

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

In re:)	
)	Chapter 11
)	
ESCO MARINE, INC., et al., ¹)	Case No. 15-20107
)	
)	
Debtors.)	(Jointly Administered)
)	
)	

**DISCLOSURE STATEMENT FOR THE JOINT CHAPTER 11 PLAN OF
REORGANIZATION OF ESCO MARINE, INC. AND ITS DEBTOR AFFILIATES**

Langley & Banack, Inc.
745 E. Mulberry, Suite 700
San Antonio, Texas 78212
(210) 736-6600 Telephone
(210) 735-6889 Telecopier

DAVID S. GRAGG
State Bar No. 08253300
NATALIE F. WILSON
State Bar No. 24076779
ALLEN M. DeBARD
State Bar No. 24065132

ATTORNEYS FOR DEBTORS AND
DEBTORS-IN-POSSESSION

Dated: November 3, 2017

¹ The Debtors also include ESCO Metals, LLC; ESCO Shredding, LLC; Texas Best Recycling, LLC, and Texas Best Equipment, LLC. The corporate address for all debtors is 16200 Joe Garza Sr., Road, Brownsville, Texas 72521. Joint administration under the above style and case number has been ordered by the United States Bankruptcy Court on March 10, 2015.

Contents

ARTICLE I. DEFINITIONS	4
ARTICLE II.	4
A. HISTORY AND FINANCIAL CONDITION OF DEBTORS	4
B. HISTORY OF THE DEBTORS' BANKRUPTCY CASES	5
1. Commencement of the Cases and Retention of Estate Professionals	5
2. Post-petition Financing	6
3. Post-Petition Agreement	6
4. The Sale of Substantially All of the Debtors' Assets	6
C. DISCLOSURES RELATED TO PROPOSED LIQUIDATING TRUSTEES	7
ARTICLE III. SUMMARY OF THE PLAN	7
ARTICLE IV. TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN	8
4.1 Unclassified Claims	8
4.2 Classified Claims	8
ARTICLE V. CONFIRMATION	10
ARTICLE VI. CONFIRMATION OF THE PLAN	11
6.1 Requirements of Confirmation.	11
6.2 Conditions to the Effective Date	12
6.3 Treatment of Executory Contracts and Unexpired Leases	13

ARTICLE VII. FEDERAL INCOME TAX CONSEQUENCES SECURITIES LAW	
CONSIDERATIONS	15
7.1 Certain Federal Income Tax Consequences of the Plan.	15
7.2 Net Operating Loss Carry-Forwards.....	16
ARTICLE VIII. ANALYSIS OF THE PLAN VS. CHAPTER 7 LIQUIDATION	16
8.1 Business Risks.	17
8.2 Risk Related to Taxation.....	18
8.3 Bankruptcy Risks.....	18
ARTICLE IX. CONFIRMATION BY CRAM DOWN	19
ARTICLE X. MISCELLANEOUS PROVISIONS	19
10.1 Preservation of Estate Causes of Action.....	20
10.2 Retention of Jurisdiction.....	23
10.3 Amendment of the Plan; Modification of the Plan.....	24
ARTICLE XI. VOTING PROCEDURE	25
11.1 Classes Entitled to Vote on the Plan.....	25
11.2 General Provisions.....	25
11.3 Acceptance by Impaired Classes of Claims.....	25
11.4 Ballots.....	25
11.5 Disputed and Unliquidated Claims.....	27
11.6 Possible Reclassification of Claimants.....	27

ARTICLE XIII. CONCLUSION..... 28

HOLDERS OF CLAIMS SHOULD CAREFULLY READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING THE EXHIBITS, PRIOR TO VOTING ON THE PLAN. FOR THE CONVENIENCE OF HOLDERS OF CLAIMS AND EQUITY INTERESTS, THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING. THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, AND NOTHING STATED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR, THE PLAN PROPONENTS OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR EQUITY INTERESTS.

CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL BE REFLECTIVE OF ACTUAL OUTCOMES. ALL HOLDERS OF CLAIMS SHOULD CAREFULLY READ AND CONSIDER FULLY THE RISK FACTORS SET FORTH IN THIS DISCLOSURE STATEMENT BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT TO, AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE AGREEMENTS. IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS AND EQUITY INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE (“IRC”); AND (B) HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

ESCO Marine, Inc. (“**ESCO Marine**”) and its debtor affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), submit this disclosure statement (this “**Disclosure Statement**”) pursuant to section 1125 of the Bankruptcy Code to holders of Claims against the Debtors in connection with the solicitation of acceptances with respect to the Joint Chapter 11 Plan of Reorganization of ESCO Marine, Inc. and its Debtor Affiliates (the “**Plan**”), dated [], 2017. A copy of the Plan is attached hereto as **Exhibit A** and incorporated herein by reference.

The Debtors, as plan proponents, provide this Disclosure Statement to all known creditors and equity interest holders of the Debtors in order to disclose the information deemed to be material, important, and necessary for creditors and equity interest holders to arrive at a reasonably informed decision in exercising their right to vote for acceptance or rejection of the Plan. A copy of the Plan accompanies this Disclosure Statement.

NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE OR REJECTION WHICH ARE OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD NOT BE RELIED UPON BY YOU IN ARRIVING AT YOUR DECISION, AND SUCH ADDITIONAL REPRESENTATIONS AND INDUCEMENTS SHOULD BE REPORTED TO COUNSEL FOR THE PLAN PROPONENTS, WHO IN TURN SHALL DELIVER SUCH INFORMATION TO THE UNITED STATES TRUSTEE FOR SUCH ACTION AS MAY BE DEEMED APPROPRIATE.

THE PLAN PROPONENTS BELIEVE THAT THEIR PLAN IS FAIR AND EQUITABLE AND TREATS ALL CREDITORS, INTEREST HOLDERS AND PARTIES IN INTEREST IN AN APPROPRIATE MANNER.

THE APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT BY THE BANKRUPTCY COURT OF THE PLAN OR A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SEC, NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THE PLAN PROPONENTS BELIEVE THAT THE PLAN AND THE TREATMENT OF CLAIMS AND EQUITY INTERESTS THEREUNDER IS IN THE BEST INTERESTS OF CREDITORS AND EQUITY INTEREST HOLDERS AND URGE THAT YOU VOTE TO ACCEPT THE PLAN.

HOLDERS OF CLAIMS SHOULD CAREFULLY READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING THE EXHIBITS, PRIOR TO VOTING ON THE PLAN. IN THE EVENT OF ANY INCONSISTENCIES BETWEEN THE

PROVISIONS OF THE PLAN AND THIS DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN SHALL CONTROL. THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, AND NOTHING STATED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS, THE PLAN PROPONENTS OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTORS, THE PLAN PROPONENTS OR HOLDERS OF CLAIMS OR EQUITY INTERESTS.

The Debtors filed voluntary Petitions for Reorganization under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas – Corpus Christi Division (the “**Bankruptcy Court**”) on March 8, 2015 (the “**Petition Date**”). On March 10, 2015, the Bankruptcy Court ordered that the cases be jointly administered, including the filing of a single Plan and Disclosure Statement. From the Petition Date, the Debtors have maintained control of their businesses as debtors-in-possession pursuant to section 1108 of the Bankruptcy Code.

You are urged to carefully read the contents of this Disclosure Statement before making your decision to accept or reject the Plan. Particular attention should be directed to the provisions of the Plan affecting or impairing your rights as they presently exist. The terms used herein have the same meaning as in the Plan unless the context hereof requires otherwise.

**SUMMARY OF PROPOSED TREATMENT
CLASS TREATMENT**

Class	Treatment
Class 1: Priority Wage Claims	Paid in full/Pro Rata
Class 2: Priority Tax Claims	Paid in full/Pro Rata
Class 3: Other Priority Claims	Paid in full/Pro Rata
Class 4: Other Secured Claims	Satisfied by surrender of collateral or as otherwise agreed.
Class 5: Secured Equipment Claims	Satisfied by surrender of collateral or as otherwise agreed..
Class 6: Callidus Secured Claim	Callidus credit bid \$26,488,788.93 of its \$30,236,856 claim to purchase substantially all of the Debtors' assets pursuant to the Sale Order. The remaining deficiency is to be treated as an Administrative Claim or as a Class 7B General Unsecured Claim.
Class 7: General Unsecured Claims	Paid Pro Rata portion from assets assigned to trusts for the benefit of General Unsecured Creditors pursuant to the Settlement Agreement.
Class 8: Subordinated Claims	Subordinated Claims, including Intercompany Claims, shall not receive or retain any property on account of such Claims.
Class 9: Interests in the Debtors	Shall be cancelled, and no holder of any Old Security shall receive or retain any property on account of such Interest.

ARTICLE I.
DEFINITIONS

Capitalized terms that are used herein but are not otherwise defined in this Disclosure Statement shall have the meanings ascribed to them in the Plan. In the event of a conflict, the definitions contained in the Plan shall control.

ARTICLE II.

A. HISTORY AND FINANCIAL CONDITION OF DEBTORS

ESCO Marine is a Delaware corporation doing business in Texas. As of the Petition Date, it operated an 88-acre marine yard and recycling operation located in Brownsville, Texas.

ESCO Marine and the affiliated Debtors specialize in recyclable metals and the proper disposal of obsolete maritime vessels.

As of the Petition Date, the Debtors were under contract with the United States Navy and the United States Maritime Administration (“**MARAD**”) to scrap decommissioned ships. The Debtors would dismantle the ships and sell the resulting scrap metal, including armored plate, and other elements of the ship to its customers. In the months prior to the Petition Date, metal prices declined precipitously as demand decreased rapidly.

With declining metal prices and declining revenues, the Debtors became unable to service their debt, in particular, the secured debt owed to Callidus Capital Corporation (“**Callidus**”). In order to pay outstanding obligations, the Debtors used money that properly belonged in Callidus’s “lock box.” Following that incident, Callidus invoked its remedies under its loan documents and refused to provide further funding under the loan documents. Thus, the Debtors had insufficient funds to continue operations, ceased operations, and filed for protection under Chapter 11 of the Bankruptcy Code.

Following the commencement of the Chapter 11 Cases, Callidus agreed to provide post-petition financing so that the Debtors could pursue reorganization and/or a Bankruptcy Court-approved sale. The Debtors did not re-commence any shipbreaking operations during the pendency of the cases and eventually sold substantially all their assets. However, as required by their contracts with the United States government, the Debtors maintained necessary security (including utilities and security personnel). The Debtors also retained certain additional personnel necessary to comply with the Debtors’ obligations under the Bankruptcy Code.

B. HISTORY OF THE DEBTORS’ BANKRUPTCY CASES

1. Commencement of the Cases and Retention of Estate Professionals

Upon filing for protection under Chapter 11 of the Bankruptcy Code, the Debtors sought certain emergency relief in various “First Day Motions.” The Debtors sought, and the Bankruptcy Court granted, the Debtors authority to use cash collateral, maintain utility services, and retain certain necessary employees. The Bankruptcy Court also authorized the joint administration of the Debtors’ cases.

The Debtors retained certain professionals, including Langley & Banack, Inc. as counsel, KSV (fka Duff & Phelps) as financial advisors, and Chatsworth Securities, LLC as investment bankers.

In May 2015, the Bankruptcy Court authorized the appointment of a Chief Restructuring Officer, Richard Whitlock.

On May 29, 2015, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “**Creditors Committee**”). The Creditors Committee retained Barron & Newburger, P.C. as its counsel and Unique Strategies, Inc. as its financial advisors.

On August 24, 2016, the Bankruptcy Court authorized the appointment of J. Kristopher Wood as the successor Chief Restructuring Officer to replace Richard Whitlock.

On September 7, 2017, the Bankruptcy Court authorized the appointment of Edward M. Asbury as the successor Chief Restructuring Officer to replace J. Kristopher Wood.

2. Post-petition Financing

The Debtors obtained Bankruptcy Court approval to obtain post-petition financing from Callidus. The Court entered several interim post-petition financing orders and on May 27, 2015, entered the final post-petition financing order [Dkt. 180] (as amended, the “**Final DIP Order**”).

Under the terms of the Final DIP Order, Callidus agreed to provide post-petition financing necessary to maintain the Chapter 11 Cases in accordance with a budget. Among other things, the post-petition loan proceeds allowed the Debtors to pay: (i) certain retained employees (including the security officers required under the contracts with the United States government), (ii) for utility services (also necessary to maintain the required security levels), (iii) necessary insurance (also required under the contracts with the United States), (iv) taxes and statutory fees, and (v) estate professionals.

In exchange, Callidus was granted a super priority administrative claim and a super-priority lien on all of the Debtors’ assets pursuant to section 364 of the Bankruptcy Code for the full amount of the Debtor’s obligations to Callidus both pre and post petition. Callidus’ right to credit bid at a sale of the Debtors’ assets under section 363 was also explicitly permitted.

The Committee objected to the entry of the Final DIP Order. The Committee and Callidus consensually resolved that objection. The terms of that consensual resolution were set forth in an amended Final DIP Order [Dkt. 384] entered on July 31, 2015, which provided, *inter alia*, that notwithstanding any other provision of the Final DIP Order, Callidus did not possess and waived any claim of lien on (1) chapter 5 causes of action, (2) the tug “Miss Angie” and any barge(s) owned by the Debtors, and (3) commercial tort claims belonging to the Debtors.

3. Post-Petition Agreement

The Committee, Callidus, and the Debtors also filed a Joint Motion to Compromise Between the Official Committee of Unsecured Creditors, Callidus Capital Corporation, and the Debtors [Dkt. 489], which the Court granted on December 21, 2015 [Dkt 501]. A copy of the Settlement Order is attached hereto as **Exhibit B**.

4. The Sale of Substantially All of the Debtors’ Assets

On June 26, 2015, the Bankruptcy Court approved Bid Procedures [Dkt. 260] under which the Debtors conducted a sale of substantially all of their assets under section 363 of the Bankruptcy Code. Pursuant to those Bid Procedures, the Debtors conducted an auction on July 27, 2015. Following the conclusion of the Auction, Callidus’s credit bid (in the approximate amount of \$26 million) was declared to be the Prevailing Bid (as defined in the Bid Procedures).

In May 2016, the Debtors sold real property located in Donna, Texas. The proceeds (approximately \$170,000 after paying costs of sale and taxes) were allocated to Callidus and the General Trust in accordance with the Settlement Agreement.

C. DISCLOSURES RELATED TO PROPOSED LIQUIDATING TRUSTEES AND DEBTORS' DISBURSING AGENT

The Plan creates two Liquidating Trusts: the General Trust and the Jaross/Levy Trust. The Creditors Committee proposes that Dan Bensimon, who is currently the principal of the Creditors Committee's financial advisor, serve as Liquidating Trustee for both trusts. The Trustee for the Jaross/Levy Trust shall be selected by the Debtors in consultation with the Creditors Committee and Callidus; provided that, in the event of a disagreement, the preference of Callidus shall control.

The Liquidating Trustee will administer the assets of the Liquidating Trusts for the payment of Administrative Claims of the Creditors Committee Professionals (if any remain after the Effective Date), and the Class 7 General Unsecured Claims. The Liquidating Trustees shall administer the Liquidating Trust Assets in accordance with the Plan and the Liquidating Trust Agreements. Copies of the Liquidating Trust Agreements for the Liquidating Trusts are attached hereto as **Exhibits C and D**.

The Debtors propose that Edward M. Asbury serve as Debtors' Disbursing Agent. Mr. Asbury was appointed to serve as the Debtors' Chief Restructuring Officer pursuant to Court order dated September 7, 2017. Mr. Asbury is familiar with the Debtors' operations history, its assets, and the course of this bankruptcy proceeding. His knowledge base makes him uniquely qualified to manage the remaining tasks of the case and evaluate which actions will best serve the parties in interest.

ARTICLE III.
SUMMARY OF THE PLAN

The Plan is a liquidating plan. The Disbursing Agent will distribute the Estates' available funds to either the Liquidating Trustee (as provided under the Plan with respect to the proceeds of the Donna sale) or to pay Administrative and Priority Claims as provided under the Plan. Callidus has agreed to subordinate up to \$250,000 of its Administrative Claim to payment of the other Administrative Claims and Priority Claims as provided in the Settlement Order. Some Priority Wage Claims may be satisfied pursuant to the Payment Bond.

General Unsecured Creditors will receive payment from the Liquidating Trusts. The Liquidating Trusts will be funded with the assets as set forth in the Settlement Agreement. Most assets will be allocated to the General Trust. Callidus's General Unsecured Claim will be subordinated to the Claims of all other General Unsecured Creditors with regard to the General Trust. The Jaross/Levy Trust assets will be liquidated to pay the General Unsecured Claims of

all Creditors and Callidus. Subordinated Claims, including inter-company claims, will not receive any distribution. The Interests in the Debtors will be canceled.

The Debtors urge all Creditors to support the Plan. The Administrative and Priority Claims may only receive a Pro Rata distribution on account of their Claims, however, this recovery is substantially more than Creditors will receive if the Chapter 11 Cases are converted or the Plan is not approved.

ARTICLE IV.
TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

4.1 Unclassified Claims

4.1.1 **General:** The Administrative Claims are the only unclassified Claims under the Plan. With respect to each Allowed Administrative Claim, except as otherwise provided for in Section 5.1 of this Plan, on, or as soon as reasonably practicable after, the latest of (i) the Effective Date, (ii) the date such Administrative Claim becomes an Allowed Administrative Claim; or (iii) the date such Administrative Claim becomes payable pursuant to any agreement between the Debtors and the holder of such Administrative Claim, the holder of each such Allowed Administrative Claim shall receive in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, (A) Cash equal to the unpaid portion of such Allowed Administrative Claim or (B) such different treatment as to which the Debtors and such holder shall have agreed upon in writing; *provided, however*, that Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto. In the event that the Estates shall have insufficient funds to pay all Administrative Claims in full, such claims shall be paid on a pro rata basis .

4.1.2 **Payment of Statutory Fees:** All fees payable pursuant to 28 U.S.C. § 1930 shall be paid in cash, when due. The Debtors will continue to be liable for payment of pre-confirmation statutory fees. After confirmation of the Plan, the Liquidating Trustee shall assume responsibility for filing the Post-Confirmation reporting obligations required by the United States Trustee and shall pay the required quarterly fees to the United States Trustee. Quarterly fees shall be paid from the proceeds of Liquidating Trust Assets before distribution to other creditors.

4.2 Classified Claims

4.2.1 Class 1 – Priority Wage Claims. Class 1 consists of Priority Wage Claims, including without limitation, claims by the Debtors’ employees for unpaid wages. Some of the unpaid wages for work performed on the ex-SARATOGA may be payable under the Payment Bond. Those claimants shall first seek repayment under the Payment Bond. To the extent that any Priority Wage Claim is not payable from other sources, including without limitation, the Payment Bond, each holder of an Allowed Priority Wage Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for such Allowed Other Priority Claim, either (i) payment in full in Cash on the later of (A) the Distribution Date and (B) the date on

which such Claim becomes an Allowed Claim, or (ii) in the event that the Estates shall have insufficient funds to pay all Allowed Priority Wage Claims in full, its Pro Rata share of such funds.

4.2.2 Class 2 – Priority Tax Claims. Class 2 consists of Priority Tax Claims, including without limitation, claims against the Debtors for sales and use tax, franchise taxes, and other claims arising under section 507(a)(8) of the Bankruptcy Code. Each holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Priority Tax Claim either (i) payment in full in Cash on the later of (A) the Distribution Date and (B) the date on which such Claim becomes an Allowed Claim, or (ii) in the event that the Estates shall have insufficient funds to pay all Allowed Priority Tax Claims in full, its Pro Rata share of such funds.

4.2.3 Class 3 – Other Priority Claims. Class 3 consists of Other Priority Claims. Each holder of an Allowed Other Priority Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Other Priority Claim either (i) payment in full in Cash on the later of (A) the Distribution Date and (B) the date on which such Claim becomes an Allowed Claim, or (ii) in the event that the Estates shall have insufficient funds to pay all Allowed Other Priority Claims in full, its Pro Rata share of such funds

4.2.4 Class 4 – Other Secured Claims. Class 4 consists of Other Secured Claims. Holders of Other Secured Claims will receive in full satisfaction, settlement, release and discharge of and in exchange for such Other Secured Claim, either (A) the property securing any Other Secured Claims or (B) such different treatment as to which the Debtors and such holder shall have agreed upon in writing; *provided* that such treatment is on more favorable terms to the Estates (or the Liquidating Trusts after the Effective Date), than the treatment set forth in clause (A) above.

4.2.5 Class 5 – Secured Equipment Claims. Class 5 consists of Secured Equipment Claims, including, but not limited to, the claims related to financing heavy machinery, rolling stock, and other equipment used in the Debtors' operations. Holders of Secured Equipment Claims will receive in full satisfaction, settlement, release and discharge of and in exchange for such Secured Equipment Claim, either (A) the equipment securing any Secured Equipment Claims or (B) such different treatment as to which the Debtors and such holder shall have agreed upon in writing; *provided* that such treatment is on more favorable terms to the Estates (or the Liquidating Trusts after the Effective Date), than the treatment set forth in clause (A) above.

4.2.6 Class 6 – Callidus Secured Claim. Class 6 consists of Callidus's Secured Claim. Callidus has an Allowed Secured Claim against substantially all of the Debtors' assets. Callidus has an agreed pre-petition Allowed Secured Claim of \$30,236,856. Pursuant to the Section 363 Sale, \$26,488,788.93 was credited against Callidus' pre-petition claim. The remaining unsecured deficiency shall be treated as an Allowed Administrative Claim as provided in the Final DIP Order, or as an Allowed Class 7B General Unsecured Claim, except to the extent that Callidus has agreed to accept different treatment in the Settlement Agreement. The Allowed Administrative Claim shall be treated as provided in the Settlement Order.

4.2.7 Class 7 – General Unsecured Claims. Class 7 consists of the Allowed General Unsecured Claims against the Debtors’ estates, including the unsecured deficiency claim of Callidus. Class 7 shall be divided into Class 7A and Class 7B. Class 7A shall consist of all Allowed General Unsecured Claims except the General Unsecured Claim of Callidus. The Class 7A creditors shall receive Pro Rata distributions from the General Trust as provided further herein. Class 7B shall consist of all Allowed Unsecured Claims including the General Unsecured Claim of Callidus, if any. Callidus shall receive Pro Rata distributions from the Jaross/Levy Trust along with other holders of Allowed Class 7B General Unsecured Claims as provided further herein. It is specifically intended that most holders of General Unsecured Claims will participate in both Class 7A and Class 7B except for Callidus, which will only participate in Class 7B. In the event that this Plan is not confirmed, the Creditors Committee reserves the right to implement the Liquidating Trusts pursuant to the Settlement Order.

4.2.8 Class 8 – Subordinated Claims. Class 8 consists of the claims of Insiders and Intercompany Claims. All of these claims are subordinated to the Allowed Class 7 Claims and no holder of a Class 8 claim shall receive or retain any property or payment on account thereof unless and until all Allowed Class 7 Claims are paid in full.

4.2.9 Class 9 – Interests in the Debtors. Class 9 consists of the Old Securities, *i.e.*, Interests in the Debtors. All Old Securities of any kind shall be cancelled and no holder of such interest shall receive or retain any property under the Plan on account of such interests.

ARTICLE V. **CONFIRMATION**

As a general rule, holders of impaired Claims and Interests are entitled to vote under the Plan. According to the Plan, Classes 1, 2, 3, 6, and 7 are “impaired” classes within the meaning of section 1124 of the Bankruptcy Code. A claimant who fails to vote to either accept or reject the Plan will not be included in the calculation regarding acceptance or rejection of the Plan. Holders of Claims and Interests in Classes 8 and 9 are not to receive or retain any property of the Debtors on account of such Claim or Interest, and are therefore deemed to reject the Plan and are not entitled to vote. Because these classes are deemed to reject the Plan, the Plan will have to be approved under the “cram down” provisions of section 1129(b) of the Bankruptcy Code.

A ballot to be completed by the holders of Claims and/or Interests is included herewith. Instructions for completing and returning the ballots are set forth thereon and should be reviewed at length. The Plan will be confirmed by the Bankruptcy Court and made binding upon the Debtors and all claimants and Interest holders if (a) with respect to impaired Classes of claimants, the Plan is accepted by holders of two-thirds (2/3) in amount and more than one-half (1/2) in number of Claims in each such class voting upon the Plan and (b) with respect to classes of Interest holders, if the Plan is accepted by the holders of at least two-thirds (2/3) in amount of the allowed interests of such class held by holders of such interests. In the event the requisite acceptances are not obtained, the Bankruptcy Court may, nevertheless, confirm the Plan if it finds that the Plan accords fair and equitable treatment to any class rejecting it. Your attention is

directed to section 1129(b) of the Bankruptcy Code for details regarding the circumstances of such “cram down” provisions.

ARTICLE VI.
CONFIRMATION OF THE PLAN

6.1 Requirements of Confirmation.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129 of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter a Confirmation Order. For the Plan to be confirmed, section 1129(a) of the Bankruptcy Code requires that:

- (a) The Plan complies with the applicable provisions of the Bankruptcy Code;
- (b) The Plan Proponents have complied with the applicable provisions of the Bankruptcy Code;
- (c) The Plan has been proposed in good faith and not by any means forbidden by law;
- (d) Any payment or distribution made or promised by the Plan Proponents or by a Person issuing securities or acquiring property under the Plan for services or for costs and expenses in connection with the Plan has been disclosed to the Bankruptcy Court, and any such payment made before the Confirmation of the Plan is reasonable, or if such payment is to be fixed after Confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;
- (e) The Plan Proponents have disclosed the identity and affiliations of any individual proposed to serve, after Confirmation of the Plan, as a director, officer or voting trustee of the Debtors, an affiliate of the Debtors participating in a joint plan with the Debtors, or a successor to the Debtors under the Plan; the appointment to, or continuance in, such office of such individual is consistent with the interests of Creditors and holders of Interests and with public policy; and the Plan Proponents have disclosed the identity of any insider that will be employed or retained by any successor to the Debtors and the nature of any compensation for such insider;
- (f) Any government regulatory commission with jurisdiction, after Confirmation of the Plan, over the rates of the Debtors have approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval;
- (g) With respect to each impaired Class of Claims or Interests, either each holder of a Claim or Interest of the Class has accepted the Plan or will receive or

retain under the Plan on account of that Claim or Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated on such date under chapter 7 of the Bankruptcy Code. If section 1111(b)(2) of the Bankruptcy Code applies to the Claims of a Class, each holder of a Claim of that Class will receive or retain under the Plan on account of that Claim property of a value, as of the Effective Date, that is not less than the value of that holder's interest in the property that secures that Claim;

- (h) Each Class of Claims or Interests has either accepted the Plan or is not Impaired under the Plan;
- (i) Except to the extent that the holder of a particular Allowed Administrative Claim or Priority Claim has agreed to a different treatment of its Allowed Claim, the Plan provides that Allowed Administrative Claims or Priority Claims shall be paid in full;
- (j) If a Class of Claims or Interests is Impaired under the Plan, at least one Class of Claims or Interests that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim or Interest of that Class; and
- (k) Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.

The Debtors believe that the Plan satisfies all of the statutory requirements of the Bankruptcy Code, that the Plan was proposed in good faith, and that they have complied with, or will have complied with, all the requirements of the Bankruptcy Code necessary to achieve Confirmation of the Plan. Because the Plan is a liquidating plan and the vast majority of the Debtors' assets were sold pursuant to the Section 363 Sale, the confirmation of this Plan will not be followed by any further need for financial reorganization.

6.2 Conditions to the Effective Date.

Each of the following events shall occur on or before the Effective Date; provided however, Debtors may waive any of these conditions, whereupon the Effective Date shall occur without further action by any Person:

- (a) the Confirmation Order shall have been entered in form and substance reasonably satisfactory to the Debtors, Callidus, and the Creditors Committee, and shall, among other things:
 - (i) provide that the Debtors or Liquidating Trustee, if applicable, is authorized and directed to take all actions necessary or appropriate

to consummate the Plan, including, without limitation, to enter into, implement, and perform under the contracts, instruments, and other agreements or documents created in connection with the Plan;

(ii) provide that, notwithstanding Federal Rule of Bankruptcy Procedure 3020(e) or the definition of Final Order in the Plan, the Confirmation Order shall be immediately effective subject to the terms and conditions of the Plan;

(b) the Confirmation Order shall not then be stayed, vacated or reversed;

(c) all material authorizations, consents and regulatory approvals required, if any, in connection with consummation of the Plan shall have been obtained;

(d) all material actions, documents and agreements necessary to implement the Plan shall have been effected or executed; and

(e) the Liquidating Trusts shall be established pursuant to the Liquidating Trust Agreements and conditions of the Plan.

6.3 Treatment of Executory Contracts and Unexpired Leases

(a) Assumption or Rejection of Executory Contracts and Unexpired Leases.

On the Effective Date, except as otherwise provided in the Plan, any unexpired lease or executory contract that has not been previously assumed or rejected by the Debtors pursuant to an order of the Bankruptcy Court shall be deemed rejected by the Debtors under Sections 365(a) and 1123 of the Bankruptcy Code, other than those executory contracts and unexpired leases that are (a) listed in the Plan (as such list may be amended, supplemented or modified on or before the Confirmation Date) or (b) subject to a motion to reject that is pending on the Effective Date. Entry of the Confirmation Order shall constitute approval of such assumptions, and the rejection of the executory contracts or unexpired leases listed in the exhibit to be provided at the confirmation hearing hereto (as such list may be amended, supplemented or modified on or before the Confirmation Date), pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Any motions to assume executory contracts and unexpired leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

(b) Objections to Assumption and Assignments of Executory Contracts and Unexpired Leases.

To the extent that any party to an executory contract or unexpired lease identified for assumption, or any other party in interest, (a) asserts arrearages or damages pursuant to section 365(b)(1) of the Bankruptcy Code in an amount different from the amount, if any, set forth in the

Petition and Schedules, (b) has any objection to the proposed adequate assurance of future performance, if required, or (c) has any other objection to the proposed assumption, cure, or assignment of a particular executory contract or unexpired lease on the terms and conditions provided for herein, all such asserted arrearages and any other objections shall be filed and served within the same deadline and in the same manner established for filing objections to Confirmation.

Failure to assert any arrearages different from the amount set forth in the Schedules (or the exhibits thereto), or to file an objection within the time period set forth above, shall constitute consent to the assumption, cure, and assignment on the terms provided for herein, including acknowledgment that (a) the Debtor (or its assignee) has provided adequate assurance of future performance, if required, (b) the amount identified for "cure," if any, is the amount necessary to compensate for any and all outstanding defaults or actual pecuniary loss under the executory contract or unexpired lease to be assumed, and (c) no other defaults exist under such executory contract or unexpired lease.

If an objection to assumption and assignment is filed based upon lack of adequate assurance of future performance or otherwise, and the Court determines that the Debtors cannot assume the executory contract or unexpired lease either as proposed or as may be proposed pursuant to a modified proposal submitted by the Debtors, then the unexpired lease or executory contract shall automatically thereupon be deemed to have been rejected.

(c) Payments Related to Assumption of Executory Contracts and Unexpired Leases.

Any monetary defaults, including claims for actual pecuniary loss, under each executory contract and unexpired lease to be assumed under the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount, if any, as otherwise agreed by the parties, or as ordered a court of competent jurisdiction, in Cash within 90 days following the later of the Effective Date or the entry of a final order determining the cure amount, or on such other terms as may be agreed to by the parties to such executory contract or unexpired lease. The cure amount, if any, on the contracts being assumed will be paid by Purchaser and future performance under the contracts assumed will be provided by the Purchaser.

(d) Bar Date for Rejection Damages.

If the rejection of an executory contract or unexpired lease pursuant to Article 6 of the Plan gives rise to a Claim by the other party or parties to such contract or lease, such Claim, to the extent that it is timely filed and is an Allowed Claim, shall be classified in Class 7; provided, however, that the General Unsecured Claim arising from rejection shall be forever barred and shall not be enforceable against the Debtors or their successors or properties, unless a proof of Claim is filed and served on the Debtors and the Liquidating Trustee within 30 days after the date of the notice of the entry of an order of the Bankruptcy Court authorizing rejection of the executory contract or unexpired lease, which order may be the Confirmation Order.

(e) Contracts to be Assumed.

The Debtors do not intend to assume any executory contracts or unexpired leases other than contracts that are to be assumed pursuant to the Section 363 Sale. The Debtors reserve the right to file notice that they will assume any of their executory contract(s) or unexpired lease(s) so long as such notice is filed not less than seven (7) days before the hearing to consider confirmation of the Plan.

(f) No Admission.

The listing by the Debtors of any contract or lease as an “executory contract” cannot be construed as an admission that such contract or lease is actually an executory contract under section 365 of the Bankruptcy Code and shall not be a binding admission against the Debtors or the Liquidating Trustee.

ARTICLE VII.
FEDERAL INCOME TAX CONSEQUENCES SECURITIES LAW CONSIDERATIONS

7.1 Certain Federal Income Tax Consequences of the Plan.

THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN OF THE SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN TO THE DEBTORS AND TO HOLDERS OF CLAIMS AND INTERESTS. NO RULINGS OR OPINIONS HAVE BEEN REQUESTED FROM THE INTERNAL REVENUE SERVICE OR COUNSEL WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. THE PLAN PROPONENTS RESERVE THE RIGHT TO SEEK SUCH RULINGS OR OPINIONS, IF ADVISABLE. HOWEVER, EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT HIS OWN TAX ADVISOR FOR THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES PECULIAR TO HIM UNDER THE PLAN.

THE PLAN PROPONENT AND ITS ATTORNEYS ARE NOT ACCOUNTANTS, TAX ADVISORS, OR CERTIFIED PUBLIC ACCOUNTANTS. ANY DISCLOSURE HEREIN IS NOT A SUBSTITUTE FOR A HOLDER SEEKING ITS OWN TAX ADVICE AND YOU SHOULD DO SO.

THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES OF THE PLAN TO THE HOLDERS OF CLAIMS AND INTERESTS MAY VARY BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. IN ADDITION, THIS DISCUSSION DOES NOT COVER ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO THE DEBTORS OR HOLDERS OF ALLOWED CLAIMS, NOR DOES THE DISCUSSION DEAL WITH TAX ISSUES PECULIAR TO CERTAIN TYPES OF TAXPAYERS (SUCH AS LIFE INSURANCE COMPANIES, S CORPORATIONS, FINANCIAL INSTITUTIONS, TAX EXEMPT ORGANIZATIONS AND FOREIGN TAXPAYERS). NO ASPECT OF FOREIGN, STATE, LOCAL, OR ESTATE AND GIFT TAXATION IS ADDRESSED. THEREFORE, THE FOLLOWING SUMMARY IS NOT A SUBSTITUTE FOR CAREFUL TAX

PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM.

THIS SUMMARY IS BASED ON THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), TREASURY REGULATIONS PROMULGATED AND PROPOSED THEREUNDER, JUDICIAL DECISIONS AND PUBLISHED ADMINISTRATIVE RULES AND PRONOUNCEMENTS OF THE INTERNAL REVENUE SERVICE (“IRS” OR THE “SERVICE”) AS IN EFFECT ON THE DATE HEREOF. CHANGES IN SUCH RULES OR NEW INTERPRETATIONS THEREOF MAY HAVE RETROACTIVE EFFECT AND COULD THEREFORE SIGNIFICANTLY AFFECT THE CONSEQUENCES DESCRIBED BELOW.

IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS AND EQUITY INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE (“IRC”); AND (B) HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

7.2 Net Operating Loss Carry-Forwards.

The federal income tax aspects of reorganization under chapter 11 are complicated and uncertain, and it is not possible to present in this Disclosure Statement a detailed analysis of the tax consequences of the actions contemplated by the Plan. Consequently, each Creditor and Interest holder is urged to consult its own tax advisors with respect to the consequences of the Plan. **THE PLAN PROPONENTS MAKE NO REPRESENTATIONS OF ANY NATURE REGARDING THE FEDERAL (OR STATE) INCOME TAX CONSEQUENCES OF THE PLAN AS TO ANY PARTY IN INTEREST.**

The Debtors may have certain tax attributes that may or may not be obtainable. At this time, it is uncertain whether the Liquidating Trustee would be able to obtain any of those tax attributes and what the effect of those attributes would be. The Liquidating Trustee reserves the right to claim any favorable tax attributes of the Debtors to which the Liquidating Trustee is legally entitled.

ARTICLE VIII.
ANALYSIS OF THE PLAN VS. CHAPTER 7 LIQUIDATION

This Plan is a liquidating plan, but it is preferable to a liquidation under Chapter 7 of the Bankruptcy Code. Most importantly, a liquidation under Chapter 7 would not increase the recovery to Creditors, but would increase administrative costs. Additionally, it is possible that a Chapter 7 Trustee could seek to unwind the settlements and agreements that the parties in

interest entered during the course of the Bankruptcy proceeding (although the Debtors do not concede that such an attempt would be a) warranted, or b) successful). Based on the prepetition assets and liabilities of the Debtors as reflected on the Schedules and the super-priority lien granted to Callidus under the Final DIP Order, there would be no assets available for distribution to pay Allowed General Unsecured Claims. Accordingly, the Debtors' Creditors fare better under the Plan than they would in a chapter 7 liquidation.

THE PLAN PROPONENTS BELIEVE THAT CONFIRMATION AND IMPLEMENTATION OF THE PLAN IS PREFERABLE TO ANY OF THE ALTERNATIVES DESCRIBED HEREIN BECAUSE THE PLAN SHOULD PROVIDE GREATER CERTAINTY AND RECOVERIES THAN THOSE THAT WOULD BE AVAILABLE UNDER CHAPTER 7 LIQUIDATION.

RISK ANALYSIS

The only alternative to this plan is a conversion to chapter 7. The risks of a chapter 7 liquidation are described above.

HOLDERS OF CLAIMS SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE HEREIN), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN.

8.1 Business Risks.

The Disclosure Statement and the material incorporated by reference herein (the "**Incorporated Materials**") include "forward-looking statements" as defined in Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934. All statements other than statements of historical facts included in this Disclosure Statement and the Incorporated Materials regarding Debtors' or the Liquidating Trust's financial position, and plans and objectives, including, but not limited to, statements using words such as "anticipates," "expects," "estimates," "believes," and "likely" are forward-looking statements.

The Debtors believe that their current views and expectations are based on reasonable assumptions; however, there are significant risks and uncertainties that could affect expected results. Important factors that could cause actual results to differ materially from those in the forward-looking statements are discussed throughout this Disclosure Statement and its attachments. The Debtors do not intend to update or otherwise revise the forward-looking statements contained herein to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

Because the Plan is a liquidating plan and not an operational plan, there are few "business risks" associated with the Plan. The greatest risk under the Plan is that the Litigation Rights assigned to the General Trust and the Levy/Jaross Trust will not yield any proceeds and thus negatively impact Unsecured Creditor recovery.

8.2 Risk Related to Taxation.

Pursuant to the Plan, each holder of an Allowed Claim receiving cash or property under the Plan will recognize gain or loss equal to the difference between the amount of any cash and the fair market value of any other property received by such holder and the basis which the holder has in such Allowed Claim. The character of any recognized gain or loss will depend upon the status of the holder, the nature of the Claim and the period for which the Claim was held by the holder. The basis of a holder in any property received under the Plan will be the fair market value of such property on the Effective Date of the Plan, and the holding period in such property received will begin on the Effective Date.

The federal, state and local tax consequences of the Plan could be complex and, in some cases, uncertain. In addition, the foregoing summary does not discuss all aspects of federal income taxation that may be relevant to a particular holder of an Allowed Claim in light of its particular circumstances and income tax situation. Accordingly, each holder of a Claim is strongly urged to consult with its own tax advisor regarding the federal, state, and local tax consequences of the Plan.

8.3 Bankruptcy Risks.

(a) Objections to Classifications.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests of such class. Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code.

However, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

(b) Risk of Non-Confirmation of the Plan.

Even if all Classes of Claims and Interests that are entitled to vote accept it, the Plan might not be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, that the confirmation of a plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor, and that the value of distributions to dissenting creditors and equity interest holders not be less than the value of distributions such creditors and equity interest holders would receive if the debtor was liquidated under chapter 7 of the Bankruptcy Code. The Debtors believe this Plan satisfies all the requirements for Confirmation of the Plan under the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will also conclude that the requirements for Confirmation of the Plan have been satisfied.

It is likely that even if the Debtors proceed to Plan Confirmation under the “cramdown” provision of section 1129(b) of the Bankruptcy Code, there is risk that the Debtors will not

receive the vote of at least one class of Creditors accepting the Plan. Further, if the Debtors receive a vote from one impaired class of creditors, there can be no assurance that the Bankruptcy Court will also conclude that the other requirements for Confirmation of the Plan under the Bankruptcy Code's "cramdown" provision have been satisfied

(c) Non-Occurrence of Effective Date of Plan.

Even if all Classes of Claims and Interests that are entitled to vote accept the Plan, the Plan may not become effective. The Plan sets forth conditions to the occurrence of the Effective Date that could remain unsatisfied. Debtors believe that they will satisfy all requirements for consummation under the Plan. However, there can be no assurance that the Bankruptcy Court will conclude that the requirements for consummation of the Plan have been satisfied.

(d) Appeal of the Confirmation Order.

The Confirmation Order may be the subject of an appeal. If the Confirmation Order is vacated on appeal (assuming an appeal could be taken and such appeal would not be rendered moot due to substantial consummation of the Plan prior to prosecution), the Plan or parts of the Plan could fail.

ARTICLE IX.
CONFIRMATION BY CRAM DOWN

Because Classes 8 and 9 are deemed to reject the Plan, the Debtors will seek confirmation of the Plan if the Court finds that the Plan does not discriminate unfairly and is fair and equitable with respect to each dissenting class (including any impaired voting class that votes to reject the Plan).

The Plan is deemed fair and equitable if it provides (i) that each holder of a Secured Claim retains its lien and receives deferred cash payments totaling at least the allowed amount of its claim, of a value, as of the effective date of the Plan, of at least the value of its secured interest in the property subject to its lien, and (ii) that each holder of an unsecured claim receives property of a value equal to the allowed amount of its claim, or no holder of a junior claim receives or retains any property.

ARTICLE X.
MISCELLANEOUS PROVISIONS

Notwithstanding any other provisions of the Plan, any claim which is scheduled as disputed, contingent, or unliquidated or which is objected to in whole or in part on or before the date for distribution on account of such claim shall not be paid in accordance with the provisions of the Plan until such claim has become an Allowed Claim by a Final Order. If allowed, the claim shall be paid on the same terms as if there had been no dispute.

At any time before the Confirmation Date, the Debtors may modify the Plan, but may not modify the Plan so that the Plan, as modified, fails to meet the requirements of sections 1122 and

1123 of the Bankruptcy Code. After the Debtors file a modification with the Bankruptcy Court, the Plan, as modified, shall become the Amended Plan.

At any time after the Confirmation Date, and before Substantial Consummation of the Plan, the Debtors may modify the Plan with permission of the Court so that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. The Plan, as modified under this paragraph, shall become the Amended Plan.

After the Confirmation Date, the Debtors may, with approval of the Bankruptcy Court, and so long as it does not materially and adversely affect the interest of creditors, remedy any defect or omission, or reconcile any inconsistencies in the Plan or in the Confirmation Order, in such manner as may be necessary to carry out the purposes and effect of the Plan.

10.1 Preservation of Estate Causes of Action.

NO CLAIMS OR CAUSES OF ACTION WILL BE RELEASED BY THE PLAN—ALL CLAIMS AND CAUSES OF ACTION WILL BE PRESERVED FOR THE BENEFIT OF CREDITORS.²

VOTING ON THE PLAN DOES NOT RELEASE ANYONE CASTING BALLOTS—FOR OR AGAINST—FROM ANY LIABILITY.

Certain claims, causes of action, and other rights, powers, and interests of ESCO Marine, Inc, and its subsidiaries, including without limitation, ESCO Metals, LLC, ESCO Shredding, LLC, Texas Best Recycling, Inc., and Texas Best Equipment, LLC are preserved for the benefit of the Liquidating Trusts as provided in the Settlement Order and this Plan. These are known as the “Preserved Causes of Action.”

The Preserved Causes of Action include the Avoidance Actions and the Litigation Rights.

The Preserved Causes of Action include all claims, causes of action, and other rights, powers, and interests that may be asserted by the Debtors under 11 U.S.C. § 544, including but not limited to the rights that may be asserted by hypothetical lien creditors, execution creditors, or bona fide purchasers of real property from the debtor.

The Preserved Causes of Action include all claims and causes of action against any person or entity, regardless of whether they are or are not creditors, and regardless of whether they voted or did not vote on the Plan. No person may obtain a release of any potential liability by supporting or opposing the Plan. Instead, any potential claims that fall within the definition of Preserved Causes of Action are being preserved for the benefit of all creditors absent a court order to the contrary.

² Except as provided in sections 14.6 through 14.10 of the Plan.

The Preserved Causes of Action may arise from the beginning of time through the consummation of the Plan and shall be fully preserved and vested in the General Trust and the Jaross/Levy Trust.

The General Trust and the Jaross/Levy Trust shall have full power over the Preserved Causes of Action, and may prosecute, settle, release, sell, or otherwise dispose of the Preserved Causes of Action without Court approval.

Examples of potential Preserved Causes of Action and potential defendants are provided below are not complete. The listing of these potential causes of action and defendants is provided without limitation and does not release any unlisted potential causes of action or unlisted potential defendants from any potential liability.

The listing of the potential defendants as Preserved Causes of Action does not mean that any position whatsoever is being taken with respect to the liability, culpability, or legal responsibility of any person or entity listed below. The Persons and firms listed below may have no involvement whatsoever with the Debtors. They may be completely innocent of any wrongdoing and free of liability. This extensive disclosure is only being made out an abundance of caution to ensure that all claims and causes of action are fully preserved for the benefit of creditors in accordance with binding legal precedents set by United States Court of Appeals for the Fifth Circuit and are in no way waived. *See Dynasty Oil & Gas, L.L.C. v. Citizens Bank (In re United Operating, L.L.C.)*, 540 F.3d 351 (5th Cir. 2008); *Spicer v. Laguna Madre Oil & Gas II, LLC (In re Texas Wyoming Drilling, Inc.)*, 647 F.3d 547 (5th Cir. 2011).

The Preserved Causes of Action include, without limitation:

- a. all causes of action arising under the Bankruptcy Code, including without limitation claims arising under or relating to 11 U.S.C. §§ 105, 362, 363(m), 363(n), 510(c), 524, 541, 542, 543 544, 545, 547, 548, 549, 550, 551, and 553;
- b. all causes of action arising under other applicable federal law, including without limitation claims under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*, and the Securities Act of 1933 and the Securities Exchange Act of 1934, 15 U.S.C. §§ 77a *et seq.* and 78a *et seq.*;
- c. all causes of action under the applicable laws of any state or country, including without limitation the Texas Uniform Fraudulent Transfer Act, Tex. Bus. & Com. Code § 24.001 *et seq.*, the Texas Securities Act, Tex. Rev. Civ. Stat. Art. 581-1, *et seq.*, and the Texas Theft Liability Act, Tex. Civ. Prac. & Remedies Code, § 134.001 *et seq.*;
- d. all common law claims and causes of action under the applicable laws of any state or country, including without limitation claims for breach of fiduciary duty, corporate waste, legal malpractice, other professional malpractice, theft, conversion, trover, detinue, trespass, replevin, embezzlement, fraud, fraudulent inducement, breach of contract, violations of state and federal banking laws, duress, and unjust enrichment; and

- e. all claims for secondary or vicarious liability, including without limitation claims for conspiracy, aiding and abetting, respondeat superior, and controlling person liability.

The potential defendants in the Preserved Causes of Action include, without limitation:

- a. all officers, directors, and employees of ESCO Marine, Inc. or its subsidiaries including without limitation Richard Jaross, Elka Jaross, Andrew Levy, Alberto Garcia;
- b. all shareholders of ESCO Marine, Inc. or its subsidiaries including, without limitation Redstone Capital Corporation, EMJ Holdings, LLC;
- c. all immediate recipients of funds, assets, investments, or other property or consideration from ESCO Marine, Inc. or its subsidiaries, including without limitation Wingreen Marine, Redstone Capital Corporation, EMJ Holdings, LLC, however not Callidus;
- d. Keith Rhodes;
- e. all parties owing contractual obligations to ESCO Marine, Inc. or its subsidiaries, including without limitation [REDACTED];
- f. all vendors providing goods and services to ESCO Marine, Inc. or its subsidiaries, including without limitation [REDACTED];
- g. Wingreen [list other related entities]
- h. all of the parents, subsidiaries, directors, officers, employees, representatives, and other affiliates of the above-mentioned persons or entities, however not Callidus;
- i. any person or entity who controlled, conspired with, aided and abetted, or are otherwise legally responsible for or culpable for any of the above-mentioned persons or entities;
- j. all subsequent transferees of the above-mentioned persons or entities
- k. all persons and entities named as defendants in Adversary Proceedings 17-2002 through 17-2026; and
- l. all persons and entities that have executed tolling agreements with the Creditors Committee.

Pursuant the Settlement Agreement, the Claims and Causes of Action listed on Exhibit B shall be transferred to the General Trust for the benefit of Allowed General Unsecured Claims in Class 7A.

In accordance with section 1123(b) of the Bankruptcy Code, on the Effective Date, the aforementioned Causes of Action shall be transferred to the General Trust or the Jaross/Levy Trust, as indicated, and the Liquidating Trustee, (a) shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, except those that were previously waived and released, and (b) may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, except those that were previously waived and released, and the Liquidating Trustee's right to commence, prosecute, or settle the Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Liquidating Trustee may, at the direction of the Liquidating Trust Committee pursue the Causes of Action, as appropriate, in accordance with the best interests of the Liquidating Trust Beneficiaries. The Liquidating Trustee reserves and shall retain the Causes of Action notwithstanding the rejection

of any executory contract or unexpired lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the General Trust or the Jaross/Levy Trust, respectively, and the Liquidating Trustee, as appropriate, and at the direction of the Liquidating Trust Committee, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Causes of Action, other than those previously waived and released, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court, provided that, the Liquidating Trustee will consult with Callidus prior to settling, compromising, releasing, or withdrawing any claims against Richard Jaross, Elka Jaross, Andrew Levy, shareholders of ESCO Marine, Inc., Redstone Capital Corporation, EMJ Holdings, LLC., or Wingreen Marine, or any of their parents, subsidiaries, directors, officers, employees, representatives, and other affiliates.

10.2 Retention of Jurisdiction.

Under Bankruptcy Code sections 105(a) and 1142, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Bankruptcy Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim, and the resolution of any objections to the allowance or priority of Claims or Interest;
- (b) Hear and determine all applications for compensation and reimbursement of expenses of Professionals under sections 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code for services rendered and expenses incurred on or before the Effective Date;
- (c) Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which Debtors are a party or with respect to which Debtors may be liable, including, if necessary, the liquidation or allowance of any Claims arising therefrom;
- (d) Effectuate performance of, and payments under, the provisions of the Plan;
- (e) Determine any and all adversary proceedings, motions, applications, and contested or litigated matters, including, but not limited to, all Preserved Causes of Action;
- (f) Enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan, and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(g) Hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

(h) Consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with the implementation, consummation, or enforcement of the Plan or the Confirmation Order;

(j) Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reserved, stayed, revoked, modified, or vacated;

(k) Hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, or the Confirmation Order;

(l) Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases;

(m) Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(n) Hear and determine all matters related to the property of the Estates, the Debtors, or the Liquidating Trusts from and after the Effective Date;

(o) Hear and determine such other matters as may be provided in the Confirmation Order and as may be authorized under the provisions of the Bankruptcy Code; and

(p) Enter final decrees closing the Chapter 11 Cases.

10.3 Amendment of the Plan; Modification of the Plan.

The Debtors may alter, amend, or modify the Plan or any Exhibits thereto under Bankruptcy Code section 1127(a) at any time prior to the Confirmation Date. After the Confirmation Date and prior to Substantial Consummation of the Plan, the Debtors may, under Bankruptcy Code section 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the

Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan so long as such proceedings do not materially or adversely affect the treatment of holders of Claims or Interests under the Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

ARTICLE XI.
VOTING PROCEDURE

ACCEPTANCE OR REJECTION OF THE PLAN WILL BE DETERMINED, PURSUANT TO THE BANKRUPTCY CODE, BASED UPON THE BALLOTS OF THE CLAIMANTS IN CLASSES THAT ACTUALLY VOTE ON THE PLAN. THEREFORE, IT IS IMPORTANT THAT HOLDERS OF ALLOWED CLAIMS IN THE CLASSES EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN.

11.1 Classes Entitled to Vote on the Plan.

Each Impaired Class of Claims and Interests that will receive or retain property or any interest in property under the Plan shall be entitled to vote to accept or reject the Plan. By operation of law, each unimpaired class of Claims is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

11.2 General Provisions.

Any claimant holding a Claim who does not vote will not be counted in the percentage or number requirements for voting. A Claim to which an objection has been filed is not an Allowed Claim unless and until the Bankruptcy Court rules on the objection. For purposes of voting on the Plan, the Bankruptcy Court may temporarily set an amount for such an objected Claim. The allowance or disallowance of any Claim for voting purposes does not necessarily mean that all or a portion of the Claim or Interest will be Allowed or disallowed for purposes of distribution under the Plan.

11.3 Acceptance by Impaired Classes of Claims.

An Impaired Class of Claims shall have accepted the Plan if (a) the holders (other than any holder designated under Bankruptcy Code section 1126(e)) of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan; and (b) the holders (other than any holder designated under Bankruptcy Code section 1126(e)) of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

11.4 Ballots.

(a) Ballots and Voting.

Holders of Allowed Claims and Interests that are entitled to vote on the Plan have been sent a Ballot, together with instructions for voting, with this Disclosure Statement. Ballots are attached to the Disclosure Statement in Exhibit I. The Debtors seek approval of the form of these ballots in conjunction with the approval of the Disclosure Statement. Any objection to the form of ballots should be included in the objection to the Disclosure Statement.

Claimants should read the Ballot carefully and follow the instructions contained therein. In voting to accept or reject the Plan, you must use only the Ballot or Ballots sent to you with this Disclosure Statement. The Debtors are authorized to receive and tabulate the Ballots. Claimants entitled to vote will be instructed to return their ballots to Debtors' counsel at the address listed below. The Debtors will present the results of the voting to the Bankruptcy Court at the Confirmation Hearing.

If you are a member of a Class entitled to vote on the Plan and did not receive a Ballot for such Class, or if your Ballot is damaged or lost, or if you have any questions concerning voting procedures, you should contact Debtors' counsel at:

LANGLEY & BANACK, INC.

Attn: Allen M. DeBard

745 E. Mulberry, Ste. 700

San Antonio, Texas 78212

(210) 736-6600 Telephone

(210) 735-6889 Telecopier

Certain Classes of Creditors and/or Interests are not entitled to vote on the Plan because they are either deemed to accept the Plan or reject the Plan depending on their treatment. The form of notice to be sent to these Creditors and Interest holders are attached as Exhibits J and K. The Debtors seek approval of the form of these notices in conjunction with the approval of the Disclosure Statement. Any objection to the form of notices should be included in the objection to the Disclosure Statement

(b) Returning Ballots by Voting Deadline.

You should complete and sign the Ballot that you receive and return it to counsel for the Debtors on or before the Voting Deadline in the enclosed, pre-addressed envelope. If you choose to return your Ballot by facsimile (fax), you must send the original Ballot to the address above so that it arrives by the Voting Deadline. Faxed Ballots not followed by receipt of the original Ballot within three (3) business days of the Voting Deadline will not be counted. Creditors must vote all their Claims either for acceptance or rejection of the Plan. Ballots transmitted by electronic mail will not be counted.

(c) Objections.

All objections to Confirmation of the Plan must be made in writing, filed with the Clerk of the Bankruptcy Court and served upon all parties in interest entitled to notice, including but not limited to, the Debtors, Callidus, and the United States Trustee, by the Objection Deadline. It

is important to note that whether a holder of a Claim or Equity Interest votes on the Plan, such Person will be bound by the terms and treatment set forth in the Plan if it is accepted by the various Classes and numbers of holders of Claims in the required majorities and/or it is confirmed by the Bankruptcy Court.

BALLOTS OF HOLDERS OF CLAIMS THAT ARE SIGNED AND RETURNED BUT DO NOT INDICATE A VOTE EITHER FOR ACCEPTANCE OR REJECTION OF THE PLAN SHALL NOT BE COUNTED.

(d) Changing Votes.

Federal Rule of Bankruptcy Procedure 3018(a) permits a claimant, for cause, to move the Bankruptcy Court to permit such claimant to change or withdraw its acceptance or rejection of a plan of reorganization. Any request to change or withdraw a vote must occur at least fourteen days before the Confirmation Hearing, unless otherwise allowed by the Bankruptcy Court.

(e) Reservation of Rights.

By enclosing a Ballot, the Debtors are not representing that you are entitled to vote on the Plan. By including a Claim Amount on the Ballot, the Debtors are not acknowledging that you have an Allowed Claim in that amount or waive any rights that they may have to object to your vote or claim.

11.5 Disputed and Unliquidated Claims.

Disputed Claims are not entitled to vote to accept or reject the Plan. If you are a claimant holding a Disputed Claim, you may ask the Bankruptcy Court to have your Claim temporarily Allowed for the purpose of voting pursuant to Federal Rule of Bankruptcy Procedure 3018.

11.6 Possible Reclassification of Claimants.

The Debtors are required pursuant to Bankruptcy Code section 1122 to place Claims into Classes that contain substantially similar Claims. Although the Debtors believe they have classified all Claims in compliance with Bankruptcy Code section 1122, it is possible that a claimant may challenge the classification of its Claim. If the Debtors are required to reclassify the Claim of any claimants under the Plan, the Debtors, to the extent permitted by the Bankruptcy Court, intends to continue to use the acceptances received from such claimants pursuant to the solicitation of acceptances using this Disclosure Statement for the purpose of obtaining the approval of the Class or Classes of which such claimants are ultimately deemed to be a member. Any reclassification of claimants should affect the Class in which such claimants were initially a member, or any other Class under the Plan, by changing the composition of such Class and the required vote thereof for approval of the Plan.

ARTICLE XIII.
CONCLUSION

By this Disclosure Statement, the Debtors have attempted to provide information regarding the Debtors' Estates, their Creditors, and the potential benefits that might accrue to holders of Allowed Claims against, and Interests in, Debtors under the Plan as proposed. The Plan is the result of extensive efforts by the Debtors and their advisors to provide the holders of Allowed General Unsecured Claims a meaningful dividend.

THE PLAN PROPONENTS THEREFORE URGE YOU TO VOTE IN FAVOR OF THE PLAN.

EXHIBITS

Exhibit A – Joint Chapter 11 Plan of Reorganization of ESCO Marine, Inc. and its Debtor Affiliates
Exhibit B – Settlement Order
Exhibit C – General Unsecured Creditors General Trust Liquidating Trust Agreement and Declaration of Trust
Exhibit D – General Unsecured Creditors Jaross/Levy Trust Liquidating Trust Agreement and Declaration of Trust
Exhibit E – Schedule B (Personal Property)
Exhibit F – Schedule G (List of Executory Contracts and Unexpired Leases)
Exhibit G – Schedule A (Real Property)
Exhibit H – Liquidation Analysis
Exhibit I – Form Ballot for Classes 1, 2, 3, 6, 7, and 8
Exhibit J – Notice of Non-Voting Status to Holder of Unimpaired Claims Deemed to Accept Plan
Exhibit K – Notice of Non-Voting Status to Holder of Impaired Claims Deemed to Reject Plan
Exhibit L – Solicitation Letter

Dated: November 3, 2017

By: /s/ Allen M. DeBard
DAVID S. GRAGG
State Bar No. 08253300
NATALIE F. WILSON
State Bar No. 24076779
ALLEN M. DeBARD
State Bar No. 24065132
Langley & Banack, Inc.
745 E. Mulberry, Suite 700
San Antonio, Texas 78212
(210) 736-6600 Ph.
(210) 735-6889 Fax

ATTORNEYS FOR ESCO MARINE, INC., *et al.*