST IT.

(9) PRESERVATION OF DEFENSES AND OTHER RIGHTS OF DEFENDANTS; NO TOLLING. NOTHING IN THE PLAN (I) WILL AFFECT IN ANY WAY ANY DEFENSES OR COUNTERCLAIMS ASSERTIBLE BY ANY POTENTIAL DEFENDANT AT LAW, IN CONTRACT OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, DEFENSES INCLUDED WITHIN THE DEFINED TERM "CAUSES OF ACTION" AND DEFENSES BASED ON RES JUDICATA; NOR (II) WILL ANYTHING SERVE TO LEGALLY, CONTRACTUALLY, OR EQUITABLY TOLL OR ABROGATE THE APPLICABILITY OF OR EXTEND THE TIME LIMITATIONS IN BANKRUPTCY CODE § 108(A) OR BANKRUPTCY CODE § 546(A), OR OTHERWISE TOLL ANY APPLICABLE STATUTES OF LIMITATIONS OR REPOSE, ALL OF WHICH WILL BE FULLY ASSERTIBLE BY ANY DEFENDANTS; NOR (III) SERVE TO AFFECT IN ANY MANNER ANY INDEMNIFICATION PROVISIONS AND OTHER PROTECTIONS SET FORTH IN BANKRUPTCY COURT ORDERS; ALL OF WHICH WILL SURVIVE THE EFFECTIVE DATE.

(10) SOLE DISCRETION OF PLAN ADMINISTRATOR. IN RECOGNITION OF THE LIMITED CASH REMAINING IN THE ESTATES, THE PLAN ADMINISTRATOR IN ITS SOLE DISCRETION WILL BE ENTITLED TO PRIORITIZE ITS INVESTIGATION, ANALYSIS, AND POTENTIAL PURSUIT OF PRESERVED CAUSES OF ACTION, WHICH CAN INCLUDE DECIDING IN ITS SOLE DISCRETION TO FOREGO THE INVESTIGATION, ANALYSIS, AND POTENTIAL PURSUIT OF ONE OR MORE PRESERVED CAUSES OF ACTION AGAINST ANY OR ALL OF THE POTENTIAL DEFENDANTS WITH RESPECT TO SUCH PRESERVED CAUSES OF ACTION. NO PERSON WILL BE ENTITLED TO SEEK RELIEF AGAINST THE PLAN ADMINISTRATOR WITH RESPECT TO THE EXERCISE OF ITS SOLE DISCRETION TO PRIORITIZE AND/OR FOREGO THE INVESTIGATION, ANALYSIS, AND POTENTIAL PURSUIT OF ANY PRESERVED CAUSES OF ACTION, EXCEPT TO THE EXTENT OF THE PLAN ADMINISTRATOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Section 10.02 Debtor Claims Against Lenders

As a result of the Lender Settlement, all actual and potential "Debtor Claims Against Lenders" (as defined and described in Section 11.02(2) of the Plan) are expressly excluded from the Preserved Causes of Action.

Section 10.03 Other Pending Bankruptcy Court Matters

(1) Except to the extent included in the Preserved Causes of Action, any objection, motion or other pleading seeking relief in the Bankruptcy Court against any Person that has been filed by any Person and has not been either adjudicated or withdrawn with prejudice prior to the Effective will be dismissed with prejudice, in each case as of the Effective Date. For the avoidance of doubt, this Section 10.03 does not apply to the Sale Order Appeals or the Patent Litigation, both of which are pending in the District Court.

ARTICLE XI
PROVISIONS GOVERNING DISTRIBUTIONS

Section 11.01 Record Date for Distributions

Unless the holder of a Claim or Interest and the Debtors agree otherwise, all distributions will be made to the holder of each Claim or Interest as of the Distribution Record Date.

Section 11.02 No Distributions to Unverified Addresses

(1) Address for Distributions. Because the Bar Date occurred in 2013, the Debtors may not have current contact information for each holder of a Claim. Prior to the Effective Date, the Debtors will attempt to verify contact information for each holder of a Claim pursuant to the procedures set forth in Section 7.02 of the Plan.

(2) OMNIBUS OBJECTION FOR UNVERIFIED ADDRESSES. IF THE DEBTORS ARE UNABLE TO VERIFY CONTACT INFORMATION AS DESCRIBED IN SECTION 11.02(1) ABOVE AND THE HOLDER OF THE CLAIM HAS NOT OTHERWISE PROVIDED A CURRENT ADDRESS, THE DEBTORS WILL HAVE THE RIGHT TO FILE AN OMNIBUS

OBJECTION TO ALL CLAIMS FOR WHICH CONTACT INFORMATION CANNOT BE VERIFIED.

Section 11.03 Date of Distributions

(1) In General. All distributions under the Plan, if any, will be made by the Plan Administrator in US Dollars out of the Plan Account from time to time reasonably promptly after the receipt of sufficient funds to make a material distribution after the payment of or reserve for interests in the funds (including Expenses, other claims with a priority, property interests and a reasonable reserve for the Plan Administrator); provided that the holder of a Disputed Claim will not be entitled to receive a distribution until the later to occur of (i) such relevant date and (ii) the date on which such Disputed Claim becomes (in whole or in part) an Allowed Claim. All distributions provided for in the Plan will be made only to the extent permitted by applicable law. Holders of Claims will not be entitled to interest, dividends or accruals on the distributions provided for herein, regardless of whether such distributions are delivered.

Section 11.04 De Minimis Distributions

No Cash payment of less than $100.00 will be made to the holder of any Claim on account of its Allowed Claim.

ARTICLE XII
CONFIRMATION REQUIREMENTS AND PROCEDURES

Section 12.01 Best Interests of Creditors Test

Bankruptcy Code § 1129(a)(10) requires either that each Class: (a) has accepted the Plan or (b) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that each Person in such would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. The Liquidation Analysis demonstrating that each Separate Plan under the Plan satisfies Bankruptcy Code § 1129(a)(10), is attached as Exhibit B. The Debtors will also present testimony at the Confirmation Hearing in support of the Plan's compliance with Bankruptcy Code § 1129(a)(10).

Section 12.02 Feasibility of the Plan

The "feasibility" requirement of Bankruptcy Code § 1129(a)(11) is satisfied as to each Debtor under the Plan because the Plan proposes the liquidation of each of the Debtors.

Section 12.03 The Confirmation Hearing

Bankruptcy Code § 1128(a) requires a bankruptcy court, after notice, to hold a hearing to consider confirmation of a proposed plan. Bankruptcy Code § 1128(b) provides that any party in interest may object to confirmation of a plan.

The dates and deadlines with respect the Plan and the Confirmation Hearing are set forth in ARTICLE II above and are also included in the notice of the Confirmation Hearing accompanying this Disclosure Statement.

Section 12.04 Statutory Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Bankruptcy Code § 1129 have been satisfied. The Debtors believe that each Separate Plan under the Plan satisfies or will satisfy the relevant applicable requirements, including the following:

(1) The Plan complies with the applicable provisions of the Bankruptcy Code.

(2) The Debtors as the proponents of the Plan have complied with the applicable provisions of the Bankruptcy Code.

(3) The Plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court.

(5) The identity of the Plan Administrator has been disclosed to the Bankruptcy Court.

(6) The "best interests of creditors" test discussed in Section 12.01 above has been satisfied.

(7) Each Class of Claims that is entitled to vote on a Separate Plan has accepted (or is deemed to accept) the Separate Plan, or the Separate Plan can be confirmed without the approval of each voting Class pursuant to Bankruptcy Code § 1129(b).

(8) Except to the extent that the holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Expenses, Priority Tax Claims, and Other Priority Claims will be paid in full, in Cash, on the Effective Date or when Allowed, or as soon thereafter as practicable.

(9) At least one Class of Impaired Claims will accept the Separate Plan, determined without including any acceptance of the Separate Plan by any Insider holding a Claim of that Class. All of the Subordinated Debtor Affiliate Claims are held by Insiders and, therefore, their votes will not be considered in determining whether the Plan satisfies this requirement. The Debtors believe that better argument is that the Non-Debtor Affiliate Claims and the Subordinated Non-Debtor Affiliate Claims are not held by Persons who are currently Insiders, because they are not, or are not Affiliates of, "control persons" with respect to the Debtors and do not hold "voting securities" of the Debtors, in both cases as a result of the entry of the Sole Authority Order. However, this issue is not free from doubt. In any event, at the September 25, 2017 hearing [update status].

(10) All US Trustee Fees then due will be paid as of the Effective Date or when they come due thereafter.

ARTICLE XIII
CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE

Section 13.01 Conditions Precedent to Confirmation and Effective Date

(1) Confirmation. The conditions to Confirmation of the Plan include (i) approval of this Disclosure Statement and (ii) the submission of a proposed form of Confirmation Order that is satisfactory to the relevant parties.

(2) Effective Date. The conditions to occurrence of the Effective Date are: (i) entry of the Confirmation Order, and (ii) the Confirmation Order becoming a Final Order, provided that the Debtors, in consultation with the Committee, will be entitled in their discretion to waive the Final Order condition.

Section 13.02 Substantial Consummation

The "substantial consummation" of the Separate Plan as to each Debtor, as such term is defined in Bankruptcy Code § 1101(2), will be deemed to occur on the Effective Date for such Plan.

ARTICLE XIV
GENERAL SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

Section 14.01 Compromise and Settlement of Claims and Interests: In General

Pursuant to Bankruptcy Code § 363 and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan constitute a good faith compromise of all Claims, Interests and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, including, without limitation, approval of the Mediated Su Parties Settlement and/or the Lender Settlement and/or the Su Parties Settlement, as applicable, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their estates and holders of Claims and Interests and is fair, equitable, and reasonable.

Section 14.02 RELEASE PROVISIONS

IN CONSIDERING WHETHER TO ACCEPT THE PLAN, ALL HOLDERS OF CLAIMS, INTERESTS OR EXPENSES ARE PARTICULARLY URGED TO READ CAREFULLY THE RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS SUMMARIZED IN SECTION 14.03 BELOW THROUGH SECTION 14.07 BELOW. THE FULL PROVISIONS ARE SET FORTH IN THE PLAN, WHICH WILL CONTROL IN ALL RESPECTS.

Section 14.03 RELEASES BY THE DEBTORS: FIDUCIARY RELEASE PERSONS

The "Fiduciary Release Persons" are (i) Mr. Esben Christensen as the Designee pursuant to the Sole Authority Order, solely in his capacity as such; (ii) Ms. Elizabeth Guffy as the Examiner, solely in her capacity as such prior to the Effective Date (but not in her partially continuing capacity as Examiner on and after the Effective Date); and (iii) each member of the Committee, solely in respect of its service on the Committee in the Chapter 11 Cases. The Plan provides for a release by each of the Debtors, on its own behalf and, to the extent applicable, as representative of its respective estate, which release will completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Fiduciary Release Persons from all Causes of Action against such Person; provided that no Person will be released from any act or omission that constitutes criminal conduct, willful misconduct, intentional fraud, or gross negligence, in each case as determined by a Final Order.

Section 14.04 EXCULPATION, LIMITATION OF LIABILITY, AND INDEMNIFICATION: FIDUCIARY RELEASE PERSONS

The Plan also provide for exculpation, limitation of liability, and indemnification of each of the Fiduciary Release Persons from any Cause of Action arising between the Petition Date and the Effective Date, except for criminal conduct, willful misconduct, intentional fraud, or gross negligence, in each case as determined by a Final Order; provided that no such exculpation will apply to the police and/or regulatory actions of any governmental unit.

Section 14.05 INJUNCTION: FIDUCIARY RELEASE PERSONS

From and after the Effective Date, to the extent (and solely to the extent) of the releases and exculpations described in Section 14.03 above and Section 14.04 above, the releasing and exculpating Persons will be permanently enjoined from commencing or continuing in any manner in any jurisdiction worldwide against the Fiduciary Release Persons and/or their assets and properties, any Cause of Action so released or exculpated.

Section 14.06 LIMITATION OF LIABILITY AND INDEMNIFICATION: PLAN ADMINISTRATOR, AND EXAMINER AFTER THE EFFECTIVE DATE

The Plan limits the liability of the Plan Administrator and the Examiner (solely in such capacity after the Effective Date) to acts comprising criminal conduct, willful misconduct, intentional fraud, gross negligence, or breach of fiduciary duty, in each case as determined by a Final Order. The Plan provides that the Bankruptcy Court will have exclusive and continuing jurisdiction over any Causes of Action against the Plan Administrator or the Examiner, and enjoins any Person from asserting any such Cause of Action in any jurisdiction worldwide other than the Bankruptcy Court.

Section 14.07 JURISDICTION AND INJUNCTION: PLAN ADMINISTRATOR, AND THE EXAMINER AFTER THE EFFECTIVE DATE

The Plan provides that the Bankruptcy Court will have and retain exclusive jurisdiction over any Causes of Action against the Plan Administrator or the Examiner, and that all Persons will be permanently enjoined from commencing any Cause of Action against the Plan

Administrator or the Examiner in any jurisdiction worldwide other than the Bankruptcy Court.

Section 14.08 Appropriateness of Releases and Exculpation for the Fiduciary Release Persons

The United States Court of Appeals for the Fifth Circuit has held that releases and exculpation of committee members is permissible. *See In re Pacific Lumber Co.*, 584 F.3d 229, 253 (5th Cir. 2009). Because, in the Debtors' view, the Designee and the Examiner are entitled to releases and exculpation on the same basis as committee members, they have been included with the Committee members as Fiduciary Release Persons. For the avoidance of doubt, (i) the release and exculpation of the Committee members does not extend to the Committee's Estate Professionals, and (i) the release of the Designee in his capacity as such does not extend to the Debtors' Estate Professionals.

ARTICLE XV
LENDER SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

Section 15.01 In General

The Plan is predicated on the Lender Settlement reached among the Debtors, the Committee, and the Lenders. If the Lender Settlement is not approved pursuant to Bankruptcy Rule 9019, the Debtors will not seek Confirmation of this Plan and, instead, will likely consent to conversion to chapter 7.

Section 15.02 The Lender Settlement

(1) Causes of Action Being Settled. The Debtors and/or the Committee and/or other Persons, have asserted, or reserved the right to assert, various Causes of Action against the Lender Release Persons (as defined and described in Section 11.02(2) of the Plan, the "Debtor Claims Against Lenders"). The Lenders have asserted, or reserved the right to assert, various Causes of Action against the Estate Release Persons (as defined and described in Section 11.02(4) of the Plan, the "Lender Claims Against Debtors"). The Lender Settlement comprises a settlement of all Debtor Claims Against Lenders and Lender Claims Against Debtors. Because of this comprehensive settlement between the Debtors and the Lenders, holders of Claims and Interests are urged to read carefully Sections 11.02(2) and 11.02(4) of the Plan before deciding whether to accept the Plan. The reasons supporting the Lender Settlement are discussed in Section 15.06 below.

(2) Lender Settlement: Consideration Being Provided by Lenders. Sections 11.02(4), 11.02(5), and 11.02(6) of the Plan describes in detail the consideration being provided by the Lenders under the Lender Settlement. It includes releases, a consent to exclusive jurisdiction, special provisions with respect to Indemnification Claims, and special provisions with respect to Section 507(b) Claimants, among other things. Parties-in-interest are urged to read those Sections of the Plan carefully in order to understand fully the consideration being provided by Lenders under the Lender Settlement before deciding whether to accept the Plan.

(3) Lender Settlement: Consideration Being Provided by Debtors. Section 11.02(7) of the Plan describes in detail the consideration being provided by the Debtors under the Lender

Settlement. It includes releases, a consent to exclusive jurisdiction, special provisions with respect to Indemnification Claims, and special provisions with respect to Section 507(b) Claims, among other things. Parties-in-interest are urged to read Section 11.02(4) of the Plan carefully in order to understand fully the consideration being provided by the Debtors under the Lender Settlement before deciding whether to accept the Plan.

Section 15.03 RELEASE PROVISIONS

IN CONSIDERING WHETHER TO ACCEPT THE PLAN, WHICH ACCEPTANCE SHALL ALSO CONSTITUTE ACCEPTANCE OF THE LENDER SETTLEMENT, ALL HOLDERS OF CLAIMS, INTERESTS OR EXPENSES ARE PARTICULARLY URGED TO READ CAREFULLY THE RELEASE AND INJUNCTION PROVISIONS SUMMARIZED IN SECTION 15.04 BELOW AND SECTION 15.05 BELOW. THE FULL PROVISIONS ARE SET FORTH IN THE PLAN, WHICH WILL CONTROL IN ALL RESPECTS.

Section 15.04 MUTUAL RELEASES BY THE ESTATE RELEASE PERSONS AND THE LENDER RELEASE PERSONS; RELATED INJUNCTION

The Plan provides for mutual, general releases as between the Estate Release Persons and the Lender Release Persons, with certain exceptions noted in the Plan, and enjoins the Estate Release Persons and Lender Release Persons from commencing any Causes of Action against each other in any jurisdiction worldwide. For the avoidance of doubt, the releases do not include any Claims that the Debtors or anyone else has or may have against the Estate Release Persons, other than the Lender Claims Against Debtors.

Section 15.05 INJUNCTION: ESTATE RELEASE PERSONS AND LENDER RELEASE PERSONS

The Plan enjoins any Person from commencing any Debtor Claims Against Lenders or Lender Claims Against Debtors in any jurisdiction worldwide. The practical effect of this is that the Debtors and the Lenders cannot sue each other, even in another jurisdiction.

Section 15.06 Disclosure of Basis for Lender Settlement Pursuant to Bankruptcy Rule 9019

(1) Section 507(b) Claims.

(i) In General. "Section 507(b) of the Bankruptcy Code allows an administrative expense claim under § 503(b) where adequate protection payments prove insufficient to compensate a secured creditor for the diminution in the value of its collateral." *In re Scopac*, 624 F.3d 274, 282 (5th Cir. 2010). The Section 507(b) Claims are asserted against two categories of defendants. The first category is the Whale Debtor against which the relevant Lender(s) assert an adequate protection claim. The second category of potential defendants is the Cash Debtors, because the Lenders have also asserted that one or more of the Cash Debtors is liable on the Section 507(b) Claims due to the permitted "sweep of excess funds" from time to time out of revenues generated by the Whale Debtors.

(ii) Section 507(b) Claims Against Whale Debtors. The Debtors question whether the Lenders have sustainable Section 507(b) Claims against the Whale Debtors, but resolving the issue will be highly fact-intensive, will likely require expert testimony, and will be very expensive. While the Whale Lenders have no assets and, therefore, the Allowance of Section 507(b) Claims against a Whale Lender will not result in a monetary recovery, the mere fact of the Allowance of Section 507(b) Claims against a Whale Debtor in any amount will likely result in the failure of the Separate Plan for such Debtor, for the reasons discussed in Section 3.16(1)(ii) above.

(iii) Section 507(b) Claims Against Cash Debtors. Even if Section 507(b) Claims are Allowed against the Whale Lenders, the Debtors question whether such Section 507(b) Claims will also be Allowed against the Cash Debtors, although the Debtors note that Mr. Su appears to believe the Lenders will succeed. *See Objection* (ECF 2839) at ¶ 78 ("[T]he Lenders' undisputed cash collateral was swept to other estates and used to pay the Debtors' professional fees, while the Debtors pursued a failed reorganization over the Lenders' objection."). But, again, even if the Debtors (rather than Mr. Su) are correct, litigating such Claims will be highly fact-intensive, will likely require expert testimony, and will be very expensive. Further, if a Lender succeeds in obtaining a monetary award against one or more of the Cash Debtors, the award would take priority over any Expenses and Claims against such Cash Debtors. To the extent a Section 507(b) Claim is allowed against a Cash Debtor that is unable to pay such Section 507(b) Claim in full, it would likely result in the failure of the Plan for each such Cash Debtor, for the reasons discussed in Section 3.16(1)(ii) above.

(iv) Treatment. The Lender Settlement releases all Section 507(b) Claims without any payment or distribution by the Debtors.

(v) Analysis. The Debtors believe that there is a risk that at least a portion of the Section 507(b) Claims against the Whale Debtors could be Allowed, in which case their Separate Plans would fail. The Debtors also believe that, although they disagree with Mr. Su and think it is unlikely, a portion of the Section 507(b) Claims against the Cash Debtors could also be Allowed. Given the risk and expense of abandoning the Lender Settlement in favor of litigating the Section 507(b) Claims, compared to the greater certainty and lower expense of proceeding with the Lender Settlement Plan, the Debtors believe that a full release of Section 507(b) Claims is a valuable component of the Lender Settlement.

(2) Lender Unsecured Claims.

(i) Lender Deficiency Claims. The Lender Deficiency Claims seek the Allowance of millions of dollars against many of the Debtors as a result of the sales of Vessels for less than the amount of the secured claims. If not waived as part of the Lender Settlement, the Lender Deficiency Claims would substantially dilute recoveries on Allowed General Unsecured Claims to the extent there is Cash available for distribution as a result of a substantial recovery on Preserved Causes of Action.

(ii) AWAC Deficiency Claim. For matters unrelated to the Chapter 11 Cases, the AWAC Lender has negotiated to preserve its Lender Deficiency Claim as part of the

Lender Settlement. However, the AWAC Lender is also a Section 507(b) Claimant, so the benefit of the full release of its Section 507(b) Claims substantially outweighs the low risk that AWAC will receive material recoveries on Preserved Causes of Action.

(iii) GEC Deficiency Claim. GEC guaranteed the CWAC Lender Facility. Unlike the secured Lender Facilities as against other Debtors, the GEC guarantee has always been unsecured because GEC did not own a Vessel or have Vessel proceeds as of the Petition Date. Instead, the Cash available to GEC is the result of the postpetition receipt by GEC of the GEC Insurance Proceeds. The GEC Deficiency Claim is not waived under the Lender Settlement, so that the holder of the Claim can receive its pro rata share of the net recoveries on the GEC Deficiency Claim. However, the holder of the GEC Deficiency Claim is also a Section 507(b) Claimant against 5 of the Whale Debtors and, potentially, the other Cash Debtors. In the Debtors' view, agreeing to preserve the GEC Deficiency Claim in exchange for the waiver of the many Section 507(b) Claims is an appropriate part of the Lender Settlement.

(iv) Treatment. The Lender Settlement releases all Lender Deficiency Claims without any payment by the Debtors but with a minor payment by the holder of such Claim as discussed in. The Lender Settlement does not release the AWAC Deficiency Claim but it is highly unlikely there will be any distribution on such Claim. The Lender Settlement does not release the GEC Deficiency Claim and it is likely that there will be a substantial distribution on such Claim.

(v) Lender Personal Guarantee Claims. The Lenders holding the Lender Deficiency Claims, the AWAC Deficiency Claim, and the GEC Deficiency Claim have asserted or reserved the right to assert such Claims directly against Mr. Su and any of his other Non-Debtor Affiliates who guaranteed such Claims. Mr. Su asserts that the Lender Personal Guarantee Claims are invalid. The Debtors express no view as to the Lender Deficiency Claims, because the resolution of such Claims will have no effect on distributions under the Plan.

(vi) Analysis. The Debtors have weighed the relatively low benefits of obtaining a waiver of recoveries on the Lender Deficiency Claims against the much higher associated benefit of obtaining a full release of the recoveries on the Section 507(b) Claims. The low risk of preserving the AWAC Deficiency Claim is also substantially outweighed by the benefit of the full release of the AWAC Lender's Section 507(b) Claims. As for the GEC Deficiency Claim, while treating it as Allowed will dilute the recoveries of the holders of General Unsecured Claims against GEC, the Debtors believe that such dilution is substantially outweighed by the full release of the Lender's Section 507(b) Claims against 5 of the Whale Debtors and, potentially, against all of the Cash Debtors. Because the above treatment of the Lender Deficiency Claims, the AWAC Deficiency Claim, and the GEC Deficiency Claim was critical to obtaining the agreement of the relevant Lenders to the Lender Settlement overall, the Debtors believe that the Plan's treatment of such Claims is a valuable component of the Lender Settlement.

(3) Indemnification Claims.

(i) In General. Claims for indemnification for an "oversecured" creditor arise under Bankruptcy Code § 506(b) to the extent they are "reasonable fees, costs, or charges provided under the [creditor's] agreement." To be allowed under § 506(b), "the court must determine whether the creditor took the kind of actions that similarly situated creditors might reasonably conclude should be taken." *In re Tribeca Lofts LP*, 2011 WL 2182828, *4 (Bankr. S.D. Tex 2011) (citing *In re Valdez*, 324 B.R. 296, 300 (Bankr. S.D. Tex. 2005)).

(ii) The Indemnification Claims. The Lenders to ALAC and FEI have asserted that they are entitled to Indemnification Claims as a result of the Lender Settlement discussions and the continuing assertions by the Su Parties (as discussed in Section 3.19 above). No other Lender has asserted, and the Plan does not Allow, any other claims for indemnification. Because the Indemnified Lenders were secured by the ALAC and FEI Vessels, they have security interests in the excess sales proceeds of such Vessels to the extent of any Allowed Indemnification Claims.

(iii) Treatment. The Lender Settlement treats the Indemnification Claims by providing for a payment of $100,000 in exchange for a cap on future potential recoveries that could otherwise be frozen until all Indemnification Claims are adjudicated. In the Debtors' view, the benefits of addressing the Indemnification Claims with a small payment and a cap on any future recoveries, is a valuable component to the Lender Settlement.

(iv) Analysis. If the Indemnified Lenders are successful in obtaining an award on their Indemnification Claims, the award would take priority over any other distributions that could be made to the holders of Expenses and Claims against ALAC and FEI. In the Debtors' view, the Indemnified Lenders might be able to assert valid arguments for at least a portion of their Indemnification Claims, and they may have additional Indemnification Claims after the Effective Date if the Su Parties do not accept the Proposed Su Parties Settlement. As well, the pendency of the Indemnification Claims could result in a "freeze' of all of the Cash in the ALAC and FEI estates, which would substantially delay and possibly dilute the recoveries of the holders of General Unsecured Claims against ALAC and FEI.

(4) Section 506(c) Claims.

(i) In General. Bankruptcy Code § 506(c) provides that, under certain circumstances, a debtor can surcharge a secured lender's interests in its collateral. "In order to charge a secured creditor with administrative expenses under § 506(c), three elements must be shown: (1) the expenditure was necessary, (2) the amounts expended were reasonable, and (3) the creditor benefitted from the expenses." *In re Domistyle, Inc.*, 811 F.3d 691, 695 (5th Cir. 2015). The Debtors have reserved the right to assert Section 506(c) Claims against one or more of the Whale Debtors, In the Debtors' view, there are colorable arguments for Section 506(c) Claims as to at least one and possibly more than one of the Whale Debtors, but the issue is not free from doubt.

(ii) Treatment. The Lender Settlement releases all Section 506(c) Claims.

(iii) Analysis. Setting aside the issue of whether the potential Section 506(c) Claims have merit, there are two primary considerations supporting the Whale Debtors' release of the Section 506(c) Claims as part of the Lender Settlement. First, if a Whale Debtor actually did obtain a recovery, the recovery would likely be owned by that Debtor, not by the Debtors generally. Because the Whale Debtors have substantial Lender Deficiency Claims, the bulk of the recoveries would flow back to the relevant Lenders as a distribution on their unsecured Claims. This means that any recovery on a Section 507(b) Claim would result in only a substantially-diluted benefit to the holders of General Unsecured Claims. Second, resolving the issue will be highly fact-intensive, will likely require expert testimony, and will be very expensive. Because releasing the Section 506(c) Claims was critical to obtaining the agreement of the relevant Lenders to the Lender Settlement overall, the Debtors believe that the Plan's waiver of the Section 506(c) Claims is an appropriate component of the Lender Settlement,

(5) Debtor Claims Against Lenders Asserted by the Su Parties. The Debtor Claims Against Lenders that Mr. Su believes should be investigated and, potentially, pursued, are discussed in Section 3.19(1) above and Section 3.19(2) above. If any such Causes of Action have merit, it is possible that the relevant Debtor(s) could receive a net recovery. However, the Debtors do not believe that any such Causes of Action have any merit, as discussed in Section 3.19(3) above.

(6) Uncertainty, Delay, and Expense. As discussed in the individual analyses above, and as is typical in actual and potential litigation, the parties have differing views on the merits of the various Causes of Action asserted by or against the Lenders. What cannot be disputed is that there would be substantial delay in resolving all of the litigation, and this would result in considerable expense to the Debtors and their estates to pursue or defend the litigation to conclusion, including potential appeals and/or further appeals. It could also result in considerable delay with respect to distributions to creditors by the Cash Debtors.

(7) Cash Recoveries from Lenders. The holders of the Section 507(b) Claims are the same Lenders against which the Debtors assert potential Section 506(c) Claims. As added consideration for the mutual releases of such Claims, the Debtors will receive $100,000 from such Lenders, as discussed in Section 11.02(6) of the Plan. With respect to the remaining Lenders being released under the Lender Settlement, the Lender Settlement includes the ability of the Debtors to recover substantial amounts currently in the Lender Accounts and the Escrow Account. As can be seen from Exhibit C to this Disclosure Statement, those recoveries could be substantial and, absent the Lender Settlement, might not otherwise be available to the Debtors. The Debtors therefore consider the $100,000 recovery and the account recoveries to be very valuable components of the Lender Settlement.

(8) Overall Analysis Supporting the Lender Settlement. In the Debtors' view, there are five primary considerations (among others) that support the Lender Settlement. First, in the Debtors' view, it is unlikely that the Debtor Claims Against Lenders will result in successful net recoveries, while it is possible that, if any of the Lender Claims Against Debtors are successful, it would substantially reduce and could potentially eliminate recoveries on Allowed General

Unsecured Claims. Second, given the limited Cash resources available to the Debtors, the expense of pursuing the Debtor Claims Against Lenders and defending against the Lender Claims Against Debtors would substantially deplete the Debtors' Cash resources, without certainty that the Debtors would receive greater net recoveries than the depleted amounts. Third, for the reasons discussed in Section 15.06(1) above, the Allowance of any Section 507(b) Claims in even a minimum amount could result in the failure of one or more of the Separate Plans. Fourth, but for the resolution of the Indemnification Claims, the Cash in the ALAC and FEI could effectively be frozen until the Indemnification Claims are resolved, because the Indemnified Lenders assert a security interest in all such Cash. Fifth, the Lender Settlement provides substantial Cash recoveries to the Debtors, as discussed in Section 15.06(7) above. In weighing the risks and benefits of each of the components of the Lender Settlement, the Debtors believe that the Lender Settlement is in the best interests of the Debtors' estates and falls within the "range of reasonableness" requirement for approval of settlements under Bankruptcy Rule 9019. Mr. Su has informed the Debtors that he disagrees, in part because he believes that the Debtor Claims Against Lenders will provide more value if preserved and pursued, rather than settled. The Debtors disagree.

Section 15.07 Approval on the Debtors' Request

Pursuant to Bankruptcy Code § 363 and Bankruptcy Rule 9019, the Plan requests Bankruptcy Court approval of the Lender Settlement as a good faith compromise of all Debtor Claims Against Lenders and all Lender Claims Against Debtors.

ARTICLE XVI
PROPOSED SU PARTIES SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

Section 16.01 Introduction

(1) In General. THIS PLAN PROPOSES A SETTLEMENT AMONG THE ESTATE RELEASE PERSONS, THE LENDER RELEASE PERSONS, AND THE SU RELEASE PERSONS. THE PROPOSED SU PARTIES SETTLEMENT IS A PROPOSAL ONLY THAT THE SU PARTIES ARE FREE TO ACCEPT OR REJECT. IF THE EACH OF THE SU PARTIES DOES NOT ACCEPT THE PROPOSED SU PARTIES SETTLEMENT OR THE PROPOSED SU PARTIES SETTLEMENT IS OTHERWISE NOT APPROVED PURSUANT TO BANKRUPTCY RULE 9019, THIS ARTICLE XVI SHALL BE DISREGARDED AND THE DEBTORS STILL INTEND TO SEEK CONFIRMATION OF THE PLAN.

(2) Deadline. The Plan requires the Su Parties to accept the Proposed Su Parties Settlement by no later than September 25, 2017.

Section 16.02 The Proposed Su Parties Settlement

(1) Causes of Action To Be Settled. The Debtors and/or the Committee have asserted, or reserved the right to assert, various Causes of Action against the Su Release Persons (as defined and described in Section 12.02(2) of the Plan, the "Debtor Claims Against Su Parties"). The Proposed Su Parties Settlement Lenders have asserted, or reserved the right to assert, various Causes of Action against the Su Release Persons (as defined and described in Section 12.02(3) of the Plan, the "Lender Claims Against Su Parties"). The Su Parties have asserted, or reserved the

right to assert, various Causes of Action against the Estate Release Persons (as defined and described in Section 12.02(4) of the Plan, the "Su Parties Claims Against Debtors"). The Su Parties have asserted, or reserved the right to assert, various Causes of Action against the Lender Release Persons (as defined and described in Section 12.02(5) of the Plan, the "Su Parties Claims Against Lenders"). If accepted by the Su Parties, the Proposed Su Parties Settlement comprises a settlement of all Debtor Claims Against Su Parties, Lender Claims Against Su Parties, Su Parties Claims Against Debtors, and Su Parties Claims Against Lenders. For the avoidance of doubt, the Proposed Su Parties Settlement Lenders do not include the BWAC Lender.

(2) Consideration Being Provided by Debtors to Su Release Persons. Section 12.02(6) of the Plan describes in detail the consideration being provided by the Debtors under the Proposed Su Parties Settlement. The most substantial component of the Debtors' consideration is the payment of $1,000,000 to or for the benefit of the Su Parties. The Proposed Su Parties Settlement also includes releases and a consent to exclusive jurisdiction, among other things. Parties-in-interest are urged to read Section 12.02(6) of the Plan carefully in order to understand fully the consideration being provided by the Debtors under the Proposed Su Parties Settlement, if accepted.

(3) Consideration Being Provided by Proposed Su Parties Settlement Lenders to Su Release Persons. Section 12.02(7) of the Plan describes in detail the consideration being provided by the Proposed Su Parties Settlement Lenders under the Proposed Su Parties Settlement. The most substantial component of the Proposed Su Parties Settlement Lenders' consideration is the release of their Lender Personal Guarantee Claims against the Su Release Persons, if (and only if) Mr. Su agrees to dismiss his Patent Litigation against the Proposed Su Parties Settlement Lenders. The Proposed Su Parties Settlement also includes releases and a consent to exclusive jurisdiction, among other things. Parties-in-interest are urged to read Section 12.02(7) of the Plan carefully in order to understand fully the consideration being provided by the Debtors under the Proposed Su Parties Settlement, if accepted.

(4) Consideration Being Provided by Su Parties to Estate Release Persons. Section 12.02(8) of the Plan describes in detail the consideration being provided by the Su Parties to the Estate Release Persons under the Proposed Su Parties Settlement. The most substantial component of the Su Parties' consideration is the release of the F3 Capital ORS Claims and the dismissal of the FEI Patent Litigation. The Proposed Su Parties Settlement also includes releases and a consent to exclusive jurisdiction, among other things. Parties-in-interest are urged to read Section 12.02(8) of the Plan carefully in order to understand fully the consideration being provided by the Su Parties to the Debtors under the Proposed Su Parties Settlement, if accepted.

(5) Consideration Being Provided by Su Parties to Lender Release Persons. Section 12.02(9) of the Plan describes in detail the consideration being provided by the Su Parties to the Lender Release Persons under the Proposed Su Parties Settlement. The most substantial component of the Su Parties' consideration is, if Mr. Su selects this option the dismissal of the Patent Litigation in exchange for the Proposed Su Parties Settlement Lenders' release of their Lender Personal Guarantee Claims against the Su Release Persons. The Proposed Su Parties Settlement also includes releases and a consent to exclusive jurisdiction, among other things. Parties-in-interest are urged to read Section 12.02(9) of the Plan carefully in order to understand fully the consideration being provided by the Su Parties to the Proposed Su Parties Settlement Lenders under the Proposed Su Parties Settlement, if accepted. For the avoidance of doubt, the

Lender Release Persons do not include the BWAC Lender, and the Lender Personal Guarantee Claims do not include any guarantee claims against any Su Release Person held by the BWAC Lender.

Section 16.03 RELEASE PROVISIONS

IN CONSIDERING WHETHER TO ACCEPT THE PLAN, WHICH ACCEPTANCE SHALL ALSO CONSTITUTE ACCEPTANCE OF THE PROPOSED SU PARTIES SETTLEMENT, ALL PERSONS ARE PARTICULARLY URGED TO READ CAREFULLY THE RELEASE AND INJUNCTION PROVISIONS SUMMARIZED IN SECTION 16.04 BELOW THROUGH SECTION 16.06 BELOW. THE FULL PROVISIONS ARE SET FORTH IN THE PLAN, WHICH WILL CONTROL IN ALL RESPECTS. SUCH RELEASE AND INJUNCTION PROVISIONS WILL ONLY BE INCLUDED IN THE CONFIRMATION ORDER IF THE SU PARTIES ACCEPT THE PROPOSED SU PARTIES SETTLEMENT ON A TIMELY BASIS.

Section 16.04 MUTUAL RELEASES BY THE ESTATE RELEASE PERSONS AND THE SU RELEASE PERSONS; RELATED INJUNCTION

The Plan provides for mutual, general releases as between the Estate Release Persons and the Su Release Persons, and enjoins the Estate Release Persons and Su Release Persons from commencing any Causes of Action against each other in any jurisdiction worldwide.

Section 16.05 MUTUAL RELEASES BY THE LENDER RELEASE PERSONS AND THE SU RELEASE PERSONS; RELATED INJUNCTION

The Plan provides for mutual, general releases as between the Estate Release Persons and the Su Release Persons, subject to Mr. Su's option to continue or terminate the Lender Personal Guarantee Claims and the Patent Litigation, and enjoins the Lender Release Persons and Su Release Persons from commencing any released Causes of Action against each other in any jurisdiction worldwide.

Section 16.06 INJUNCTION: ESTATE RELEASE PERSONS, LENDER RELEASE PERSONS, AND SU RELEASE PERSONS

The Plan enjoins any Person from commencing any Debtor Claims Against Su Parties, Su Lender Claims Against Su Parties, Su Parties Claims Against Debtors, and Su Parties Claims Against Lenders in any jurisdiction worldwide, subject to Mr. Su's option to continue or terminate the Lender Personal Guarantee Claims and the Patent Litigation.

Section 16.07 Disclosure of Basis for Settlement Pursuant to Bankruptcy Rule 9019

(1) Debtors' Views with Respect to Debtor Claims Against Su Parties.

(i) In General. The Debtors believe that the Debtor Claims Against Su Parties have varying degrees of merit, depending on the particular Cause of Action involved. For example, the Debtors believe there is considerable merit to the potential Cause of Action against Mr. Su with respect actions taken by him in Malta in respect of the admiralty

proceedings involving the *M/V A Ladybug*, because the Debtors incurred substantial expense (both by the Estate Professionals and by the Lenders to ALAC) in responding to those actions, which the Debtors believe were taken in violation of the automatic stay. Others of the Debtor Claims Against Su Parties are more speculative. The Su Parties have informed the Debtors that they dispute the merits of any of the Debtor Claims Against Su Parties.

(ii) Collectability. Broadly speaking, the Debtor Claims Against Su Parties involve two categories of defendants. With respect to the Non-Debtor Affiliates, a number of them might potentially be shell companies incorporated in Panama and elsewhere, suggesting that even if the Causes of Action against those entities have merit, it may be difficult to collect on a favorable judgment. With respect to Mr. Su and F3 Capital, the Debtors are aware that they are or may be subject to a number of claims from various parties, such as the Lender Personal Guarantee Claims asserted by the Lenders. While further investigation is merited, this could also present a situation where it may be difficult to collect on a favorable judgment.

(iii) Availability as a Defense/Setoff. At the same time, the Debtors believe that the Debtor Claims Against Su Parties could serve as substantial defenses against the Su Parties Claims Against Debtors and could also be offset against such Claims and Interests, such that, if the Su Parties Claims Against Debtors have any merit, the end result could be that such Claims and Interests would not result in any recoveries against the Debtors by the Su Parties.

(2) Debtors' Views with Respect to Proposed Su Parties Settlement Lender Claims Against Su Parties. Because the Lender Claims Against Su Parties belong to the Proposed Su Parties Settlement Lenders, any successful recoveries will benefit the Proposed Su Parties Settlement Lenders, not the estates. Therefore, the Debtors express no views as to the Lender Claims Against Su Parties.

(3) Debtors' Views with Respect to Claims Asserted by Su Parties Against Debtors.

(i) F3 Capital ORS Claims. The F3 Capital ORS Claims are described in Section 3.10(1) above. As discussed in Section 3.10(2) above, the Committee has filed a motion (ECF 2633) asserting that the F3 Capital ORS Claims can be satisfied in full by turning the F3-Vantage Shares over to F3 Capital, including certain replacement shares acquired by the Debtors after they sold some shares for approximately $18.9 million in partial repayment of the DIP Facility. F3 Capital asserts that the replacement shares cannot be applied toward the F3 Capital ORS Claims and, as a result, F3 Capital is entitled to a priority claim in the amount of $18.9 million. If F3 Capital is correct, and if its resultant damages are awarded against all of the Cash Debtors, there would remain no funds in any of the estates to make distributions on unsecured claims. In the Debtors' view, the Committee has the better argument but the result is not free from doubt. In addition, even if F3 Capital is successful, the Order Regarding Shares requires that the F3 Capital ORS Claims be allocated on a Debtor-by-Debtor basis, taking into account the share sale proceeds that were used by each Debtor to repay the DIP Facility. If the Bankruptcy Court

agrees, the Debtors believe that any damages awarded would result in a minimal overall recovery to F3 Capital. F3 Capital disagrees with the Debtors' views.

(ii) Non-Debtor Affiliate Claims. The Non-Debtor Affiliate Claims and Subordinated Non-Debtor Affiliate Claims that were not dismissed pursuant to ECF 2687 seek an Allowance of more than $11,000,000 against various of the Debtors. [update status]

(iii) Sale Order Appeals. The Sale Order Appeals are described in Section 3.09(2) above. The Debtors believe that the Sale Order Appeals have no merit, both because Mr. Su's factual assertions are unsupportable and because, pursuant to Bankruptcy Code § 363(m), the appeals are moot in any event. Mr. Su disagrees.

(iv) Su FEI Claims. Mr. Su's Patent Litigation with respect to the *M/V Fortune Elephant* is described in Section 3.13(2) above. The Debtors believe that the Su FEI Claims have no merit, for the reasons discussed in Section 3.13(2) above. Mr. Su disagrees. However, until the Su FEI Claims are resolved, the Cash in the FEI estate remains frozen.

(v) Other Patent Litigation. Mr. Su's Patent Litigation with respect to the Vessels formerly owned by AWAC, BWAC, CWAC, DWAC, GWAC, and HWAC is discussed in Section 3.14 above. The Patent Litigation primarily asserts Causes of Action against the Lenders with respect to those Vessels, but the relevant Debtors are also named as defendants. The Debtors believe that the Patent Litigation has no merit. Mr. Su disagrees.

(vi) Direct Causes of Action. As discussed in Section 3.19(3) above, Mr. Su asserts that he has or may have direct Causes of Action against various of the Estate Release Persons. Because those Causes of Action belong to the Su Parties, any successful recoveries will benefit the Su Parties, not the estates. Therefore, the Debtors express no views as to such Causes of Action.

(4) Claims Asserted by Su Parties Against Proposed Su Parties Settlement Lenders. As discussed in Section 3.19(3) above, Mr. Su asserts that he has or may have direct Causes of Action against various of the Lender Release Persons. Because those Causes of Action belong to the Su Parties, any successful recoveries will benefit the Su Parties, not the estates. Therefore, the Debtors express no views as to such Causes of Action.

(5) Uncertainty, Delay, and Expense. As is typical in actual and potential litigation, the parties have differing views on the merits of the various Debtor Claims Against Su Parties, Lender Claims Against Su Parties, Su Parties Claims Against Debtors, and Su Parties Claims Against Lenders. What cannot be disputed is that there would be substantial delay in resolving all of the litigation, and this would result in considerable expense to the Debtors and their estates to pursue or defend the relevant litigation to conclusion, including potential appeals and/or further appeals. It could also result in considerable delay with respect to distributions to creditors by the Cash Debtors.

(6) Comparison to Prior Settlement Agreed to by the Su Parties. Pursuant to the settlement set forth in the now-withdrawn Su Parties Settlement Plan, the Debtors were prepared to pay $1,000,000 to or for the benefit of the Su Parties, which is the same amount that the Debtors

propose to pay under the Proposed Su Parties Settlement. Under the Su Parties Settlement Plan, however, $500,000 of the payment would have applied to fund an independent "Liquidation Administrator" with respect to the investigation and potential pursuit of the Causes of Action identified by Mr. Su In part B of Exhibit C to an the disclosure statement (ECF 2718) for the Su Parties Settlement Plan. Because the Proposed Su Parties Settlement would pay that $500,000 to the Su Parties instead, and because the Debtors believe that the Causes of Action identified by Mr. Su have no merit, the Debtors believe that the cash component of the Proposed Su Parties Settlement is favorable to the Su Parties. Conversely, the Proposed Su Parties Settlement would require the Su Parties to release any direct Causes of Action they have or may have against the non-Debtor Estate Release Persons and against the Lender Release Persons. The settlement under the Su Parties Settlement Plan did not include such releases.

(7) Analysis.

(i) Absolute Priority Rule. The "absolute priority rule" requires that. Absent consent, more senior classes must be paid in full before more junior classes can receive a distribution. Mr. Su asserts that, because the Proposed Su Parties Settlement would provide the payment of $1,000,000 to or for the benefit of the Su Parties before the holders of unsecured Claims can receive distributions, such payment would violate the absolute priority rule. The Debtors disagree. The Su Parties Claims against Debtors include not only the more junior Subordinated Non-Debtor Affiliate Claims and Mr. Su's equity interests, but also Mr. Su's more senior alleged Su FEI Claims and F3 Capital ORS Claims. The Su Parties Settlement proposes to settle such Claims in the whole, rather than allocating any payments specifically to the Subordinated Non-Debtor Affiliate Claims and the Interests. Therefore, in the Debtors' view, the absolute priority is not violated.

(ii) Overall. In the Debtors' view, there are three primary considerations (among others) that support the Proposed Su Parties Settlement. First, there is a risk that the F3 Capital ORS Claims could result in monetary damages against one or more of the Debtors. While the Debtors believe that risk is small, if F3 Capital is entirely successful, it could eliminate any distributions to unsecured creditors. Second, there is a risk that the Su FEI Claims could result in a substantial recovery with respect to the Cash in the FEI estate. Further, regardless of the results of the litigation, the FEI Cash is effectively frozen until the litigation is resolved, which could substantially delay distributions to the creditors of FEI. Third, for the reasons discussed in Section 16.07(5) above, continued litigation with the Su Parties could cause the Debtors to incur considerable fees and expenses with respect to such litigation. In sum, and in light of the limited remaining Cash resources in the Debtors' estates compared to the expense of ongoing litigation with the Su Parties, the Debtors believe that the Proposed Su Parties Settlement is in the best interests of the Debtors' estates and falls within the "range of reasonableness" requirement for approval of settlements under Bankruptcy Rule 9019. [update status]

Section 16.08 Approval on the Debtors' Request

Pursuant to Bankruptcy Code § 363 and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to this Plan, and if and only if the Su Parties accept the Proposed Su Parties Settlement, the provisions of this Plan shall constitute a good faith

compromise of all Debtor Claims Against Su Parties, Lender Claims Against Su Parties, Su Parties Claims Against Debtors, and Su Parties Claims Against Lenders. If and only if the Su Parties accept the Proposed Su Parties Settlement, the entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Proposed Su Parties Settlement, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their estates and holders of Claims and Interests and is fair, equitable, and reasonable. If and only if the Su Parties accept the Proposed Su Parties Settlement, the entry of the Confirmation Order will also constitute the Bankruptcy Court's approval and enforcement of the Global Release Provisions.

ARTICLE XVII
ADDITIONAL DISCLOSURE

Section 17.01 Risk Factors

(1) Expenses in Connection with a Contested Disclosure Statement and Plan. It is currently likely that the Su Parties will object to Confirmation of the Plan. [update status] Absent the ability to resolve any objection consensually, litigation concerning the Plan could be expensive, depending on the nature of the objections and the course of the proceedings. Even if such objections are unsuccessful, there is the possibility of an appeal, which would cause the estates to incur additional expenses (although the Plan will still become effective). The Liquidation Analysis does not include an estimate for the fees and expenses that will be incurred by the Debtors and the Committee in connection with a contested Disclosure Statement, a contested Plan, or potential appeals. As a result, in the event of objections that are vigorously litigated, actual recoveries will be lower than those estimated on the Liquidation Analyses.

(2) Potential Plan Failure. Each Separate Plan for each Debtor under the Plan must be confirmed by the Bankruptcy Court on its own merits. Given the potential for objections as discussed above, it is possible that one or more of the Separate Plans will not be confirmed. In such event, any distributions from each Debtor whose Separate Plan is not confirmed will be delayed and, due to incremental fees and expenses and a potential conversion to Chapter 7, will likely be lower than estimated on the Liquidation Analyses.

(3) Su Parties Claims. If the Su Parties do not accept the Proposed Su Parties Settlement, it is possible (although, in the Debtors' view, unlikely) that one or more of the Su Parties Claims Against Debtors will be successful. The consequences of any such success are discussed in Section 16.07(3) above.

(4) Plan Administrator Expenses. The Plan Administrator will also incur fees and expenses in administering the Debtors, reconciling Claims, filing reports, making distributions, and other matters. In the Debtors' view, such fees and expenses will likely be comparable to the fees and expenses that would be incurred by a chapter 7 trustee. Under the Plan, if the Su Parties do not accept the Proposed Su Parties Settlement, the Plan Administrator will also likely incur substantial fees and expenses in ongoing litigation with the Su Parties. The Liquidation Analysis does not include an estimate for such fees and expenses, so actual recoveries might be lower. At the same time, the Liquidation Analysis does not reflect any potential recoveries from Preserved Causes of Action, so actual recoveries might be higher.

(5) Preserved Causes of Action. As discussed in this Disclosure Statement, the Debtors believe it is unlikely that there will be any recoveries from the Preserved Causes of Action, with the possible exception of the Debtor Claims Against Su Parties (if the Su Parties do not accept the Proposed Su Parties Settlement). As noted in Section 15.06(8) above, Mr. Su disagrees.

Section 17.02 Tax Consequences

The potential federal income tax consequences of the Plan, and the tax consequences of the Plan under the laws of any other applicable jurisdiction, are highly complicated and could vary substantially on whether the holder of a Claim receiving a distribution under the confirmed Plan is a "US person" or a "non-US person" under United States federal income tax laws. Accordingly, the Debtors recommend that holders of Claims receiving a distribution under the confirmed Plan consult with their own counsel as to the potential applicable tax consequences of receiving such distribution.

ARTICLE XVIII
MISCELLANEOUS PROVISIONS

Section 18.01 Amendments and Modifications

The Plan can be amended, modified, revoked, or withdrawn under certain circumstances on the bases set forth in the Plan.

Section 18.02 Retention of Jurisdiction

The Plan provides that the Bankruptcy Court will generally retain original and exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan, including the Preserved Causes of Action to the fullest extent permitted by law.

Section 18.03 Satisfaction of Certain Claims

All Claims in the Schedules and Proofs of Claim that were paid during the course of the Chapter 11 Cases are deemed satisfied in full and of no further force and effect. As a result of the sale of all of the Vessels, all Secured Claims in the Schedules and all Proofs of Claim for Secured Claims are deemed satisfied in full and of no further force and effect, provided that this will not affect (i) the unsecured portion of any Claim (such as Lender Deficiency Claims, the AWAC Deficiency Claim and the GEC Deficiency Claim) giving rise to the scheduling or filing of a Secured Claim; (ii) Allowed Indemnification Claims; or (iii) any continuing security interest described in Plan Sections 6.01 and 11.02(5)(iii)(c). In calculating and making distributions under the confirmed Plan, the Plan Administrator will be entitled to treat as disallowed and disregard all such paid Claims and all such Secured Claims except for any such continuing security interests and Allowed Indemnification Claims, even if the Schedules have not been amended to reflect the foregoing and even if any such Proofs of Claim have not been adjudicated.

Section 18.04 Specific Bar Dates for Certain Actions

The Plan set forth various deadlines after the Effective Date for the assertion of Expenses, Claims, objections, and Preserved Causes of Action: Administrative Expenses (30 days); the

assertion of Estate Professional Fees and Examiner fees and expenses (30 days); objections to Administrative Expenses, Estate Professional Fees, and Examiner fees and expenses (21 days after filing); objections to Claims against Cash Debtors (90 days); and all Preserved Causes of Action (120 days). The Plan also permits the relevant applicant, claimant, or potential defendant to agree to extend the applicable deadline, but not otherwise, and permits the Plan Administrator to provide early notice that it does not intend to pursue a particular Preserved Cause of Action.

Section 18.05 Lender and Escrow Accounts

(1) Nature. The Lender Accounts are Debtor bank accounts maintained at various of the Lenders. The Escrow Account is an escrow maintained by Bracewell for the funding of Estate Professional Fees with respect to certain of the Sale Order Appeals and Patent Litigation. The funds in the material Lender Accounts and in the Escrow Account are set forth on Exhibit C to this Disclosure Statement.

(2) In General. As part of the Lender Settlement and except as set forth in Section 11.02(6) of the Plan, all funds in the Lender Accounts shall be retained by the Debtors. With respect to funds in the Escrow Account and except as set forth in Section 11.02(6) of the Plan, this Plan shall serve as an irrevocable instruction by the Debtors to turn over such funds to the 345 Account or the Plan Account, as the case may be.

(3) Application All funds actually received by a Debtor from its Lender Accounts shall be turned over to TPR in partial repayment of such Lender's Intercompany Loan. All funds turned over to the Debtors from the Escrow Account shall be turned over to TPR because such funds formerly belonged to the relevant Lender, not the relevant Debtor. All such funds turned over to TPR shall be retained by the Debtors generally for the payment of Expenses and Claims that are senior to Pari Passu Unsecured Claims.

(4) Cooperation. To the extent reasonably requested by the Debtors, the Lenders and the Su Parties are required to cooperate with the Debtors in effecting the provisions of Section 13.05 of the Plan with respect to sweeping the funds from the relevant Lender Accounts, and the Debtors shall be entitled to seek an order from the Bankruptcy Court if any such Person does not provide such cooperation.

DATED: [●], 2017

A WHALE CORPORATION
B WHALE CORPORATION
C WHALE CORPORATION
D WHALE CORPORATION
E WHALE CORPORATION
G WHALE CORPORATION
H WHALE CORPORATION
A DUCKLING CORPORATION
F ELEPHANT INC
A LADYBUG CORPORATION
C LADYBUG CORPORATION
D LADYBUG CORPORATION
A HANDY CORPORATION
B HANDY CORPORATION
C HANDY CORPORATION
B MAX CORPORATION
NEW FLAGSHIP INVESTMENT CO., LTD
RORO LINE CORPORATION
UGLY DUCKLING HOLDING CORPORATION
GREAT ELEPHANT CORPORATION
TMT PROCUREMENT CORPORATION

By: _____
Name: Esben Christensen
The Court-Appointed Designee