

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

<b>IN RE</b>	§	
	§	<b>Case No. 16-10300-tmd</b>
	§	
<b>WESTECH CAPITAL CORP.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	
	§	

**TRUSTEE’S SECOND AMENDED DISCLOSURE STATEMENT  
FOR  
TRUSTEE’S CHAPTER 11 PLAN (AS CORRECTED)  
FOR WESTECH CAPITAL CORP. F/K/A TEJAS  
INCORPORATED**

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May 22, 2017

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## I INTRODUCTION

This case was filed as a case under Chapter 11 and remains pending under that Chapter.

On July 29, 2016 this Court ordered the appointment of a Chapter 11 Trustee, [Doc #103] and, thereafter, the Office of the United States Trustee appointed Gregory S. Milligan as the Chapter 11 Trustee (“Trustee”), an appointment approved by an order of this Court on August 10, 2016 [Doc #118].

The Trustee has served in that capacity since appointment and qualification, and is filing this Disclosure Statement as a result of that appointment and service.

## II IMPORTANT INFORMATION AND DEADLINES

THE DEADLINE FOR SUBMITTING BALLOTS FOR ACCEPTANCE OR REJECTION OF THE PLAN IS THURSDAY, JUNE 22, 2017, 5:00 P.M.

THE BALLOTS SHALL BE SUBMITTED TO COUNSEL FOR THE TRUSTEE AT THE ADDRESS SET FORTH IN THE DISCLOSURE STATEMENT.

BALLOTS SHALL NOT BE FILED WITH THE COURT.

THE DEADLINE FOR FILING WITH THE COURT AND SERVING WRITTEN OBJECTIONS TO CONFIRMATION OF THE PLAN IS THURSDAY, JUNE 22, 2017, 5:00 P.M. ANY OBJECTION TO THE PLAN SHALL INCLUDE A BRIEF IN SUPPORT OF THE OBJECTION.

THE HEARING ON CONFIRMATION OF THE PLAN IS SET FOR THURSDAY, JUNE 29, 2017, 9:30 A.M., AT THE U.S. BANKRUPTCY COURT, 903 SAN JACINTO BLVD., AUSTIN, TX 78701, COURTROOM NO. 2, HOMER J. THORNBERRY FEDERAL BUILDING.

DEFINITIONS: Capitalized terms used but not defined in this Disclosure Statement are defined in the Plan. All Plan definitions apply to this Disclosure Statement.

### A. DISCLAIMERS

NO REPRESENTATIONS CONCERNING THE DEBTOR, PARTICULARLY AS TO ITS FUTURE INCOME, VALUE OF CURRENT ASSETS, OR THE VALUE OF ANY OTHER ASSETS TO BE CONSIDERED UNDER THE PLAN, ARE AUTHORIZED BY THE PROPONENTS OTHER THAN AS SET FORTH IN THIS STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE YOUR ACCEPTANCE WHICH ARE OTHER THAN AS SET FORTH IN THIS STATEMENT, SHOULD NOT BE RELIED UPON IN ARRIVING AT YOUR DECISION.

THE INFORMATION CONTAINED HEREIN HAS NOT BEEN INDEPENDENTLY AUDITED FOR INCLUSION HEREIN.

THIS DISCLOSURE STATEMENT IS INTENDED FOR THE SOLE USE OF CREDITORS AND OTHER PARTIES-IN-INTEREST OF THE DEBTOR TO ENABLE SUCH CREDITORS AND OTHER PARTIES-IN-INTEREST TO MAKE AN INFORMED DECISION ABOUT THE PLAN.

IF ANY IMPAIRED CLASS VOTES TO REJECT THE PLAN, THE TRUSTEE MAY SEEK CONFIRMATION UNDER THE CRAM DOWN PROVISIONS OF § 1129(b) OF THE BANKRUPTCY CODE AND HEREBY GIVES NOTICE OF INTENT TO INVOKE THE CRAM DOWN PROVISIONS OF § 1129(b) IN THAT EVENT.

**B. BRIEF EXPLANATION OF THE CHAPTER 11 TRUSTEE**

This Chapter 11 case was originally filed by Westech, under the guidance and operations of its board of directors. Subsequent to the filing, certain parties and parties-in-interest moved to appoint a Chapter 11 Trustee as a result of allegations of insider mishandling of the affairs of the Debtor and failing to disclose material or significant relationships. Upon appointment of the Trustee, he replaced the Debtor's board of directors as management and all business decisions have been made or implemented by the Trustee. This Disclosure Statement attempts to address, in addition to other issues, those issues of insider relationships and potential claims for mismanagement and improper insider transactions that gave rise to the appointment of a Chapter 11 Trustee, which is an extraordinary remedy that occurs very rarely.

**C. THIS DISCLOSURE STATEMENT**

Why You Have Received This Disclosure Statement. You have received this Second Amended Disclosure Statement ("Disclosure Statement") because the Trustee has filed a Plan ("Plan"). A copy of the Plan is enclosed with the materials that you have received. This Disclosure Statement is provided pursuant to § 1125 of the Bankruptcy Code to all of the Debtor's known Creditors and other parties-in-interest whose claims are impaired in connection with the solicitation of acceptance of the Plan proposed by the Trustee.

Purpose of this Disclosure Statement. The purpose of this Disclosure Statement is to provide such information as will enable a hypothetical, reasonable investor typical of the holders of Claims against the Debtor to make an informed judgment in exercising its right either to accept or reject the Plan. The definitions in the Plan should be referred to in reading and analyzing the Plan and this Disclosure Statement.

Bankruptcy Court Approval of this Disclosure Statement. The Bankruptcy Court conducted a hearing on this Disclosure Statement and determined that it contains information of a kind in sufficient detail, adequate to enable a hypothetical, reasonable investor typical of the Classes being solicited to make an informed judgment about the Plan.

Purpose of the Plan. The purpose of the Plan is to provide a mechanism for the reorganization of the Debtor's assets and for the payment of Creditors and Interest Holders. The Plan was developed by the Trustee after consulting with his legal advisers, certain Creditors and other interested parties. The Trustee believes that the Plan is more attractive than other alternatives, such as conversion to Chapter 7 for liquidation or dismissal of the Chapter 11 Case. **Each creditor is urged to read the Plan.**

Sources of Information. The information contained in the previously filed Debtor's First Amended Disclosure Statement was submitted by the Debtor's prior management and was never approved by the Court. Much of the same factual information is contained in this Disclosure Statement; however, significant additional information is provided herein arising from the intervening investigations by the Trustee.

Plan Summary: This Disclosure Statement contains only a summary of the Plan. The Plan, which accompanies this Disclosure Statement, is an integral part of this Disclosure Statement, and each Creditor is urged to read the Plan prior to voting. The Plan is a Chapter 11 Plan to reorganize the Debtor under management of the Trustee as Plan Trustee. All assets of the Debtor will be monetized and the proceeds will be distributed to Creditors and Interest Holders. In the event of any conflict between the information set forth in this Disclosure Statement and the Plan, the Plan language shall control.

Only Authorized Disclosure. No party is authorized to give any information with respect to the Plan, other than what is contained in this Disclosure Statement or any other Disclosure Statement approved by the Court. No representations concerning the Debtor, its business, or the value of its property has been authorized by the Bankruptcy Court, other than as set forth in this Disclosure Statement. Any information, representations, or inducements made to obtain acceptance or rejection of the Plan other than, or inconsistent with, the information contained herein and in the Plan should not be relied upon by any entity in voting on the Plan.

Any representation or inducement made to you not contained in this Disclosure Statement should be reported to the Trustee's attorney, who may deliver such information to the Bankruptcy Court for such action as may be appropriate.

This Disclosure Statement and accompanying exhibits will be transmitted by First Class Mail to all Creditors and Interest Holders who have either been scheduled by the Debtor, have filed a proof of claim, or properly requested notice under Bankruptcy Rule 2002.

#### **D. PRESERVATION OF RIGHTS AND NO FINDINGS OF FACT**

**The factual recitations in this Disclosure Statement are based on the Trustee's investigation to date. Parties have objected to the Disclosure Statement on the basis that they disagree with the Trustee's description or characterization of factual matters, and in the case of lawsuits that the Trustee has or may pursue as to which they are or may be defendants, they do not believe the Trustee will prevail in those actions. The Court stated at the hearing on approval of this Disclosure Statement that approval of this Disclosure Statement in no way represents a finding by the Court that the statements in the Disclosure**

**Statement are correct, and all parties preserve their rights in any pending or future litigation where any such facts are relevant.**

#### **E. DESCRIPTION OF THE DEBTOR**

Westech Capital Corp. (“Westech” or the “Debtor” or the “Company”), [formerly known as Tejas, Incorporated], is a publicly held Delaware corporation, and operates as a holding company for affiliated entities including:

**Tejas Securities Group, Inc. (“Tejas”)**, formerly a licensed broker dealer that was BDW (broker dealer withdrawn) by FINRA as of September 30, 2013. Debtor owns 100% of Tejas;

**Tejas Securities Group Holding Company (“Tejas Holding”)** is a holding company for Tejas. Debtor owns 100% of Tejas Holding;

**TSBGP, LLC (“TSBGP”)**, the general partner of TI Building Partnership, Ltd., the limited partnership that owned the building located at 8826 Bee Caves Road, Austin, TX 78746, which was sold in 2014. The Debtor owns 100% of TSBGP and TSBGP owns 1% of TI Building Partnership, Ltd.;

**TI Building Partnership, Ltd. (“TI Building Partnership”)**; a limited partnership formed to own and hold title to the real property located at 8826 Bee Caves Road, Austin, TX 78746, which was sold in 2014. The Debtor owns 99% of TI Building Partnership; and,

**Clearview Advisors, Inc. (“Clearview Advisors”)** is a Texas corporation that was formed to provide advisory services; however, it never commenced operations. The Debtor owns 100% of Clearview Advisors, Inc.

Westech has 4,031,722 shares of common stock outstanding and 338 shares of Series “A” Preferred outstanding, which have a par value and a right to a preferential distribution of \$8.45 million, plus interest, before any distributions to holders of common shares. Each Series “A” Preferred Share is convertible to 25,000 shares of common stock.

#### **F. PRIOR MANAGEMENT OF THE DEBTOR**

On May 5, 2016 Westech conducted its annual meeting pursuant to an order of the Delaware Chancery Court, and held an election pursuant to the Voting Agreement in effect, which was supervised by special counsel and certified by a third party.

The following directors were elected: James Rodgers, Tamra Inglehart (wife of John Gorman IV), Robert Halder, James Fellus (who at the time owed Westech in excess of \$1.1 million arising from a FINRA arbitration), Gary Salamone, and Michael Dura.

Mr. Dura served as Interim Chairman of the Board and has been a Director since 2012. Mr. Salamone has been the CEO and a member of the Board of Directors since January 2013.

It was this Board of Directors (and the activities of prior Board of Directors) that have been replaced by the Trustee.

**G. HISTORY OF THE DEBTOR**

**1999: The Beginning<sup>1</sup>**

Westech, then known as Tejas, Incorporated, was founded in 1994 in Austin, Texas by several individuals, including John Gorman IV (“Gorman”). Its primary function has been to serve as a holding company for Tejas Securities Group, Inc. (“Tejas”), a then-active broker dealer.

Gorman would serve as the Chair of the Board of the Company from 1999 through 2013.

Tejas was a full-service brokerage and investment banking firm that focused on proprietary research regarding distressed debt and special situation securities; trading and other brokerage services to value-based institutional and retail investors active in fixed income and equity instruments, as well as corporate finance and strategic advisory services to middle-market companies within certain target industries.

On September 30, 2004, Westech reported cash and cash equivalents and investments on hand of \$8,970,064.

**2005: Westech (f/k/a Tejas Incorporated) Goes Public**

In February 2005, Westech raised \$23,688,000 in a public offering of 1,600,000 shares at \$15.75 per share.

At the conclusion of the public offering, as of March 31, 2005, Westech had over \$37,000,000 in Shareholder Equity. By 2011, it was all gone.

The below chart is a comparison of Gorman’s annual compensation to Westech’s operating losses between 1994 and 2013:

<b>Year</b>	<b>Total Revenues</b>	<b>Investment Banking Revenues</b>	<b>Total Comp</b>	<b>Net Income Loss</b>
1994	0	0	0	-3,943
1995	3,781,247	0	0	550,127

<sup>1</sup> Certain facts in this Disclosure Statement were obtained by the Trustee from the Debtor’s Disclosure Statement and have not been independently verified.

1996	4,257,512	0	<b>790,272</b>	-206,755
1997	6,496,909	752,554	<b>1,165,688</b>	474,035
1998	10,241,914	2,584,770	<b>1,094,423</b>	-397,322
1999	30,432,709	925,616	<b>5,850,050</b>	3,138,343
2000	14,709,285	1,831,326	<b>2,233,699</b>	-3,999,140
2001	25,328,149	316,927	<b>3,598,259</b>	833,022
2002	21,234,927	335,663	<b>4,409,282</b>	290,052
2003	26,583,760	72,799	<b>4,406,138</b>	847,130
2004	48,680,296	18,339,975	<b>4,831,863</b>	7,281,404
2005	28,383,495	16,436,706	<b>8,376,496</b>	-3,822,021
2006	18,853,784	1,914,720	<b>4,067,906</b>	-5,640,493
2007	17,665,740	4,254,497	<b>2,418,535</b>	-4,499,265
2008	12,726,347	1,962,586	<b>1,993,555</b>	-10,003,945
2009	15,227,053	0	<b>2,913,221</b>	446,152
2010	22,343,141	225,000	<b>4,101,383</b>	106,468
2011	20,335,680	1,754,237	<b>1,758,966</b>	-3,250,729
2012	22,440,619	104,807	<b>1,889,196</b>	-4,993,087
2013			<b>2,129,730</b>	
Total	349,722,567	51,812,183	<b>58,028,662</b>	<b>-22,849,967</b>

As discussed below, in 2013, the board – not controlled by Gorman – and although Tejas was no longer an operating company, at some point, either at the parent or subsidiary level, determined to continue to pay officers and directors salaries and reimbursements for two years, long enough to effectively exhaust all of the remaining approximately \$2 million in cash deposits. Once those



deposits were paid out, primarily to insiders or for the benefit of insiders, Westech then filed this Chapter 11 proceeding. Some of these transactions are discussed in the relevant section further below.

### **2011: Company Issues Series “A” Preferred Shares**

In September 2011, the Company represented that it had adequate working capital of about \$2 million to meet the Company’s needs and the minimum capital requirements of regulators, but desired to raise more capital to expand investment opportunities.

In September 2011, the Company raised \$8.45 million by issuing Series “A” Preferred stock and Series “A” Convertible Notes.

Four primary groups of investors bought these shares:

- (1) James J. Pallotta (“Pallotta”), a friend and long-time client of Gorman;
- (2) James B. Fellus (“Fellus”), who had been a consultant to Westech, and members of Fellus’ family;
- (3) Robert Halder (“Halder”), an officer of Westech and Tejas Securities at various times, and a group of employees; and
- (4) Gorman and family trusts and supposed retirement accounts which Gorman at that time claimed to, or in fact, controlled.

A Stock Purchase Agreement and Voting Agreement were negotiated and executed effective September 23, 2011.

The resulting new board of directors consisted of Gorman (Chair), Fellus, and Halder. (Palotta did not exercise his right to designate a board member until later.)

Fellus became the CEO of Westech and he also signed a \$1,000,000 promissory note to Westech due in one year on September 23, 2012 to pay for his Series “A” Shares.

Halder became the President and Chief Operating Officer of Westech and entered into an employment agreement dated October 11, 2011, including a strict non-compete agreement.

In 2012, amongst much finger pointing, a Special Committee of Westech’s Board of Directors retained the firm of Morgan, Lewis & Bockius (“Morgan Lewis”) to review certain allegations of misconduct against Gorman, Fellus and Halder. Morgan Lewis issued its draft Independent Report on September 18, 2012, covering the time period from September 2011 to the date of the report, which criticized Fellus, Halder, and Gorman.

Director Fellus refused to pay the \$1 million note at maturity on September 23, 2012 (“Note”) and was terminated as CEO (which also caused his removal from the Board) “for

cause” due to his failure to pay the Note. Fellus disputed that cause for termination existed and in November 2012, initiated a FINRA arbitration proceeding against Westech and its subsidiary Tejas arising out of his employment agreement. Westech filed a counterclaim in the Arbitration Proceeding seeking recovery of the amount Fellus owed under the Note. The arbitration was resolved in favor of Westech, with the panel issuing an award of \$1.1 million against Fellus (“Fellus Arbitration Award”). In 2014, Fellus sued in New York State Court seeking to have the Fellus Arbitration Award overturned, but never served Westech with the petition. Yet the Westech Board of Directors gave up any attempts to collect the Fellus Arbitration Award. The Board of Directors directed its attorneys to dismiss the pending lawsuit against Fellus rather than attempt to confirm the Fellus Arbitration Award, which would have resulted in the ability to record a judgment against Fellus and commence collection efforts under the law. Fellus later told the Trustee that the Westech Board of Directors did not pursue its rights under the Fellus Arbitration Award because they are friends and they wanted to find ways to make more money together in the future. The Trustee has now filed an Adversary Proceeding to confirm the Fellus Arbitration Award and will seek to collect on the same for the benefit of Allowed Creditors and Interest Holders.

In September 2012, Michael Dura, who had previously been a consultant to Westech, was elected to the board. In November, Dura became the Interim CEO and found that compensation and expenses were excessive. He introduced substantial general cost saving measures, to reduce the drain on cash flow but determined that Gorman’s specific compensation package was far more generous than the Company could afford. However, after the departure of Gorman, Dura, as a board member, appears to have taken no action from late 2014 through filing of the Chapter 11 to curb the transfers to insiders of substantially all of the liquidity of the Debtor, including directly paying Salamone, his business partner in other matters, more than \$600,000 in salary and other payments, plus approximately \$275,000 to counsel which represented both Westech and Salamone, all for a non-operating company whose directors were embroiled in litigation against each other.

In **January 2013**, Gorman asked Salamone, who had previously served as a consultant to Westech, to become CEO replacing Interim CEO Michael Dura, and Salamone accepted. Under the Voting Agreement, Salamone joined the board by virtue of his becoming CEO. Salamone entered into an employment agreement signed by Gorman on behalf of the Company. Disputes soon arose.

The board met in June 2013 in New York City. A few days later, on June 7, 2013, Gorman “resign[ed] from all positions with Westech and its subsidiaries,” including Tejas.

At that point the board consisted of Salamone, Dura, and Halder, and Peter Monaco, a member designated by Pallotta pursuant to the Voting Agreement.

After Gorman’s resignation, Salamone asserts he became aware of several regulatory inquiries into trading activity by Gorman and improper expenses charged to both Westech and Tejas by Gorman. The Board claimed that Gorman had withheld information concerning these investigations from the board.

The outstanding investigations resulted in Salamone being called to an in-person meeting with the Securities and Exchange Commission (and telephonically with FINRA) in September of 2013. The Debtor asserted in its Disclosure Statement that the investigations of Gorman are continuing; however, the Trustee was unable to determine if any action was taken by the SEC or FINRA in these transactions described by the prior Board.

### **The Board Disputes Over Control Continue**

In **August 2013**, two months after Gorman resigned, he engaged in a series of maneuvers in an attempt to regain control of Westech. On **August 14, 2013**, Gorman sent Westech a letter purporting to replace Halder on the board and adding a board member of his choosing.

Then on **August 21, 2013**, Gorman purchased his friend Pallotta's shares of Series "A" Preferred in exchange for a \$1.4 million promissory note. As a result of this purchase, Gorman contended that he controlled the board by adding himself and 3 "friendly" directors, who could outvote the incumbent directors, Salamone and Dura, on the six-member board; however, after substantial litigation (described below), the Delaware Supreme Court held that Gorman did not obtain the control he intended.

On **August 26, 2013** Gorman filed a lawsuit in Travis County Texas District Court, purportedly on behalf of Westech and himself, seeking a judgment that he had successfully retaken control of Westech through these maneuvers and sought a temporary restraining order to prevent anyone from interfering with his taking physical control of the offices, interfering with his "officers" taking over management of the Company, or continuing to prevent him access to Company records.

After a lengthy hearing, the Travis County Texas District Court denied Gorman's application for a temporary restraining order. After Defendants filed a Motion to Show Authority and Motion to Dismiss, Gorman nonsuited his lawsuit.

On **August 27, 2013**, Gorman filed essentially the same action he had filed in the Travis County Texas District Court in the Delaware Court of Chancery pursuant to Section 225 of the Delaware General Corporation Law. Later that day Halder, who asserts he did not know of Gorman's Delaware filing, also filed a Section 225 action to litigate the controversy regarding the proper composition of the board. These two proceedings were consolidated (the "First Section 225 Action"). During the pendency of the First Section 225 Action, the Delaware court ordered that Salamone, Dura, and Halder continue to serve as Westech's Board.

On **September 4, 2013**, the Delaware Chancery Court entered a "Status Quo" Order limiting the authority of the board. Among other things, the Order capped the payments to officers of the Company. Thus, and although Halder claims his commissions due under his employment agreement were unpaid, he was at the time an insider, a member of the board of directors, and he continued to work under the Court-ordered Status Quo Order prohibiting Westech from paying certain compensation on a current basis.

Halder had entered into a three-year employment agreement with Westech on October 1, 2011 to serve as “President and Chief Operating Officer” of Westech and Tejas (the “Halder Employment Agreement”) as part of the transactions in which the Series “A” Preferred Shares were sold. The agreement included objectively measurable Base Compensation, Quarterly Bonuses, and Quarterly Special Compensation based upon his performance in producing revenue. The agreement was signed by Gorman on behalf of Westech.

In March 2014, the Company attempted to raise capital in order to survive by selling an office building located in Austin, owned by a special purpose subsidiary of the Debtor, with equity of approximately \$1,800,000. But by the time the property was ultimately sold in November 2014, Tejas had failed. Litigation by Westech against Gorman regarding the sale of the building remains pending, but is stayed.

Eventually the non-operating Westech and Tejas were drained of almost \$2 million in cash deposits by the insiders and board members.

On March 24, 2014, Gorman initiated a FINRA Arbitration proceeding against Tejas, Halder, Salamone, and Apex Clearing Corporation (“Apex”). Westech was not a party to this arbitration. Tejas filed a counterclaim against Gorman and that action remains pending, but is stayed as a result of the Gorman Bankruptcy Case.

It is also during this time that certain events occurred that permitted, in the Trustee’s view, the insiders to assure the collapse of Westech and Tejas, as described below:

Halder’s three-year employment agreement automatically renewed on October 1, 2014 for an additional two-year term, unless notice of non-renewal was given him by June 3, 2014. Gorman advocated for the termination of Halder’s employment agreement, and on May 14, 2014, he filed a Motion to Prevent Automatic Renewal of the Employment Agreement in the Delaware Chancery Court, demanding that Salamone send Halder a notice that his contract would not be renewed.

An insider transaction was arranged between Salamone and Halder that gave Halder free reign to compete against Tejas, afford an opportunity for other important Tejas employees to leave Tejas for Halder’s new employer, and to still retain a claim of \$350,000 against Westech – a claim that the Westech board instructed its own counsel not to answer and contest. Halder disputes the Trustee’s contentions with regard to this transaction.

Separately, Westech filed suit against Gorman in the Travis County District Court on May 20, 2014 arising out of transaction with NetJets. That action remains pending, but is stayed. The board of Westech claims that Gorman did not reimburse the Company for his personal use and, even after he resigned in June 2013, he continued to use the jet to fly himself and his family to the Hamptons and other locations. Gorman claims that this is untrue, and that Halder, for instance, charged a vacation to the Bahamas on NetJets that was never paid. Halder admits he flew the company Netjets to the Bahamas, but asserts that it was not a vacation for him or the other Tejas employee also on the flight because it was a business trip.

The Board also claimed that it was Gorman's breach of his agreement to make payments on the NetJets fractional interest after April 2013 directly led to NetJets obtaining a default judgment against the Company for \$193,568 in late 2015. However, the Westech board also did not contest the amount claimed by NetJets and allowed a default judgment to be entered. Subsequently, it was this judgment by NetJets that Halder claimed during the Westech §341 meeting of creditors that caused the filing of the Westech Chapter 11 case – a filing that was made only after Westech had depleted almost all of the remaining cash on hand.

On May 29, 2014, the Delaware court entered a Memorandum Opinion in the First Section 225 Action rejecting Gorman's purported takeover of the board but ruled that Gorman had successfully removed Halder from the board on August 14, 2013 and had successfully appointed himself and his ally at the time, T.J. Ford. As a result of this ruling the Westech board became deadlocked.

On May 30, 2014, Salamone, on behalf of the Company but without approval of the deadlocked Westech board, and Halder executed the Cancellation Agreement of Halder's Employment Contract that resulted in the following insider transactions:

i. Westech/Tejas released Halder from his non-compete so that his "severance" was replaced with a new salary.

ii. Westech/Tejas did not obtain a release from Halder for anything other than the severance that Halder was replacing by his new ability to compete directly against Westech/Tejas.

iii. Halder then went to work for a competitor and a number of the Tejas employees followed Halder to his new employer, further assuring that Tejas was further impaired to continue its business. Halder asserts that it is misleading to state that Halder wrongfully solicited employees when at the same time Trustee acknowledges that employees left Tejas after the July 7, 2014 letter from Gorman.

iv. Halder then sued Westech/Tejas to collect the claimed commissions and bonuses, thereby allowing Halder to not only directly compete, but to also try to collect what he knew was the very limited remaining cash. Halder's law firm on his lawsuit against Westech/Tejas was Beatty, Bangle, Strama, PC, the same law firm that Westech was paying to defend him in the Gorman FINRA arbitration.

v. Westech/Tejas, through its board, instructed its new attorney to not defend that Halder lawsuit, by either refusing to even file a general denial, but also refusing to respond to Halder's Motion For Summary Judgment seeking substantial funds.

vi. An interlocutory summary judgment was obtained, without Westech/Tejas opposing on their own behalf. Counsel for T.J. Ford did appear in opposition and claimed to represent Westech derivatively; however, Ford's counsel had no access to the debtor's books and records to put on a proper defense and was simply representing a shareholder to fill the void and defend Halder's efforts despite the huge informational disadvantage.

Salamone claims he did not receive any financial benefit from the less than arm’s length transaction with Halder, contrary to Gorman’s later allegations, which were repeated in the Derivative Suit. However, all during this time, Salamone received more than \$600,000 in salary and other payments, plus six-figure payments to counsel for the benefit of Salamone (subject to oversight and approval by Halder as a board member) to serve as CEO and oversee a company with no regular ongoing operations.

Moreover, Halder was free to compete and replace his “severance” by taking Tejas’ opportunities and employees to his new employer (assuring the failure of Tejas), while collecting his new salary, maintaining his claims for more than \$350,000 against Westech/Tejas, and working with a friendly board that would simply not contest any of these decisions.

There did not seem to be any opposition to payments to board members, attorneys for board members, and related benefits to board members. As discussed, in November of 2014 Westech received approximately \$1.8 million in proceeds from the sale of a building, and by March, 2016, the Board had authorized the expenditures of almost all of these funds as shown in the table below. Approximately 60% of the “TSG Payroll” shown below was paid to Salamone as an officer and director of a company with no regular business operations.

Payee	Total Pmts	% of Total
TSG Payroll (Transfers to TSG)	\$823,045.95	50%
Ratliff Law Firm	\$274,211.29	17%
Landis, Rath & Cobb, LLP	\$86,366.71	5%
TSG Operating Expenses (Transfer to TSG)	\$79,328.19	5%
Smith, Robertson, Elliott,	\$61,031.00	4%
Strasburger & Price, LLP	\$50,000.00	3%
William Wheeler Payroll	\$35,940.68	2%
Beatty, Bangle, Strama, PC	\$33,530.86	2%
Johns Marrs Ellis & Hodge LLP	\$30,000.00	2%
PMB Helin Donovan, LLP	\$26,995.00	2%
Gary Salamone	\$26,250.27	2%
Chipman Brown Cicero & Cole LLP	\$25,613.50	2%
Fritz, Byrne, Head & Fitzpatrick	\$25,588.20	2%
Crabbe, Brown & James, LLP	\$10,000.00	1%
Hohmann, Brophy & Shelton, PLLC	\$10,000.00	1%
Richards, Layton & Finger	\$10,000.00	1%
Apps4Rent	\$8,567.75	1%
Corporate Stock Transfer	\$6,649.86	0%
Law Offices of J Pete Laney	\$5,455.75	0%
Jason Mongaras	\$5,380.14	0%
Commissioner of Taxation	\$3,841.27	0%
NY Marriot East Side	\$2,395.38	0%
Citrix Systems	\$2,287.80	0%
State Comptroller	\$1,674.61	0%

CT Corporation	\$1,503.10	0%
Delaware Secretary of State	\$525.00	0%
Webcore	\$440.30	0%
Gemisys Financial Services	\$326.20	0%
Office of US Trustee	\$325.00	0%
Evolve IP, LLC	\$294.75	0%
Harland check fee	\$134.73	0%
NYC Dept of Finance	\$50.00	0%
NY State Corp Tax	\$31.00	0%
	<b>\$1,647,784.29</b>	<b>100%</b>

On **June 25, 2014**, Gorman filed a second Travis County Texas District Court lawsuit, which he would later dismiss.

On **July 2, 2014**, Halder left the Company. The Debtor claimed in its First Amended Disclosure Statement that “. . .there is no evidence that Halder solicited any employees to leave;” however, it appears that a number of key employees did soon leave Tejas to go to work with Halder at his new employer. The Halder Employment Agreement prohibited him from soliciting or hiring any Tejas employee.

By this time Westech and Tejas were severely undercapitalized. Westech’s balance sheet equity was \$306,313 and Tejas Securities was \$555,558, which was under the minimum required by the clearing broker and also for most trading counterparties.

On **July 7, 2014**, Gorman sent a letter by email to all officers and employees of Westech and Tejas, claiming that he, as the majority shareholder, had amended the bylaws to allow shareholders to remove the CEO, and that he had replaced Salamone as CEO. Gorman also claimed to have fired the Company’s counsel, Greenberg Traurig.

Halder moved to his new employer and multiple key employees resigned from Tejas and worked with Halder. Halder contends that any employees that left Westech did so for reasons unrelated to Halder.

Separately on **July 17, 2014**, a FINRA arbitration panel entered an award against Fellus in the amount of \$1,092,780 for his obligation on the promissory note he executed to acquire Series “A” Preferred Shares in September 2011. From the entry of the Arbitration Award, through filing of the Westech Chapter 11, no action was taken by the board to confirm the Award or bring any actions to collect the debt. In fact, the board caused its lawyers to dismiss the pending lawsuit against Fellus instead of seeking to confirm the award, a clear breach of their fiduciary duties to Westech. (Motion to Dismiss dated April 25, 2014, Doc #32, in Case #1:12-cv-01150-SS; *Westech v. Fellus*, U.S. District Court, Western District of Texas, Austin Division.)

On **July 10, 2014**, Salamone and other shareholders filed a second Section 225 lawsuit in Delaware to determine whether Gorman could control the Company (the “Second Section 225 Action”).

On **July 31, 2014**, the Delaware court in the Second Section 225 Action ordered that the Board would remain composed of Salamone, Dura, Ford, and Gorman during the pendency of the action, as the court had previously ruled in the First Section 225 Action. So the board deadlock persisted.

On **August 12, 2014**, the Second Section 225 Action was voluntarily dismissed. Two weeks later, on August 22, 2014 Gorman filed a Notice of Non-Suit of all claims against all defendants in his second Travis County Texas District Court lawsuit. On August 25, 2014, Halder filed suit against the Company and Gorman to recover the compensation he claimed was due and sought a declaration that the Cancellation Agreement was enforceable, that the Company was in breach of the agreement for failure to pay \$169,598 in “Quarterly Special Payments”, that the Company was in breach of the agreement for failure to pay “Quarterly Bonuses”, that he was entitled to terminate the Halder Employment Agreement for “Good Cause”, and that the non-competition provisions in the Halder Employment Agreement were not enforceable.

The board deadlocked on defending Halder’s lawsuit, with Dura and Salamone voting to not defend the dispute and thus agreeing that Halder should be awarded a judgment against Westech/Tejas, only one month after Halder left and began competing against Tejas. Salamone and Dura, according to the Debtor’s First Amended Disclosure Statement, “did not believe it was appropriate to spend Company funds defending it”. Gorman and Ford caused to be filed a “derivative” answer and later a “derivative” counterclaim.

All during this time, because the board was deadlocked, the Company refused to defend against the suit. That decision was made by Salamone (who drafted and executed the Cancellation Agreement) and Dura. Had their strategy been successful, the Company that refused to defend itself in the lawsuit would have had a judgment against it in favor of Halder for all of his claimed bonuses and commissions totaling approximately \$350,000, *and* would have allowed Halder to continue to compete against Tejas.

On **September 30, 2014** Gorman filed a Third Section 225 Action.

On **November 20, 2014**, FINRA canceled the Tejas Securities Group Membership Agreement and Tejas was no longer authorized to operate as a broker dealer.

In **December 2014**, Westech was able to monetize and sell its office building for a net recovery \$1.81 million. Over 50% of these funds over the next 16 months were spent to pay insiders – Salamone, who received the majority of the payroll, and two other employees.

Finally, on **December 20, 2014**, the Delaware Supreme Court rendered its decision on appeal of the First Section 225 Action and determined that the board consisted of Halder, Dura, Salamone, Gorman and Ford. The board deadlock was broken, and Westech was now controlled by the three aligned board members, Halder, Dura, and Salamone.



From this point forward, until the filing of the Westech Chapter 11 proceeding, the Trustee contends the board made a series of decisions over approximately 16 months to spend all of the cash generated by the sale of the building with no attempt to re-start any of Tejas' business or to wind down Westech in a way that would maximize the return to the Debtor's creditors, shareholders and other stakeholders with approximately \$2 million in cash on hand at that time. Instead, those funds, as noted herein, were spent in large part, by, or for the benefit of, insiders and their attorneys.

On **March 10, 2015**, Halder filed a Motion for Summary Judgment in his Texas suit to recover his compensation and obtain a ruling on the Cancellation Agreement. The board did not defend the motion; however Gorman and Ford filed a response on behalf of Westech and claimed Halder was not entitled to additional compensation because that would have required approval of the board of directors, which at the time was deadlocked. Although Dura and Salamone disputed Gorman and Ford's standing to defend the suit or file a counterclaim on behalf of the Company, they filed a notice with the court that they did not object to Gorman or Ford appearing to oppose the Motion.

On **April 30, 2015**, the Court partially granted Halder's First Amended Summary Judgment, which summary judgment is interlocutory, not yet enforceable against Westech and subject to further challenge by Westech (through the Trustee). The Court's order states:

"Plaintiff seeks declaratory relief that as of May 30, 2014, Defendant Westech Capital Corp. was in breach of the Agreement for failure to pay "Quarterly Special Payments" as defined and pursuant to the October 1, 2011 Employment Agreement between Plaintiff Robert W. Walder [sic] and Defendant Westech Capital Corp. The Court grants summary judgment on this claim. Accordingly, the Court finds that Defendant Westech Capital Corp. is liable to Plaintiff in the liquidated amount of \$169,598.00."

#### **H. EVENTS LEADING UP TO THE BANKRUPTCY FILING**

On **July 31, 2015**, the Delaware Chancery Court issued a Memorandum Opinion in the Third Section 225 Action, finding that Gorman had not removed Salamone as CEO (because Delaware law does not allow shareholders to bypass the board and directly terminate officers) and determined that there were fact issues that remained as to whether Halder had resigned which would require further proceedings. The Court refused to grant Gorman's proposed "Status Quo" Order which would give Gorman control over the board and deferred Gorman's request for sanctions against Salamone for allegedly authorizing payments to Halder and himself without proper board approval, pending a determination on Halder's purported resignation from the board.

On **September 8, 2015**, Westech shareholders Avery Martin, Britt Rodgers, John Glade and Mike Wolf filed a verified complaint in Delaware Chancery Court seeking an order compelling Westech to hold an annual stockholders' meeting. Westech retained Landis Rath & Cobb LLP ("Landis Rath") to defend the lawsuit and deal with shareholder meeting issues.

Landis Rath appeared in the litigation and worked with the stock transfer agent (who also served as the inspector of elections) on the process of designating nominees under the Voting Agreement. Later, Tamra Inglehart (Gorman's wife at the time) asserted that she and her children controlled the voting of a significant number of shares (both Series "A" and common) that Gorman had represented he controlled, and that they might not wish to vote the way Gorman had indicated. Under the Voting Agreement, various designations turn on the wishes of stockholders who controlled the shares. The fact that Gorman did not control the voting of large blocks of those shares made it possible for other stockholders to make different designations. Ultimately, Landis Rath concluded that the director designation process it worked out in the fall of 2015 was not valid, and it would have to be redone so that stockholders would have the opportunity to make different designations if they so chose. The process was re-started in February, 2016, resulting in the valid annual meeting on May 5, 2016, that resolved this stockholder suit.

On **October 28, 2015**, Gorman withdrew his Third Section 225 Action, ending all challenges to the composition of the board and the officers of the Company.

On **November 20, 2015**, a default judgment in favor of NetJets was entered in the amount of \$193,568. Although the Board knew of the suit, there is no explanation as to why it would allow the entry of a default judgment, in lieu of having Westech represented or attempting to reach an agreed judgment. The NetJets judgment was one of the reasons the Company stated was the cause of the Chapter 11 filing, according to the testimony provided at the Section 341 meeting of creditors, by Halder.

On **February 25, 2016**, Eric Steinhafel, Robert Clement, and Rick Shottenfeld, holders of common shares filed *Eric Steinhafel, et al. derivatively on behalf of Westech Capital Corp. and Tejas Securities Group v. Gary Salamone and Greenberg Traurig*; Delaware Chancery Court. Plaintiffs, who are common shareholders, filed a derivative shareholder suit alleging that Salamone caused Westech to cancel the Halder Employment Agreement with Westech after which Halder went to work for a competitor of Tejas where additional Tejas employees soon followed, thus allegedly putting the final nail in the Westech and Tejas business.

Plaintiffs in that suit contend that the filing of the Derivative Suit led to the filing of the Westech Chapter 11 proceeding, but Company management contended that is not the case. The Debtor stated in its First Amended Disclosure Statement that the Derivative Suit was subject to summary dismissal because Plaintiffs had not given the Debtor notice or made demand on the board to pursue the action and had not provided the board any information upon which the board could make an informed decision. Of course, the CEO of Westech taking those positions on behalf of the Company is individually named as a defendant in the Derivative Suit.

Since the time of his appointment, the Trustee has been able to transfer venue of the Derivative Suit to United State Bankruptcy Court Western District of Texas (Austin Division) where the Trustee has been substituted as Plaintiff and the lawsuit is proceeding. At a hearing on May 16, 2017, on the Defendants' motions to dismiss, the Bankruptcy Court ordered that the Plaintiff amend his complaint within 30 days.

The Debtor claimed in its First Amended Disclosure Statement that the Chapter 11 “was filed . . . after Gorman’s costly and damaging efforts to regain control of the Company had been exhausted while the Debtor still had sufficient liquid assets to fund a reorganization effort in Chapter 11.” At the time Westech filed for Chapter 11 protection, it had cash on hand of \$281,074.73, down from approximately \$2 million some 16 months prior. After the case was filed, Salamone continued to receive his monthly salary of \$29,166.67 (\$350,000 annual salary). By the time the Trustee was appointed, the cash balance was only \$189,673.57, an amount that was exceeded by the amount of Chapter 11 administrative expenses incurred by estate professionals to that date. To the extent that the activities which occurred after the sale of the building and prior to the filing of the Westech Chapter 11 proceeding give rise to breach of duty claims against officers and directors, the Revested Debtor will be assigned such causes of action and the Plan Trustee will continue to prosecute same. Certainly, the claims to be preserved by the Revested Debtor include claims against each of the directors of Westech and Tejas over the 48 months immediately prior to the petition date. The Revested Debtor will also collect and monetize any remaining Westech assets, including the Fellus Arbitration Award, as well as pursuing any avoidable transfers.

In **August 2016**, Gorman filed an individual Chapter 11 case in the same Austin Bankruptcy Court and the same Bankruptcy Judge was assigned to that related case (“Gorman Bankruptcy Case”). As a result of this filing, certain of the actions against Gorman, including actions involving both Westech and Tejas, were stayed and certain of the pending actions were removed from other venues to the Gorman Bankruptcy Case.

On **October 7, 2016**, as a result of several creditors advocating for the conversion of the Gorman Bankruptcy Case to Chapter 7 or alternatively, to appoint a Chapter 11 Trustee, the Bankruptcy Court entered an order directing the Office of the United States Trustee to appoint a Chapter 11 Trustee. Subsequently, retired bankruptcy judge Richard Schmidt was appointed as the Chapter 11 Trustee in the Gorman Bankruptcy Case. As a result of this appointment, Gorman no longer controls the administration of his case or access to the assets comprising his estate, nor does he have authority to initiate litigation, arbitration or other proceedings to enforce any purported claims or rights of the Gorman bankruptcy estate.

## **I. FINANCIAL INFORMATION OF THE DEBTOR**

In March of 2005, after the closing of a public offering of common shares, Westech reported shareholders’ equity in excess of \$37 million. In the ensuing six years, the reported shareholders’ equity was reduced to about \$3 million. By mid-2011, Westech was in need of a capital infusion to maintain regulatory and counter-party minimums, and raised \$8.45 million in a Series “A” Preferred offering. The Company continued its losses as it commenced an expansion plan to open a New York office under the management of Fellus.

In the fall of 2012, James Fellus was terminated as CEO for failing to repay the promissory note used to purchase his Series “A” Preferred Shares, and Michael Dura was named to the Board and became Interim CEO. Mr. Dura determined that the Company was draining its

capital so rapidly that he immediately implemented cost-cutting measures to put the Company on a path to profitability. He also began a reassessment of the Company's compensation structure.

Mr. Salamone took over as CEO in January of 2013.

By the end of June 2014, due to a sharp falloff in revenue, the Tejas broker dealer fell below clearing firm minimum requirements and was restricted from most of its significant counterparties.

The following chart illustrates the erosion of reported shareholders' equity over time and the inadequacy of capital by June 30, 2004.

<b>Quarter Ending</b>	<b>Westech</b>	<b>Tejas Securities</b>
	<b>Balance Sheet</b>	<b>FOCUS</b>
	<b>Equity</b>	<b>Net Capital</b>
3/31/2005	\$37,322,929	
6/30/2011	\$3,191,175	\$1,576,183
8/31/2011	\$3,585,549	\$1,166,781
9/30/2011	\$10,200,124	\$4,009,508
12/31/2011	\$8,195,803	\$2,902,474
3/31/2012	\$8,551,506	\$1,821,646
6/30/2012	\$5,976,237	\$1,419,660
9/30/2012	\$3,920,023	\$1,023,396
12/31/2012	\$2,723,555	\$1,051,643
3/31/2013	\$2,756,745	\$1,396,975
6/30/2013	\$2,480,807	\$1,503,190
9/30/2013	\$2,549,023	\$1,930,897
12/31/2013	\$668,623	\$1,219,826
3/31/2014	\$1,318,309	\$1,500,727
6/30/2014	\$306,313	\$555,558
Q3 2014	(\$987,076)	(\$331,943)
Q4 2014	(\$2,024,210)	

Importantly, Westech sold its corporate office building on November 21, 2014 for net cash of \$1.8 million, giving the Company a cash balance of approximately \$2 million. Both the board and Gorman preferred to continue their infighting litigation rather than take decisive action to maximize the recovery for the Company's creditors, shareholders and other stakeholders.

## J. PENDING CAUSES OF ACTION ON DATE OF FILING

At the time of the bankruptcy filing, the Debtor was a party to the following causes of action:

1. D-1-GN-14-001475; *Westech Capital Corp. v. John J. Gorman, IV*; in the 53<sup>rd</sup> District Court of Travis County, Texas (currently on appeal before the Third Court of Appeals, Austin under cause number 03-16-00041-CV). Westech brought claims against Gorman for theft, unjust enrichment and fraud relating to the NetJets contract and his failure to reimburse the Company for his personal use of the aircraft and is seeking damages in excess of \$693,000.

This suit has been removed to the Bankruptcy Court and should be resolved in conjunction with the Debtor's Proof of Claim against Gorman.

2. D-1-GN-14-003190; *Robert Halder v. Westech Capital Corp. and John J. Gorman, IV*; Travis County District Court. Halder brought this claim for declaratory relief, including a declaration that the Cancellation Agreement (of Halder's Employment Agreement) was a binding and enforceable agreement, that Halder is owed certain amounts under the employment agreement, and that he is not bound by restrictive covenants. Halder was granted partial summary judgment (which is only interlocutory, and not final) that he was owed "Quarterly Special Payments" of \$169,598.00." Halder's remaining claims are pending; however the case remains stayed.

The Debtor failed to remove this case to Bankruptcy Court and removal time has expired unless the stay is lifted.

3. No. 11482; *Avery Martin, et al. v. Westech Capital Corp.*; Section 211 case pending in the Delaware Court of Chancery; this action was filed seeking an order of the Chancery Court compelling Westech to hold an annual stockholder's meeting. After this case was filed an Agreed Order was entered and the annual meeting was held on May 5, 2016.

This case is moot, and if still pending, should be dismissed.

4. C.A. No. 12047; *Eric Steinhafel, et al. derivatively on behalf of Westech Capital Corp. and Tejas Securities Group v. Gary Salamone and Greenberg Traurig*; Delaware Chancery Court. Plaintiffs, who are common shareholders, filed this derivative shareholder suit, alleging that Salamone caused Westech to cancel Halder's non-compete agreement with Westech after which Halder immediately moved Westech's and Tejas' business and sales personnel to his new firm, thus allegedly destroying Westech's and Tejas' business. Plaintiffs contend that this action breached Salamone's fiduciary duties to Westech and Tejas, and violated the Court of Chancery's Status Quo Order in a then-pending 8 Del. C. § 225 action. Plaintiffs further allege that Greenberg Traurig aided and abetted Salamone's actions and also breached its fiduciary duty of loyalty to Westech by engaging in conflicting representations of multiple parties throughout a series of lawsuits over control of Westech, which further caused damage to Westech and Tejas.

This suit is now pending before the Austin Bankruptcy Court and is being prosecuted by the Trustee.

5. D-1-GN-16-001103; *Westech Capital Corp. v. John Gorman, IV*; Travis County District Court: This is a breach of fiduciary duty claim against Gorman relating to the sale of the office building located at 8826 Bee Caves Road, Austin, Texas 78746.

This suit has been removed to the Bankruptcy Court in the Gorman Bankruptcy Case and should be resolved in conjunction with the Debtor's and Tejas' Proofs of Claim against Gorman.

6. 15 CV 3159; *NetJets Aviation, Inc., et al. v. Westech Capital Corp.*; Court of Common Pleas, Franklin County, OH. NetJets brought this civil action against Westech for breach of contract and to collect an outstanding debt Westech owed NetJets for airplane use, maintenance and related services.

NetJets obtained a default judgment in the amount of \$193,568 on November 20, 2015.

#### **K. POTENTIAL CLAIMS PRESERVED TO THE REVESTED DEBTOR**

1. The Trustee believes that certain decisions regarding the Halder Cancellation Agreement, his subsequent competition, and his service on the board may give rise to claims of breach of his fiduciary duty and insider self-dealings. All of those claims are being pursued by the Trustee and are expressly preserved by the Plan for continued pursuit post-confirmation by the Plan Trustee.

2. In respect to unsecured creditors, the Trustee believes that the directors' fiduciary duties shifted from only Westech to its unsecured creditors as a result of Westech's insolvency. To the extent that this is established, all of those claims are expressly preserved by the Plan.

3. The Trustee believes that certain decisions regarding the salaries and transfers to Salamone during the two years prior to the filing of this Chapter 11 proceeding, and includes the actions taken by Salamone and the board to ratify the Halder Cancellation Agreement, his subsequent competition, and allow his continued service on the board, as well as the position of the board on several instances to simply allow judgments to be taken against Westech, which may give rise to claims of breach of his fiduciary duty and insider self-dealings. All of those claims are expressly preserved by the Plan.

4. Suit has been filed against Fellus seeking confirmation of the Fellus Arbitration Award and the collection of the judgment, all of which are expressly preserved by the Plan.

5. The Trustee believes that the Debtor may have actionable claims against Clearview Securities, the firm Halder joined immediately after leaving Westech. The Debtor expressly retains all claims it may have regarding the competition of Clearview.

6. Claims have been filed against Gorman, both prior to and after the commencement of the Gorman Bankruptcy Case by Westech and Tejas. The Trustee has filed claims on behalf of Westech and Tejas in the Gorman Bankruptcy Case.

7. The Trustee has evidence that the Debtor holds warrants for 81 shares of The Hundred Acre Wine Group, Inc. Based upon information disclosed in the Gorman Bankruptcy Case, the imputed value of the Debtor's rights is \$701 per share. The Trustee is pursuing the liquidation of the value of these warrants, having exercised them in January 2017.

8. The Trustee has not completed his investigation of the Debtor's pre petition payments, including but not limited to those payments listed on the chart on pages 13-14 of this Disclosure Statement. Any and all rights to recover such payments, either from the direct recipients of the payments or from any insider for whose benefit the payments were made, are expressly preserved by the Plan under any available legal theory of recovery.

#### **L. POSITION STATEMENT OF JOHN GORMAN, IV**

##### **John Gorman, IV's Contentions**

*In response to the statements contained in the Disclosure Statement, Gorman provides the following additional information. This information is expressly not the position of Milligan or of Richard Schmidt, the Chapter 11 Trustee of Gorman's individual bankruptcy case. These facts have not been independently verified by Milligan or Schmidt. The lack of a specific response by Gorman to any statement contained in the Disclosure Statement is not intended by Gorman to be an admission or adoption or any such statement.*

A. Gorman's Response to Specific Allegations of Overpayment. In Article II(F) of the Disclosure Statement, a chart prepared for the Debtor prior to the appointment of the Trustee that purportedly "compares" Gorman's compensation with Westech's operating losses. The Disclosure Statement does not identify or explain that from 1999 through 2013, all compensation paid to Gorman was pursuant to the terms of his employment contract, based upon commissions earned, and was approved following deliberation by compensation committees that included, at various times, Barry Williamson, Clark Wilson, Dennis Panches and Mike Dura. This compensation was disclosed to the Securities and Exchange Commission, was verified by Westech's auditors, and was included in the company's annual Financial and Operational Combined Uniform Single ("FOCUS") Reports submitted to FINRA.

B. Additional Contentions of Gorman. Article II(F) of the Disclosure Statement also contains a section, prepared by the Debtor prior to appointment of the Trustee, that purports to describe the dispute over control of the Westech board. Gorman contends that the section is a one-sided and inaccurate review of the litigation. For example, on page 15, the Disclosure Statement inaccurately summarizes the ruling of the Delaware Supreme Court. The Delaware Supreme Court ruled that Gorman's attempted removal of Halder from the board August 14, 2013 was invalid. However, it did not rule that, as of December 20, 2014, the board consisted of Halder, Dura, and Salamone. Instead, it only ruled that as of August 14, 2013, Halder, Dura, and

Salamone were board members and that Gorman's removal of Halder was invalid. Halder resigned from all positions in July of 2014, and it is unclear to Gorman how Halder could validly serve on the Westech board following his resignation from all positions. Additionally, the narrative of events inaccurately identifies Gorman as filing the first lawsuit on August 27, 2013. This, Gorman contends, is inaccurate. Gorman contends that Halder filed the First Section 225 Action *before* Gorman in Delaware. This inaccurate timeline has been improperly used, Gorman contends, as a pretext to deny certain of Gorman's indemnification claims.

Gorman maintains he is entitled to indemnification by Westech for his legal fees and expenses incurred throughout his time on the board. Gorman contends that the AIG policy provides coverage for Westech's indemnification obligation. Gorman contends that AIG has wrongfully paid for the legal fees and expenses of Halder and Salamone, while failing to pay for Gorman's significant legal fees and expenses. Gorman contends that Greenberg Traurig has been paid more than \$2.5MM with proceeds from a the AIG policy, on behalf of their clients Salamone, Halder and Dura. Gorman contends that this is ironic because, Gorman contends Salamone, Halder, and Dura argued against renewing the AIG policy.

In the Debtor's bankruptcy schedules, Morgan Lewis and Wilmer Cutler are identified as creditors. To the best of Gorman's knowledge and belief, those are not Westech nor Tejas engagements. Gorman believes those are Pallotta and Raptor's fees.

Gorman contends he has never sold a share of Westech/Tejas from 1994 thru present.

Gorman also believes that Westech's Hundred Acre Warrants have a value more than \$500,000.00, and that Westech owns other valuable domain names, intellectual property, and trademarks.

## **M. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

### **1. Introduction**

The following discussion summarizes certain United States federal income tax consequences of the implementation of the Plan to the Debtor and holders of Claims and Interests.

The following summary is based on the Internal Revenue Code of 1986, Treasury regulations thereunder, judicial decisions and published rulings and pronouncements of the Internal Revenue Service ("IRS") as in effect on the date hereof. Changes in these rules, or new interpretations of these rules, may have retroactive effect and could significantly affect the federal income tax consequences described below.

The federal income tax consequences of the Plan are complex and subject to uncertainties. The Debtor has not requested a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the interpretation that the IRS will adopt. In addition, this summary does not address foreign, state



or local tax consequences of the Plan, and it does not purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as foreign taxpayers, broker dealers, banks, insurance companies, financial institutions, small business investment corporations, regulated investment companies, tax-exempt organizations or investors in pass through entities).

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO THE HOLDER OF A CLAIM OR INTEREST. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS IN DETERMINING THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES TO THEM OF THE PLAN.

**2. Tax Consequences to the Debtor**

Generally, under the terms of the Plan, all Claims and Interests are to be retained. However, under certain circumstances, some Claims or Interests may be reduced or subordinated either by agreement or by court order. If that occurs, any income corresponding to the satisfaction of Claims at a discount should not constitute taxable income to the Debtor since the debt forgiveness arises in connection with a case under title 11 of the United States Code. The Debtor, however, may be required to reduce certain tax attributes, such as net operating loss (“NOL”) carryovers. Any NOLs remaining may be subject to utilization limitations imposed by Internal Revenue Code section 382, as amended.

**3. Tax Consequences to Claimants**

**(a) In General**

The federal income tax consequences of the implementation of the Plan to a holder of a Claim or Interests will depend, among other things, on: (a) whether its Claim or Interest constitutes a debt or security for federal income tax purposes, (b) whether the holder of a Claim receives consideration in more than one tax year, (c) whether the holder of a Claim is a resident of the United States, (d) whether all of the consideration by the holder of a Claim is deemed received by that holder as part of an integrated transaction, (e) whether the holder of a Claim or Interest reports income using the accrual or cash method of accounting, and (f) whether the holder of a Claim or Interest has previously taken a bad debt deduction or worthless security deduction with respect to the Claim or Interest.

**(b) Gain or Loss on Exchange**

Generally, a holder of an Allowed Claim will realize a gain or loss on the exchange under the Plan of his Allowed Claim for cash and other property in an amount equal to the difference between: (i) the sum of the amount of any cash and the fair market value on the date of the exchange of any other property received by the holder (other than any consideration attributable to accrued but unpaid interest on the Allowed Claim), and (ii) the adjusted basis of the Allowed

Claim exchanged therefore (other than basis attributable to accrued but unpaid interest previously included in the holder's taxable income). Any gain recognized generally will be a capital gain (except to the extent the gain is attributable to accrued but unpaid interest or accrued market discount) if the Claim was a capital asset in the hand of an exchanging holder, and such gain would be a long-term capital gain if the holder's holding period for the Claim surrendered exceeded one (1) year at the time of the exchange.

Any loss recognized by a holder of an Allowed Claim generally will be a capital loss if the Claim constitutes a "security" for federal income tax purposes or is otherwise held as a capital asset. For this purpose, a "security" is a debt instrument with interest coupons or in registered form.

Holders of Claims who receive any consideration under the Plan in respect of Allowed Claims for accrued but not previously taxed interest must treat the amount of that consideration as ordinary income. A holder of a Claim whose Allowed Claim for accrued and previously taxed interest is not fully satisfied generally may take an ordinary deduction for the unsatisfied portion of that Allowed Claim, even if the underlying claim is held as a capital asset. Holders of Claims should consult their own tax advisors about the proper allocation of consideration between principal and interest.

#### 4. Tax Consequences to Holders of Interests

Capital gain or loss will be long-term if the Interest was held by the holder for more than one year and otherwise will be short-term.

Any capital gain realized will generally be taxable. Any capital losses realized generally may be used by a corporate holder only to offset capital gains, and by an individual holder only to the extent of capital gains plus \$3,000 of other income.

#### 5. Preservation of Net Operating Loss and Tax Attributes

Internal Revenue Code section 382 could substantially limit, or deny in full, the availability of the Debtor's net operating loss and tax credit carry-forwards as a result of the transactions contemplated by the Plan, even though the Plan is designed to protect the future use of the Debtor's and its subsidiaries' NOLs. Moreover, Internal Revenue Code section 108 could result in the reduction of the loss and credit carry-forward based on the amount of any debt discharged in the Plan, although the Plan is not designed to discharge debts and so such discharge may or may not occur.

The Plan contemplates monetizing the NOLs by allowing a buy-in or merger of another party into the company within the limits imposed by IRC Sections 382(b) and (g), however, there are no assurances that such buy-in or merger will in fact occur, or that the IRS would accept the company's proposed tax treatment of any such buy-in or merger, or that such events would actually result in any funds becoming available to pay Claims or distribute on account of Interests.

Under IRC Sections 382(b) and (g), the Debtor cannot wind up with one or more shareholders, each of which afterwards each own 5% or more of the company, and whose aggregate stockholdings in the Company as measured by either numerical shares outstanding or by value, have collectively increased their ownership in the company by more than 50% of the total outstanding stock on a fully diluted basis. If these rules are implicated, the Debtor's and Tejas' NOLs may be limited each year thereafter as to how much can be used to offset current income. Further, these tests look back for three years to see how much stock has been acquired by the >5% shareholders.

The Trustee has not obtained and does not intend to obtain an opinion of counsel or a ruling from the Internal Revenue Service that the Plan treatment of Class 6 Series "A" Preferred Interests or Class 7 Common Share Interests have not changed in such a material fashion as would be considered an issuance of a new class of stock. Additionally, Trustee has not sought an appraisal of the market value, if any, of either the preferred stock or the common stock, each of which is intended to retain its attributes and relative priorities under the Plan. Nor has the Trustee considered what valuation methodology would be applied to the measurement of whether a Section 382 event has occurred, although the Trustee expects that the optimal method would be used.

The potential implications and effect of IRC Section 382 under the Plan are nuanced and complicated and each person must rely on their own competent tax advisor in making any decisions regarding these matters.

#### **6. Information Reporting and Backup Withholding**

Under the backup withholding rules of the Internal Revenue Code, holders of Claims may be subject to backup withholding with respect to payments made pursuant to the Plan unless such holder (i) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number and certifies under penalties of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of a failure to report all dividends and interest income. Any amount withheld under these rules will be credited against the holder's federal income tax liability. Holders of Claims may be required to establish exemption from backup withholding or to make arrangements with respect to the payment of backup withholding.

### **III ASSETS AND LIABILITIES AT THE TIME OF FILING**

At the time the case was filed the Debtor scheduled assets in the amount of \$2,636,999.73 and liabilities in the amount of \$972,477.61. The Debtor claimed that it did not own any real property, and had no secured or priority debt tax debt on the Petition Date.

CONFIRMATION OF THE PLAN REVESTS ALL THE DEBTOR'S ASSETS IN THE REVESTED DEBTOR REGARDLESS OF WHETHER THE DEBTOR DISCLOSED THEM IN ITS SCHEDULES AND REGARDLESS OF WHETHER THE TRUSTEE HAS DISCOVERED THEM IN TIME TO IDENTIFY THEM IN THIS DISCLOSURE STATEMENT.

**A. ASSETS OF THE DEBTOR**

1. Cash. At the time the case was filed, the Debtor had cash in the amount of \$281,074. At the time the Trustee was appointed, the Debtor had cash of \$189,674, and as of April 30, 2017, the cash balance was \$120,376.
2. Net Operating Losses. The Debtor believes it has net operating losses as follows:

Debtor Federal NOL	\$2,979,127
Debtor Federal AMT NOL	\$3,063,800
Debtor NY State and Local NOL	\$3,121,223
Debtor NY State and Local AMT NOL	\$3,205,427

The value of these losses and whether any value can be realized is unknown. The actual amount of such losses depends on historical transactions affecting the ownership of the Debtor. The value of the net operating loss carryforward is calculated by the taxes from future income that can be offset by these losses. The losses have no value in liquidation, but may have value in connection with future operations of the Revested Debtor.

Trustee spent substantial time with his general counsel and his special tax counsel to develop an understanding of the legal grounds for preserving and monetizing the Debtor's NOLs for the benefit of estate creditors. Trustee has also conferred with Salamone, Halder, and Gorman about utilizing the Debtor's (and its subsidiary's) NOLs. Trustee determined to wait until the Plan is confirmed before vetting and selecting the best available arrangement to monetize the NOLs, as he believes that pre-confirmation, there is too much uncertainty for any such arrangement to result in the maximum benefit to the estate.

3. Fellus Arbitration Award. The Debtor has an arbitration award against James Fellus in the amount of \$1,092,780.00. Suit has been filed in the Bankruptcy Court to enter judgment on the award and collection efforts have begun. A lis pendens has been filed by the Trustee in New York against real estate Fellus fraudulently transferred to his spouse, and Westech has also sued his spouse to recover the fraudulent transfer. Both defendants were duly served and have defaulted, and Trustee is seeking entry of a default judgment which he will then seek to enforce against Fellus and the property. On May 8, 2017, FINRA suspended Fellus' registration for failing to comply with the Fellus Arbitration Award. Fellus can clear the suspension by paying the award.

4. The Hundred Acre Wine Group, Inc. Warrants. Gorman disclosed an unscheduled asset to the Trustee in the form of Warrants held by the Debtor Westech (81 shares) from The Hundred Acre Wine Group, Inc. Gorman held the same or similar warrant rights as Westech for 205 shares, and liquidated the same on May 6, 2016 for \$143,742, providing an indicated value of \$701 per share. The Trustee is pursuing the liquidation of these warrants, having exercised them in January, 2017.<sup>2</sup>
5. Intellectual Property. To include any/all domain names, trademarks and other forms of intellectual property owned by the Debtor.
6. Causes of Action.
  - (a) Westech's proof of claim filed in the Gorman Bankruptcy case and right to assert that claims against Gorman are non-dischargeable.
  - (b) Claims identified in Section II.J above and IV.G. below against past officers and directors of Westech and Tejas.
  - (c) Claims asserted against Greenberg Traurig, LLP, including those claims set out in the Delaware Derivative Suit.
  - (d) Claims asserted against the Debtor's insurer AIG.
  - (e) Intercompany Claims with Subsidiary Tejas, see attached Exhibit 1.
  - (f) Other claims as described elsewhere in this Disclosure Statement.
7. Retainer refund. Westech paid a retainer to Beatty, Bangle, Strama, PC, which has agreed to return an unexpended balance of \$2,756.07.
8. Subsidiaries
  - (a) Tejas. Tejas was a FINRA regulated broker dealer which is no longer authorized to operate by FINRA.

Assets

- (1) Cash of \$186,055 from the Apex Partial Settlement (being held by Trustee in a segregated account)
- (2) Remaining claims against Apex Clearing Corp. for return of approximately \$150,000

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<sup>2</sup> Tejas also holds warrants for 479 shares of The Hundred Acre Wine Group, Inc., which were exercised at the same time.

- (3) Proof of Claim against Gorman bankruptcy estate and right to assert that claims against Gorman are non-dischargeable
- (4) The Debtor believes its subsidiary Tejas has net operating losses as follows:

Tejas Federal NOL	\$5,958,455
Tejas Federal AMT NOL	\$5,971,055
Tejas NY State and Local NOL	\$5,978,120
Tejas NY State and Local AMT NOL	\$5,995,237

The value of these losses and whether any value can be realized is unknown. The actual amount of such losses depends on historical transactions affecting the ownership of the Debtor. The value of the net operating loss carryforward is calculated by the taxes from future income that can be offset by these losses. The losses have no value in liquidation, but may have value in connection with future operations of Tejas.

- (5) Intercompany Claims with Westech, see attached Exhibit "1".
- (6) The Trustee has evidence that Tejas holds warrants for 479 shares of The Hundred Acre Wine Group, Inc. Based upon information disclosed in the Gorman Bankruptcy Case, the imputed value of the Debtor's rights is \$701 per share. These warrants were exercised in January, 2017.

#### Liabilities

- (7) Accounts payable per 03/31/16 consolidated financial statement totaled \$1,745,918.
  - (8) FINRA claim by Gorman of at least \$440,000, plus additional compensatory damages, punitive damages, interest, and attorneys' fees. (This claim is now owned and controlled by Chapter 11 Trustee in Gorman's Bankruptcy Case.)
- (b) Tejas Holding. This entity is not operating and has no assets or liabilities.
- (c) TSBGP. This entity is not operating and has no assets or liabilities.
- (d) TI Building Partnership. This entity is not operating and has no assets or liabilities.
- (e) Clearview Advisors. This entity is not operating and has no assets or liabilities.

#### **B. LIABILITIES OF THE DEBTOR**

The Debtor scheduled general unsecured debt in the amount of \$972,477.61.

Exhibit "2" is the Trustee's claims analysis which lists both scheduled and filed claims.

The deadline to file proofs of claims was July 18, 2016.

Impaired Accrued Professional Compensation Claims: As a result of filing of the Chapter 11 proceeding by Westech, certain claims have accrued for costs and expense of administration, including claims by Debtor's prior counsel of approximately \$280,000.00 (before application of unapplied retainer of approximately \$30,500), and the costs to continue administration of the case by the Trustee (whose pre-confirmation compensation is, subject to the occurrence of the Effective Date of the Plan, being waived) and the Trustee's general counsel and other professionals, with unpaid fees and expenses of approximately and additional \$346,000 through May 16, 2017, and continuing to accrue. These administrative expenses are an impaired voting class under the Trustee's Plan.

Intercompany Claims by Tejas: See attached Exhibit "1".

### **C. CAPITAL STRUCTURE OF THE DEBTOR**

The Debtor has 338 outstanding shares of Series "A" Preferred with a par value of \$.001 per share with a preferential right to distributions of \$8.45 million and convertible to 25,000 shares of common stock per share. None of the Series "A" Preferred shares will be cancelled under the Plan, but may be subordinated. The Series "A" Preferred shares are not secured by any collateral and are subordinate in payment priority to all legitimate claims of unsecured creditors.

Debtor has 4,031,722 outstanding shares of common stock. None of the common stock will be cancelled under the Plan, but may be subordinated. The Debtor's common shares are subordinate in payment priority to all legitimate claims of unsecured creditors and to Series "A" Preferred shares.

## **IV SIGNIFICANT EVENTS IN CHAPTER 11**

### **A. EMPLOYMENT OF PROFESSIONALS.**

On March 28, 2016, Debtor filed an Application to Employ Stephen A. Roberts and the law firm of Strasburger & Price, LLP ("Strasburger") as bankruptcy counsel for Debtor. The Court Approved the Application. Upon appointment of the Trustee, Strasburger withdrew as Debtor's bankruptcy counsel.

On April 5, 2016, Debtor filed an Application to Employ Accountant as Ordinary Course Professional, seeking approval to continue utilizing the services of its accountant, PMD Helin Donovan, in the ordinary course of business. The Court Approved the Application.

On April 5, 2016, Debtor filed an Application to Employ Landis Rath & Cobb, LLP as Special Delaware Counsel to the Debtor. An objection was filed to the Application, but was later withdrawn. The Court approved the Application. The Landis firm filed a fee application for approximately \$50,000, and after review by the Trustee, agreed to waive its fee not covered by the retainer (a reduction of approximately \$7,000). The matter was settled on that basis with Court approval and Landis Cobb no longer represents the Debtor.

On August 15, 2016, the Trustee filed his Application to Employ Trustee's Counsel Jordan, Hyden, Womble, Culbreth & Holzer. The Court approved the Application.

On September 30, 2016, the Trustee filed his Application to Employ Schlanger, Silver, Barg & Paine, LLP as Tax Advisor to the Trustee and for Approval of Payment As Ordinary Course Professional. The Court approved the Application.

On October 13, 2016, the Trustee filed his Application to Employ Special Counsel, George Brothers Kincaid & Horton, L.L.P. and Prickett, Jones & Elliott, P.A., to pursue the Delaware Derivative Action. The Court approved the Application.

On November 3, 2016, the Trustee filed his Application to Employ Strasburger & Price, LLP as Special Counsel to prosecute the claims against Gorman and the Gorman Chapter 11 bankruptcy estate. The Court approved the Application.

On February 23, 2017, the Trustee filed his Motion To Withdraw Strasburger & Price, LLP And Substitute Jon Michael Smith as Special Counsel For Matters Involving John J. Gorman, IV. The Court granted the Motion.

On April 5, 2017, the Trustee filed his Application to Employ Pryor & Mandelup, LLP as special counsel to pursue the Fellus Arbitration Award in New York State. The Court approved the Application.

## **B. OTHER SIGNIFICANT COURT RULINGS**

Motion to Enforce Automatic Stay, to Establish Notification Procedures, and to Approve Restrictions on Certain Transfers of Interests in the Debtor. Westech filed its Motion to restrict certain transfers of Interests in the Debtor on April 13, 2016. The Court approved the Motion on April 20, 2016.

Debtor's Plan. On July 20, 2016, the Debtor filed its First Amended Plan and Disclosure Statement. Subsequent to appointment of the Trustee, the Debtor's Plan was withdrawn.

Motion to Appoint Trustee. The Bankruptcy Court ordered the appointment of a Chapter 11 Trustee and subsequently approved the appointment of Gregory S. Milligan to that position.

The Court found as follows in determining to appoint the Chapter 11 Trustee:

- The Westech bankruptcy case is a continuation of the Board control fight by other means. All the significant claims filed in the case are by parties involved the pre-petition (and post-petition) control fight.
- The Court would have entertained the atypical use of Chapter 11 by a debtor-in possession provided that all the Is were dotted and the Ts are crossed. That did not happen here.



- Trustees are expensive. And in this case, the trustee is sought by shareholders who are likely out of the money and who want to bring a derivative suit that in part may not be well founded. Particularly for this last reason, the Court reached its decision reluctantly.
- Mr. Salamone's yearly salary of \$350,000 was based on an expired contract for a CEO of a holding company of an active broker/dealer. But the broker/dealer ceased operating in late 2014. Bankruptcy was filed on March 14, 2016. And yet, Mr. Salamone continued to draw his salary at the \$350,000 rate and he did so until May. More to the point, while in Chapter 11, he drew a salary at an annual rate that exceeded the company's cash reserves of \$280,000. It's hard to imagine a context in which that's not excessive. It is certainly excessive here. It reflects poor stewardship and poor management of the conflict of interest relating to the payment of salary.
- The derivative lawsuit against Mr. Salamone is clearly an asset of the estate and clearly needed to be disclosed on Schedule A.
- The Debtor scheduled Mr. Salamone's claim as indemnity in connection with the Gorman versus Tejas arbitration. And yet when he filed his proof of claim, he attached the derivative lawsuit and so you have to ask yourself, "What's going on here?".
- Then Mr. Salamone doesn't testify at the 341. It's the fast-talking Mr. Halder.
- The faulty disclosures demonstrated poor management of the conflict of interest and poor stewardship.
- Mr. Salamone moved to dismiss and remand the derivative suit which was a stay violation. In other words, he violated the stay of the estate that he's the custodian for, acting in his own self-interests.
- The Court was troubled by the choice of Mr. Fellus as a board member.
- The Court was troubled by Mr. Salamone's failure to seek permission from the Delaware Court before signing the cancellation agreement and his failure to seek my permission before moving to dismiss the derivative suit.
- The Court was troubled by the broker/dealer losing \$1 million in capital during the second quarter of 2014, which was two-thirds of its capital that it had at the time. That deserves investigation by an independent trustee.
- It seems possible that the Gorman and Halder commission contracts buried the company more than did the litigation. If your business model is pay my biggest rainmaker whatever my biggest rainmaker wants, that's not much of a business model.

- The Court was not satisfied by the manner in which the derivative suit was proposed to be handled under the Debtor's plan.
- The Court would never find that Mr. Dura was independent notwithstanding his obviously impressive credentials and bearing.

Lift Stay On Delaware Litigation. On October 6, 2016, the Court entered a consent order lifting the stay to permit transfer of the Delaware Derivative Litigation to this Court, which was subsequently accomplished.

Motion to Permit Tejas Corporate Governance. The Court granted the Trustee's Motion to approve himself as a Special Committee Board member of Tejas to act with respect to certain limited areas of operations, including control of all litigation, matters involving the Gorman Bankruptcy Case and whether or not Tejas should file for Chapter 11 bankruptcy protection.

Apex Partial Settlement. The Court approved a settlement by which Apex Securities released \$250,000 to Tejas. Tejas' retained all its remaining claims against Apex.

The Hundred Acre Wine Group. The Court Approved the Trustee to take the steps necessary to exercise the Debtor's Warrants for shares of The Hundred Acre Wine Group, Inc. The Warrants were exercised in February, 2017; however, Hundred Acre has disputed the claim and has not issued the shares.

Ratliff Firm Fee Settlement. The Court approved a settlement of a claim by the Ratliff Law Firm against Tejas for attorney's fees in the reduced amount of \$58,919.92. This settlement negotiated by the Trustee resulted in a savings of approximately \$80,000.00 (or 57%) from the initial fees requested by the Ratliff Firm. Payment has been made from the funds Tejas recovered in the Apex Partial Settlement.

### **C. OTHER MATTERS**

Data Preservation Issue. The Trustee requested that the Company's Controller, who has worked for the Debtor for years, investigate the ability to reduce the monthly charges for more than 40 e-mail accounts since the Company had not been operating for an extended period. As part of that process, the Trustee requested that the Controller also obtain an archive copy of all data stored by the third-party vendor; however, during the process, the Controller caused all of the data for all but three of 41 e-mail accounts to be deleted without the Trustee's knowledge or authorization, and before the archive copy was obtained. The Trustee subsequently discharged the Controller and was successful in recovering the lost data by subpoena issued to a separate third-party provider that is required as part of its approved vendor status with the Security and Exchange Commission to maintain archives of all data for an extended period.

Taxation Matters. President Trump's public comments regarding his upcoming tax proposal may impact the potential value of the Debtor's and Tejas' NOLs. If Congress does lower the corporate tax rate, NOLs will be less valuable. Trustee has received information that corporations with marketable NOLs have recently traded those assets at lower prices after the

Trump announcement, with potential implications for companies as large as Fannie Mae and Freddie Mac, which have large deferred tax assets on their balance sheets. The potential impact on the Trustee's ability to utilize the Debtor's tax attributes is unknown.

## **V OPERATIONS OF THE DEBTOR IN CHAPTER 11**

Westech ceased normal operations prior to filing and prior to sale of the Westech office building in December 2014. Although operations were ceased, the board approved the continued payment of full-time salaries and reimbursements to Salamone and others, and continued to pay for litigation costs to counsel representing both Westech and certain insiders of Westech.

Since his appointment, the Trustee has investigated the assets, liabilities, and historical business of the Debtor, and has requested and obtained certain limited corporate governance rights with respect to its wholly owned subsidiary, Tejas.

## **VI SUMMARY OF TRUSTEE'S PLAN**

### **A. OVERVIEW OF THE PLAN**

THE FOLLOWING DISCUSSION IS A GENERAL OVERVIEW OF THE PLAN ONLY. IT IS NOT INTENDED TO MODIFY THE TERMS OF THE PLAN IN ANY WAY. THE PLAN IS ENCLOSED WITH THIS DISCLOSURE STATEMENT. CREDITORS ARE URGED TO READ THE PLAN IN ITS ENTIRETY IN DECIDING WHETHER TO VOTE FOR OR AGAINST THE PLAN.

Capitalized terms used in the following summary are as defined in the Plan. The following summary is included for convenience of the reader and shall not modify the specific terms of the Plan.

Holders of Claims and Interests may refer to this Disclosure Statement for a discussion of the Debtor's history, businesses, results of operations, historical financial information, and a summary and analysis of the Plan and certain related matters. The Debtor, through the Trustee, is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Under the Plan, Westech will continue post-confirmation as the "Revested Debtor" to be managed and controlled by the Trustee as Plan Trustee without change of ownership or equity (except as may be approved by the Plan Trustee after Confirmation of the Plan), for the purpose of liquidating all claims, assets, opportunities, and operations of the Debtor, as well as management of those assets for the ultimate distribution to Allowed Claims of Creditors and Interests Holders.

The Revested Debtor shall be funded from cash on hand, asset sales, expected litigation recoveries, and future business opportunities, all of which may be used in the Plan Trustee's sole discretion to pay all management, operating, litigation, and professional expenses incurred by the Revested Debtor. The restrictions on stock transfers currently in effect will continue in order to preserve the Debtor's net operating losses unless and until the Plan Trustee ends such limitation. Upon Confirmation, all voting or voting rights agreements are cancelled and terminated or

rejected as will be reflected in amended bylaws of the Revested Debtor.

The Plan creates the following Classes of Claims and Interests:

Class 1. Convenience Class. A Convenience Class of Allowed Claims of \$5,000.00 or less, or Claims voluntarily reduced to \$5,000 or less, if any, shall be paid in full within 90 days after the Effective Date, without interest or attorneys fees. These claims are Impaired and entitled to vote.

Class 2. Impaired Accrued Professional Compensation Claims. To avoid any issues of administrative insolvency of the Debtor's Estate, the Plan may be confirmed through the voting and agreements of the Accrued Professional Compensation Claims to be paid post-confirmation, from funds available through the liquidation of all of the Revested Debtor's property, assets. These claims are Impaired and entitled to vote.

Class 3. Secured and Priority Tax Claims. Allowed Secured and Priority Tax Claims shall be paid, subject to available funds, in installment of principal and statutory interest over 60 months, or such other terms as may be agreed, and any liens held by an Allowed Class 3 claim are retained. These claims are Impaired and entitled to vote.

Class 4. Priority Claims. Allowed Priority Claims will be paid over time from cash of the Revested Debtor remaining after the payment of post-confirmation operations, Class 2 and Class 3 Claims. These claims are Impaired and entitled to vote.

Class 5. Unsecured Claims. Allowed Unsecured Creditors will be paid over time from cash of the Revested Debtor remaining after the payment of post-confirmation operations, Class 2, 3 and 4 Claims. These claims are Impaired and entitled to vote.

Class 6. Series "A" Preferred Interests. Class 6 consists of Allowed Series "A" Preferred Interests, which shall retain all existing financial rights, provided that, some Interests may be partially or wholly subordinated for distribution purposes as insider Interests or for other reasons, which Interests, if subordinated, will be treated as Class 7 Interests or Class 8 Interests. Class 6 Interests are unimpaired and not entitled to vote.

Class 7. Common Share Interests and Partially Subordinated Series "A" Preferred Share Interests. Class 7 consists of the Debtor's Common Stock Interests and Partially Subordinated Series "A" Preferred Share Interests, all of which shall retain the existing financial rights of Common Shares, provided that, some may be partially or wholly subordinated for distribution purposes as insider Interests or for other reasons, which Interests if subordinated, will be treated as Class 8 Interests. Class 7 Interests are unimpaired and not entitled to vote.

Class 8. Subordinated Claims and Interests. Class 8 Subordinated Claims and Interests receive nothing, are deemed to reject the Plan, and are not entitled to vote.

The Disclosure Statement sets out the known litigation that may be initiated and/or continued by the Revested Debtor, through the Plan Trustee, the proceeds of which will be

applied to the payment of all Allowed Claims and Interests. Westech will preserve all causes of action, including those set out in the Disclosure Statement.

Westech will evaluate post-confirmation merger opportunities and new business consolidations to utilize the net operating losses preserved under this Plan and otherwise maximize the distribution to Claimants and Interest Holders.

Westech will also seek to monetize the value of its subsidiary, Tejas, through either a restructuring, a recapitalization, a business combination, an orderly liquidation, or potentially a Chapter 11 filing, all as authorized by orders of the Bankruptcy Court. All orders of the Bankruptcy Court regarding the appointment or rights of the Trustee shall be reaffirmed in the confirmation order as continuing in full force and effect upon and after Confirmation of the Plan. At no time will the Plan Trustee of the Revested Debtor be required to post any form of bond or surety to serve in such capacity.

Conversion of this case to a Chapter 7 liquidation will return less to creditors than the implementation and Confirmation of this Plan due to the additional layer of administrative expenses (on top of the existing Chapter 11 administrative expenses) that will be generated by the Chapter 7 Trustee and the Chapter 7 Trustee's counsel as they spend the significant time and effort needed to understand the myriad facts and issues surrounding the Debtor. Also, the Plan contemplates continuing the Debtor's business for an indefinite period of time to maximize the value of the NOL, and, in contrast, a Chapter 7 Trustee can only operate a business for a limited period of time, with court authorization, and the bankruptcy code contemplates such authorization only in a limited number of situations. Thus under the Trustee's proposed Chapter 11 Plan, the Plan Trustee will have more flexibility and opportunity to monetize the NOL for the benefit of all creditors than a Chapter 7 Trustee would have.

This is a general summary of the Plan. To the extent that the specific provisions in this Plan conflict with this summary, such detailed provisions shall prevail.

## **B. UNCLASSIFIED ADMINISTRATIVE CLAIMS AGAINST THE DEBTOR**

Except for Class 2 Impaired Accrued Professional Compensation Claims, or as may otherwise agree in writing, Administrative Expense Claims which are Allowed Claims prior to the Effective Date of the Plan shall be paid in full on or before the Effective Date of the Plan. The Bankruptcy Court shall retain jurisdiction to compel such payment and any action to determine such payment as may be initiated by motion of a party and be treated as a contested matter under Bankruptcy Rule 9014.

**ADMINISTRATIVE CLAIM BAR DATES:** The deadline to file an application for allowance and payment of an administrative expense claim that is not a Class 2 Claim is 30 days after the Effective Date, or such earlier date as may be set by order of the Bankruptcy Court. Failure to timely file such a request shall constitute waiver of such claim and such claims shall be barred and deemed for all purposes disallowed. All timely filed Administrative Claims are subject to objections to the allowance filed within 21 days of the filing date.

All fees owing to the United States Trustee pursuant to 28 U.S.C. § 1930 shall be paid by the Plan Trustee from the assets of the Reorganized Debtor in Cash as such fees become due. The Plan Trustee shall timely file on behalf of the Reorganized Debtor quarterly post-confirmation reports until this case is closed, converted, or dismissed.

Trustee does not believe there are any unpaid administrative expenses other than estate professionals' fees.

### **C. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

Summary. Pursuant to Section 1123(a)(1) of the Bankruptcy Code this Plan designates the following classes of Claims and Interests. A Claim or Interest is included in a particular class only to the extent that the Claim or Interest fits within the description of that class and, unless otherwise herein provided, is included in a different class to the extent that any remainder of the Claim or Interest fits within the description of such different class. A Claim or Interest is included in a particular class only to the extent that the Claim is an Allowed Claim in that Class and has not been paid prior to the Effective Date, and, in the case of an Interest evidenced by certificated or uncertificated shares of preferred or common stock, only to the extent that such stock is outstanding immediately prior to the Effective Date. The treatment afforded to the Creditors' Claims or Interests as set forth hereunder shall be in full satisfaction, settlement, release, and discharge for and in exchange for such Claim or Interest, respectively.

The Claims and Interests against the Debtor are classified as follows:

- Class 1: Convenience Class
- Class 2: Impaired Accrued Professional Compensation Claims
- Class 3: Secured and Priority Tax Claims
- Class 4: Priority Claims
- Class 5: Unsecured Claims
- Class 6: Series "A" Preferred Interests
- Class 7: Common Share Interests and Subordinated Series "A" Preferred Share Interests
- Class 8: Subordinated Claims and Interests

#### **CLASS 1: CONVENIENCE CLASS UNSECURED CLAIMS**

Class 1 Claims include each Unsecured Claims of \$5,000.00 or less, or any Allowed Unsecured Claim that is reduced by the agreement of the holder of such Claim to \$5,000.00 or less. No interest or attorneys' fees are permitted as part of any Class 1 Claim. Class 1 Claims may also include any Secured and Priority Tax Claim that meets the criteria in amount, and shall be paid in accordance with Class 1 and not as provided in Class 3.

Class 1 Claims shall be paid in full not later than 90 days from the Effective Date, excluding any interest or attorneys' fees.

The Class 1 Claims are Impaired and are, accordingly, entitled to vote on the plan.

The Trustee estimates Class 1 Claims may be approximately \$25,000.00.

**CLASS 2: IMPAIRED ACCRUED PROFESSIONAL COMPENSATION CLAIMS**

Class 2 consists of all Impaired Accrued Professional Compensation Claims which shall be paid in full, post-confirmation, in priority to all other Classes of Allowed Claims, however after the Post-Confirmation costs and expenses of operations, and Class 1 Claims, from all assets of the Revested Debtor. Such payments shall be made from time to time as funds are available for payment, in the Plan Trustee's sole discretion.

Class 2 Claims must be filed prior to the deadline for voting on acceptance or rejection of this Plan in order to vote; provided, however, that such claims need not be Allowed to be entitled to vote, and provided further that failure to vote on the Plan does not bar the timely filing or Allowance of any Class 2 Claim.

Class 2 Claims are subject to the filing and objection deadlines as set forth in of Section III of the Plan.

The Class 2 Claims are Impaired and are, accordingly, entitled to vote on the Plan.

As of May 15, 2017, the Trustee is aware of the following unpaid Class 2 Claims:

- |                           |                           |
|---------------------------|---------------------------|
| 1) Jordan, Hyden, et al   | \$343,203.31              |
| 2) Strasbuger & Price LLP | \$280,075.29 <sup>3</sup> |
| 3) Schlanger, Silver      | \$ 5,098.50 <sup>4</sup>  |

**CLASS 3: SECURED AND PRIORITY TAX CLAIMS**

Class 3 consist of all claims of taxing authorities that are secured by liens or are entitled to Priority under §507(a)(8) of the Bankruptcy Code.

Class 3 Allowed Claims will be paid, subject to funds being available, in installments over 60 months from the Petition date, beginning after the Effective Date and for each quarter thereafter, and for each Class 3 Claim that is Secured, such Class 3 Claimant shall retain its lien until payment in full of the Class 3 Claim.

Class 3 Allowed Claims shall be calculated as provided by the laws of the State of Texas and Allowed consistent with such laws and statutes and shall bear interest as the statutes of the State of Texas provide.

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<sup>3</sup> Prior to application of \$30,487.00 in unapplied retainer.

<sup>4</sup> Balance due after interim total payments of \$19,420.25 pursuant to the order entered by the Bankruptcy Court on October 26, 2016 (Doc# 199) authorizing the firm's employment and the terms of interim payment.

Class 3 Claims shall be paid in priority to all other Classes of Allowed Claims, after Class 1 Claims, all post-confirmation costs and expenses of operations, and Class 2 Claims.

The Class 3 Claims are Impaired and are, accordingly, entitled to vote on the Plan.

The Trustee believes that the only claims in this class are the claims filed by the Comptroller for the State of Texas in the amount \$7,196.85 and by Harris County, Texas for \$113.87. Trustee expects to pay these claims in full within 30 days after the Effective Date.

#### **CLASS 4: PRIORITY CLAIMS**

Class 4 Claims include all Allowed Unsecured Priority Claims that have not been subordinated by agreement or order of the Bankruptcy Court. Class 4 Claims shall be paid in priority, after post-confirmation operating expenses and Class 1 through Class 3 Claims, up to 100% of the Allowed Class 4 Claims, without interest, attorney's fees or costs, and from time to time from the assets of the Revested Debtor, in the sole discretion of the Plan Trustee.

The Class 4 Allowed Unsecured Priority Claims are Impaired under the Plan and, accordingly, are entitled to vote for or against the Plan.

The Trustee believes there are no claims in this Class.

#### **CLASS 5: UNSECURED CLAIMS**

Class 5 Claims include all Allowed Unsecured Claims that have not been subordinated by agreement or order of the Bankruptcy Court. Class 5 Claims shall be paid in priority, after post-confirmation operating expenses and Class 1 through Class 4 Claims, up to 100% of the Allowed Class 5 Claims, without interest, attorney's fees or costs, and from time to time from the assets of the Revested Debtor, in the sole discretion of the Plan Trustee.

The Class 5 Allowed Unsecured Claims are Impaired under the Plan and, accordingly, are entitled to vote for or against the Plan.

The Trustee's claims analysis is attached as Exhibit "2". The total amount of proofs of claim filed, including contingent claims, plus claims scheduled by the debtor as undisputed is \$12,774,834.48. The Trustee estimates that the allowed claims entitled to payment under the plan will ultimately be a small fraction of that amount.

John Gorman filed Proofs of Claim totaling \$9,724,712.80. The Trustee does not believe that these claims are valid for the reasons set forth in the History of the Debtor section of this Disclosure Statement; moreover, Gorman's claims are subject to offset against claims by the Debtor against him, and are subject to subordination. The Debtor does not believe that the claims of John Randolph (\$261,981) or Craig Biddle (\$42,500) are valid because they arise out of their employment by Westech's subsidiary, Tejas, not Westech, and their claims arise out of compensation alleged owed them by Tejas. The Trustee will object to these claims. The Trustee has not yet completed his review of Claims for possible objections, but notes there are some



claims that appear to be duplicates (i.e., Salomone and AIG), and the Claims of Salomone and Halder are subject to offset against claims by the Debtor against them, and/or subordination.

If the Trustee's litigation is successful and his claims objections are sustained, the maximum amount of Allowed Claims in this class will be no more than \$1,000,000.00. If the Trustee's litigation is not successful and his claims objections are not sustained, then the Holders of some or all of those Claims will be entitled to participate in the distributions to Class 5 Creditors to the extent the Court finds that such Claims are valid.

#### **CLASS 6: SERIES "A" PREFERRED SHARE INTERESTS**

Class 6 consists of the holders of the Debtor's Series "A" Preferred Shares that have not been subordinated by agreement or order of the Bankruptcy Court. The Class 6 Series "A" Interest Holders retain their Interests and all financial rights related thereto; however, the Voting Agreement is cancelled or rejected and all corporate authority of the Revested Debtor will be maintained solely in the Plan Trustee.

The transfer of all or part of the Preferred Shares will continue to be restricted pursuant to the Order Granting Motion to Enforce Automatic Stay, to Establish Notification Procedures, and to Approve Restrictions on Certain Transfers of Interests in the Debtor, which is incorporated in the terms of the Plan, until such time as the Plan Trustee may terminate such restrictions in his sole discretion.

Each Class 6 Interest must first be an Allowed Claim and as such, the Allowance shall be subject to any rights of offset, recoupment, breach of contract, or damages claims of the Debtor as enforced and enforceable on the Effective Date by the Revested Debtor.

Each Class 6 Allowed Interest retain their Interests and financial rights under the Plan, are not Impaired and, accordingly, are not entitled to vote for or against the Plan.

A list of holders of Class 6 Claims is attached at Exhibit 3. The value, if any, of Class 6 Claims will depend on the outcome of the Trustee's objections to Claims and his efforts to monetize the Estate's assets.

#### **CLASS 7: COMMON SHARE INTERESTS AND SUBORDINATED INSIDER SERIES "A" PREFERRED SHARE INTERESTS**

Class 7 consists of Holders of common shares of the Debtor and Holders of Series "A" Preferred Shares that have been subordinated, if any. All existing equity interests of holders of Class 7 Interests retain their Interests and financial rights; however, the Voting Agreement is cancelled or rejected and all corporate authority of the Revested Debtor will be maintained solely by the Plan Trustee.

Class 7 Interests are not impaired and are not entitled to vote on the Plan.

A list of holders of Class 7 Claims is attached at Exhibit 4. The value, if any, of Class 7 Claims will depend on the outcome of the Trustee's objections to Claims and his efforts to monetize the Estate's assets.

**CLASS 8: SUBORDINATED CLAIMS AND INTERESTS**

Class 8 consist of all Claims or Interests subordinated by agreement or order of the Bankruptcy Court. Class 8 will receive nothing under the Plan, is deemed to reject the Plan and is therefore not entitled to vote on the Plan.

Class 8 will receive no distributions under the Plan.

**D. ACCEPTANCE OR REJECTION OF THE PLAN**

Classes Entitled to Vote. The Classes entitled to vote on the Plan are:

<b>Class</b>	<b>Description</b>
Class 1	Convenience Class
Class 2	Impaired Accrued Professional Compensation Claims
Class 3	Secured and Priority Tax Claims
Class 4	Priority Claims
Class 5	General Unsecured Claims

Voting Classes; Presumed Acceptance by Non-Voting Classes. If a Class contains Claims eligible to vote, and no Holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be presumed accepted by the Holders of such Claims in such Class.

Special Provision Governing Unimpaired Claims or Interests. Except as otherwise provided in the Plan, nothing under the Plan shall affect the rights of the Debtor, in respect of any Unimpaired Claims or Interests, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims or Interests. Unimpaired Claims and Interests shall remain Disputed Claims or Interests under the Plan until such Claims or Interests are Allowed. Unimpaired Interests shall have no corporate authority with respect to the operations of the Revested Debtor.

Cram Down Election. If a Class fails to accept this Plan by the statutory majorities provided in section 1126 (b) and 1126(c) of the Bankruptcy Code, the Debtor hereby requests the Bankruptcy Court to confirm this Plan as to such rejecting Class.

General Settlement of Claims. Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies resolved pursuant to the Plan.

#### **E. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

All executory contract and unexpired leases are rejected unless a Schedule of assumed Executory Contracts (if any) and Unexpired Leases, (if any) is filed within 10 days of the Confirmation Hearing.

The Trustee believes that the only contract that may be considered an executory contract is the Voting Agreement, which is rejected. The Trustee believes there are no existing contracts or leases other than month-to-month contracts for software and data services, and a lease of a storage warehouse, none of which are either assumed or rejected.

The Trustee's existing fee agreements with the law firms of George Brothers Kincaid & Horton, L.L.P., Prickett, Jones & Elliott, P.A. Schlanger, Silver, Barg & Paine, LLP, and Pryor & Mandelup, LLP, are continued in place by Plan Trustee.

Confirmation Order. Entry of the Confirmation Order shall constitute a Court order approving the assumptions, assumptions and assignments, or rejections of such Executory Contracts or Unexpired Leases as provided under the Plan or the Schedule of Assumed Executory Contracts (if any) and Unexpired Leases, (if any) pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Unless otherwise indicated, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Court on or after the Effective Date.

Claims of Rejected Contract and Lease Holders. Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be Filed with the Court within 30 days after the date of entry of an order of the Court (including the Confirmation Order) approving such rejection. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed within such time shall be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, its Estates, the Post-Confirmation Trustee or the Revested Debtor.

Reservation of Rights. Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Schedule Of Assumed Executory Contracts and Unexpired Leases, nor anything contained in the Plan, shall constitute an admission by the Debtor or Trustee or any other Entity, as applicable, that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that either any Debtor or any other entity, as applicable, has any liability thereunder.

#### **F. PRESERVATION OF CAUSES OF ACTION**

Causes of Action Preserved. All claims and Causes of Action of the Debtor, including but not limited to the Derivative Lawsuit described below, and all causes of action arising out of

a common nucleus of operative facts with claims raised in pending litigation and arising out of the facts disclosed herein, and Chapter 5 Causes of Action, shall be preserved. Filing and prosecution of Causes of Action shall be at the sole discretion of the Reorganized Debtor, by and through the Plan Trustee, and may be pursued to the extent any potential recovery would justify the costs and time associated with pursuing such actions.

**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.**<sup>5</sup>

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

All claims, causes of action, and other rights, powers, and interests of Westech Capital Corp. and its subsidiaries are preserved. These are known as the “Preserved Causes of Action.”

The Preserved Causes of Action include all claims, causes of action, and other rights, powers, and interests that may be asserted by Westech Capital Corp. and its subsidiaries under 11 U.S.C. § 544, including 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 creditors or not, and regardless of whether they voted on the Plan or not. No person may obtain a release of any potential liability by supporting or opposing the Plan. Instead, any potential claims for liability are being preserved for the benefit of all creditors.

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 Revested Debtor.

The Revested Debtor 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.

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 these potential defendants does not mean that any position whatsoever is being taken about 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 Westech Capital Corp. and its subsidiaries. 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

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<sup>5</sup> Except as provided in the exculpation provisions in §§ VIII and XIV of the Plan for the Trustee and for the Chapter 11 bankruptcy estate professionals retained by order of the Bankruptcy Court.

that all claims and causes of action are fully preserved for the benefit of creditors in accordance with binding legal precedents set by United State Court of Appeals for the Fifth Circuit. *See Dynasty Oil & Gas, L.L.C. v. Citizens Bank (In re United Operating, L.L.C.)*, 540 F.3d 351 (5th Cir. 2008) and *Spicer v. Laguna Madre Oil & Gas II, LLC (In re Texas Wyoming Drilling, Inc.)*, 647 F.3d 547 (5th Cir. 2011).

1. 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 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, 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.
2. The potential defendants in the Preserved Causes of Action include, without limitation:
  - a. all officers, directors, and employees of Westech Capital Corp. and its subsidiaries including without limitation Robert Halder, John Gorman, Mike Dura, Gary Salamone, James Fellus, and Peter Monaco;
  - b. all shareholders of Westech Capital Corp. and its subsidiaries including without limitation Raptor Group;
  - c. all immediate recipients of funds, assets, investments, or other property or consideration from Westech Capital Corp. and its subsidiaries, including without limitation Greenberg Traurig, LLP, and Gary Salamone;
  - d. all parties owing contractual obligations to Westech Capital Corp. and its subsidiaries;
  - e. all professionals and professional firms providing services to Westech Capital Corp. and its subsidiaries, including without limitation Greenberg Traurig, LLP;

- f. all vendors providing goods and services to Westech Capital Corp. and its subsidiaries, including without limitation Apex Clearing House;
- g. all of the parents, subsidiaries, directors, officers, employees, representatives, and other affiliates of the above-mentioned persons or entities;
- h. 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; and
- i. all subsequent transferees of the above-mentioned persons or entities.

The following list is only a summary of the claims being retained. The Revested Debtor is vested with ownership of all Claims of the Debtor and its Estate against all persons against whom a recovery may be had; omission of any person from this summary list is not an admission that such claims are waived or released.

## **G. THE CLAIMS IN THE DERIVATIVE LAWSUIT**

### **1. BACKGROUND AND HISTORY**

On February 25, 2015, Eric Steinhafel, Robert Clement, and Rick Shottenfeld, who are common shareholders, filed a derivative shareholder suit styled *Eric Steinhafel, et al. derivatively on behalf of Westech Capital Corp. and Tejas Securities Group v. Gary Salamone and Greenberg Traurig*; Delaware Chancery Court (the “Derivative Suit”). Plaintiffs, who are common shareholders, filed this derivative shareholder suit without making demand on the board, alleging that Salamone caused Westech to cancel Halder’s non-compete agreement with Westech after which Halder immediately moved Westech’s and Tejas’ business and sales personnel to his new firm, thus allegedly destroying Westech’s and Tejas’ business. Plaintiffs contend that this action breached Salamone’s fiduciary duties to Westech and Tejas, and violated the Court of Chancery’s Status Quo Order in a then-pending 8 Del. C. § 225 action. Plaintiffs further allege that Greenberg Traurig aided and abetted Salamone’s actions and also breached its fiduciary duty of loyalty to Westech by engaging in conflicting representations of multiple parties throughout a series of lawsuits over control of Westech, which further caused damage to Westech and Tejas.

The Debtor, by and through its management, including CEO Salamone who was a defendant in the lawsuit, believed the Derivative Suit was subject to summary dismissal, absent this bankruptcy filing, because the plaintiffs had not given the Company notice or make demand on the Company’s board to pursue the action. Also, the Debtor claimed plaintiffs failed to plead with the particularity required by Delaware law as to why demand on the board would have been futile. It is clear from the Trustee’s investigation that proof of the futility of the demand would have been justified.

However, when this case was initiated, all causes of action, including the Derivative Suit, became property of the bankruptcy estate and so the board had undertaken a process to determine whether it is in the best interest of the bankruptcy estate to proceed with those alleged causes of

action on behalf of the Company. The Trustee did same analysis and reached a different conclusion.

After the filing of the Derivative Suit, a new board of directors was elected pursuant to the Voting Agreement, consisting of Mike Dura, James Fellus, Tamra Inglehart, James B. Rodgers, Rob Halder and Gary Salamone. The Trustee believes that this Board was highly conflicted and inadequate disclosure of those conflicts occurred. Rob Halder was suing Westech. Salamone was drawing full time salary for a company that had no operations. Fellus owed Westech \$1.1 million yet the Board on which Fellus also served seemed to have ignored that fact. Several of these directors were represented by the same lawyers that represented Westech. Likewise, both Salamone and Halder had claims against Westech, and Salamone was being defended in litigation through the Debtor's D&O Policy, which defense triggered deductibles in excess of \$500,000.00. Tamara Inglehart was the wife of Gorman and was involved in a bitter divorce with Gorman.

According to the Debtor's First Amended Disclosure Statement, the directors Dura, Fellus, Inglehardt, and Rogers (Halder and Salamone allegedly were not present and did not participate in the deliberations) reviewed the facts and considerations and made an independent determination whether or not to adopt and proceed with the claims in the Derivative Suit.

Also, according to the Debtor's First Amended Disclosure Statement, the Debtor's board believed the other directors did not have any financial interest in the determination of whether to proceed with the Derivative Suit except that, board members James Fellus, Tamra Inglehart, and James B. Rodgers own or have powers of attorney to vote preferred and common shares of the Company and so have a financial incentive to maximize the assets of the bankruptcy estate. The Trustee believes that Fellus had a serious conflict prohibiting his service. Ms. Inglehart was the community recipient of \$58 million in income from the Debtor up to 2013. Thus, both Fellus and Inglehart may have had reasons to exercise their votes to not pursue directors knowing that the same reciprocal approach might be available to them to avoid potential personal liability.

The information the board considered included the facts alleged in the Derivative Suit, and the board invited counsel for the plaintiffs to provide any additional information they wished the board to consider. According to the Debtor, Counsel for the plaintiffs declined the offer. The board also considered the potential impact on the Debtor, the creditors, and the estate of proceeding with the litigation. The Debtor's First Amended Disclosure Statement did not discuss whether counsel for the Plaintiffs would agree to prosecute the litigation on a contingency, and there was no discussion that Westech's D&O Insurance Carrier had taken up the representation costs of Salamone.

Based on all of these considerations, the board unanimously determined that it was not in the best interest of the estate to divert the Company's scarce resources from payment of the creditors to proceed with the Derivative Lawsuit. The Debtor's Plan provided that the Debtor would not pursue the claims alleged in the Derivative Suit and that the Derivative Suit would be dismissed *with prejudice*. The common members of this Board oversaw the non-operations of Westech from December 2014 through filing of the Chapter 11, but did not seem to have the

same concerns about maximizing return to creditors. During this period the Company earned literally no operating income, but paid officers and directors more than \$800,000.00 and law firms that represented both Westech and Salamone approximately \$275,000.00. Likewise, these members were also on the board that allowed NetJets to take a default judgment, voted to instruct Westech's newly retained lawyer to not answer nor file a response to the Halder motions for summary judgment, resulting in two judgments in excess of \$340,000.00.

## 2. THE MERITS OF THE CASE

The main contention in the Derivative Suit is that CEO Salamone released Halder from his contractual obligations under Halder's Employment Agreement when he signed the Cancellation Agreement on May 30, 2014, cancelling Halder's Employment Agreement and that, had the Cancellation Agreement not been executed, the Company could have enforced Halder's Employment Agreement and stopped Halder from leaving the Company, joining another brokerage firm, and allegedly soliciting other employees. Plaintiffs also contend that the Cancellation Agreement was void and of no effect because Salamone did not have the authority to execute it. Plaintiffs further allege that Greenberg Traurig aided and abetted Salamone's actions and also breached its fiduciary duty of loyalty to Westech by engaging in conflicting representations of multiple parties throughout a series of lawsuits over control of Westech, which further caused damage to Westech and Tejas.

The Debtor's First Amended Disclosure Statement also notes that “[i]t does not appear there was any dispute, as a Texas state court later determined, that the Company was in substantial payment default under Halder's Employment Agreement.” This court ruling was obtained, at least in part, by Westech instructing its lawyer to stand down from any defense, although counsel for TJ Ford did make an appearance in opposition.

Salamone asserts he was acting on the advice of counsel that the Company could not enforce Halder's Employment Agreement due to the alleged defaults when he entered into the Cancellation Agreement. Salamone also asserts he was acting with the knowledge that Halder could claim to be entitled to \$274,864 in unpaid salary and about \$500,000 in severance payments had Salamone complied with Gorman's demand that he give Halder notice that his employment contract would not be renewed. Remarkably, knowing that Westech at that time had no funds, the Debtor's First Amended Disclosure Statement suggests that “the effect of the Cancellation Agreement was to eliminate a \$500,000 severance claim against the Company” so that within a month of this “savings,” Halder was able to sue Westech for the unpaid salary, and have a board allow him to try and take an unopposed judgment for all of his claims. When an attempt to defend Westech was made by plaintiff's counsel in the Derivative Suit (not Westech), they were able to stop more than \$200,000 of Halder's claims from reaching summary judgment.

The Trustee believes, based on his investigation thus far of the events and the relationships of the parties, that the board had sufficient information to question the accuracy of the legal advice that Salamone was acting upon or otherwise contradict these facts. The Debtor's First Amended Disclosure Statement suggests that Plaintiffs have not provided the board any information as to what wrongful acts Greenberg Traurig aided and abetted or how the firm aided



and abetted wrongful acts. The Trustee understands that no discovery has been undertaken by Plaintiffs, Westech or Salamone such that information may be available.

Plaintiffs allege that Salamone financially benefitted from this transaction but the board contended that Plaintiffs have not provided any information to the board to support this allegation. The Trustee believes that it merits independent review as to why the board would approve more than \$600,000 in salary and other payments to Salamone, plus approximately \$275,000 to counsel which represented both Westech and Salamone when there were no ongoing operations and a severe need to control and preserve cash. Assuming, for instance, had board member Halder been successful in his efforts to obtain a judgment against his employer that had just released him to compete directly against his employer, that amount would have wholly exhausted all funds available to Westech. Yet the board instructed its lawyers to stand down on defense of Halder's claims, and apparently never considered filing Chapter 11 when Westech had \$2 million in its account after the sale of the office building. And, there was certainly no opposition by Fellus and Inglehart, one of whom has a \$1.1 million liability to Westech and the other a potential liability to the extent of her community estate, an estate that, being subject to the fraud and tort related litigation, could not protect the existing community property or even Ms. Inglehart's sole managed community property, from claims or recovery of avoidance actions.

Plaintiffs also alleged that Halder solicited other brokers to join him, but the board contended that Plaintiffs have not provided any evidence of this. However, there is evidence that a significant number of brokers left a few weeks later when Gorman sent all employees a letter stating (incorrectly as it turns out) that he had terminated Salamone as CEO and that Gorman was taking Salamone's place.

### 3. THE COST TO THE ESTATE OF CONTINUING THE LITIGATION

The Company's insurer, American International Group Inc.<sup>6</sup> ("AIG"), has accepted the defense of Mr. Salamone, subject to reserving its right to deny coverage in the future. AIG has filed a proof of claim for \$410,418.98 for losses and fees it has already incurred which are within the Debtor's self-insured retention and claims that it is entitled to reimbursement for additional attorneys' fees incurred in defending claims, including defending claims in the Derivative Suit against Salamone, up to the retention amount in the policy. According to AIG's proof of claim, the additional claim up to the limit of the self-insured retention in the policy is \$339,581.02. Accordingly, the pursuit of the litigation could increase the claims against the debtor up to \$339,581.02.

Moreover, Halder has filed a contingent proof of claim in this case, claiming an additional \$498,000 in the event it is determined that the Cancellation Agreement is found to be invalid in the Derivative Suit. Accordingly, if a court were to determine that the Company was in breach of the Halder Employment Agreement, but that Salamone did not have the authority to enter into the Cancellation Agreement, and Halder's contingent proof of claim is approved in full, the claims against the Debtor could increase by \$498,000.

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<sup>6</sup> and certain of its subsidiaries.

The Trustee believes that if the Court determines that Halder and Salamone were intending to avoid the additional discomforts and litigation by Gorman, and wanted to be assured that their personal financial futures were sound by distributing all of Westech's cash and all of its valuable "opportunities" to themselves, neither would have claims against Westech. The Trustee does not believe that all of these issues were fairly investigated and has ask its counsel to work on that investigation through the Derivative Suit.

Plaintiffs' counsel in the Derivative Suit is representing the Trustee and the Westech bankruptcy estate on a full contingency basis, advancing all costs of litigation. A similar fee arrangement was available to Debtor's management and board, so cost to the Company was not a valid reason for deciding to dismiss the case and not pursue the matter.

#### 4. TRUSTEE'S REJECTION OF DEBTOR'S PROPOSED SETTLEMENTS

The Trustee has reviewed the basis of the suggested settlements in the Debtor's Plan and does not support, at this time, such settlements. The Debtor was insolvent on the Petition Date, and it is currently administratively insolvent. However, the Trustee does not deem prudent a settlement that avoids payments of insider claims that could not be paid even absent a settlement, and he cannot fail to conduct a full investigation into all of the insider's relationships and activities taken while Westech was insolvent.

However, according to the Debtor's First Amended Disclosure Statement, the board had previously "*approved various settlements under the Plan as detailed in COMPROMISE AND SETTLEMENT OF CERTAIN CLAIMS BY AND AGAINST THE DEBTOR which will provide a substantial benefit to the bankruptcy estate and its creditors by reducing or subordinating claims against the estate of about \$2,058,569, consisting of \$1,220,988 in liquidated claims and \$837,581 in contingent claims.*" Importantly, these settlements require that Derivative Suit be dismissed ***with prejudice*** and that the Debtor ***release any claims against the settling parties*** under the Plan. In other words, claims against an insolvent estate by insiders would have been dismissed if the estate dismisses all claims it has against the solvent insiders, with in some cases, available insurance coverage. The Trustee is not ready to make that determination, and his Plan leaves open his right to continue the investigation into these matters.

The Debtor's prior plan proposed that the Court terminated the rights of all common shareholders, leaving the Series "A" Preferred Interest Holders as the only class of equity; whereas, the Trustee's Plan retains all financial rights of both the Series "A" Preferred and common Holders.

The Trustee reserves the right to reconsider his decision to proceed with all or any part of the Derivative Suit at any time, both before and after confirmation of his Plan.

#### **H. THE CLAIMS AGAINST GORMAN AND HIS BANKRUPTCY ESTATE**

Trustee has filed an amended proof of claim in the Gorman Bankruptcy Case, and maintains the right to seek an order of the Bankruptcy Court that Westech's claims against Gorman are not dischargeable in his bankruptcy case. The Reorganized Debtor, through the

Trustee (and Plan Trustee after confirmation) will continue to pursue these claims. No rights with respect to the Gorman claims or any insurance proceeds related to damages suffered by the Debtor and Revested Debtor, are waived, modified or in any manner released by Confirmation of this Plan, it being the express intent and purpose of this Plan to preserve all claims, rights, defenses, and remedies as the Debtor and Reorganized Debtor may be entitled in law or in equity.

#### **I. STATUS OF DEBTOR'S UNCONSUMMATED PLAN SETTLEMENTS**

The Debtor's Plan included a number of proposed settlements that the Trustee is not currently pursuing and which are not part of this proposed Plan.

Greenberg Traurig filed a proof of claim for legal fees in the amount of \$535,704.62. The prior board negotiated a settlement with Greenberg which required it to release its claim in its entirety under the Plan upon the Effective Date of the Debtor's Plan, in exchange for a full and complete release by Debtor of Greenberg Traurig; however, that settlement was not consummated, the Trustee withdrew the Debtor's Plan, and is not currently pursuing that settlement.

AIG filed a proof of claim for \$410,418.98 plus a contingent claim of up to an additional \$339,581.02 for a total potential claim of \$750,000. As part of the Debtor's prior plan, AIG was required to release its claim in its entirety upon the Effective Date, but apparently in exchange for a full and complete release of AIG on the remaining approximate \$7 million in policy limits. Trustee has been informed that as of September, 2016, AIG had paid out for defense of Salamone and others approximately \$3.1 million, and so the policy limits would be approximately \$7 million of the original \$10,000,000 policy. However, that settlement was not consummated, the Trustee withdrew the Debtor's Plan, and is not currently pursuing that settlement.

Halder filed a proof of claim for \$305,268.75 in compensation and for reimbursement of attorneys' fees, and a contingent claim for \$498,000 in the event the Cancellation Agreement is determined to be ineffective. In the Debtor's plan, Halder agreed to reduce his claim so that his claim to reimbursement of attorneys' fees in the amount of \$30,404.75 was to be treated as an Allowed Class 2 Unsecured Claim, his claim for compensation in the amount of \$274,864 would be subordinated and treated as a Class 3 Subordinated Claim for which he would be given an equity interest in the Debtor rather than a cash payment for his claim, and he would waive his contingent claim, all upon the Effective Date of the Plan. However, that settlement was not consummated, the Trustee withdrew the Debtor's Plan, and is not currently pursuing that settlement.

Gary Salamone filed a contingent proof of claim for \$500,000, the amount of the self-insured retention by the Debtor under its AIG policy. To the extent AIG pays for the defense of Salamone in the Derivative Action, AIG will subrogate to any rights to reimbursement that Salamone may have, and so, the contingent claims of AIG and Salamone may be duplicative. Salamone was required to release his claim in its entirety upon the Effective Date of the Debtor's

Plan. However, that settlement was not consummated, the Trustee withdrew the Debtor's Plan, and is not currently pursuing that settlement.

The Trustee will continue to negotiate with all these parties in good faith. In particular, Halder, Salamone and Gorman have each indicated interest in working to utilize the Debtor's NOL, and the Trustee intends to take such efforts, if successful, in consideration with respect to possible settlement of Westech's claims against them.

#### **J. OTHER CLAIMS**

The Trustee has asserted claims against Salamone and other insiders for preferences and transfers arising from payments made to them and/or for their benefit after his employment contract expired.

The Trustee is investigating and reserves all claims against Halder, and other insiders, for preferences and fraudulent transfers made at any time.

The Trustee is investigating claims against Jim Palotta, Peter Monaco, Raptor Group, Al Gordon, and Dan Zwirn connected with the Braver Stern transaction, and all rights to seek recovery on such claims are expressly preserved to the Revested Debtor.

The Trustee is investigating claims against Mike Dura for breach of duty in connection with the retention and termination of James Fellus and all rights to seek recovery on such claims are expressly preserved to the Revested Debtor.

#### **K. IMPLEMENTATION OF THIS PLAN**

Effective Date. If this Plan is approved by the Court, an Order Confirming the Plan will be signed and entered into the record of the Court. The Effective Date of the Plan shall be the date that is 15 days after an order confirming the Plan is entered.

Post-Confirmation Management. All post-confirmation operations of the Revested Debtor shall be conducted by the Plan Trustee, as Trustee for the Revested Debtor, with the full power to manage the operations, litigation, administration and liquidation of all assets for the payment of Post-Confirmation operating expenses, and thereafter all Allowed Claims up to 100% of all Allowed Claims, pursuant to this Plan and the Confirmation Order, and such extension of all Bankruptcy Court orders regarding the appointment of the Chapter 11 Trustee/Plan Trustee and his related rights and duties carried forward to the Reorganized Debtor.

Post-Confirmation Compensation. Subject to the occurrence of the Effective Date of the Plan, the Trustee agrees to waive all compensation due to him for his pre-confirmation services, and as the post-confirmation Plan Trustee, he shall be compensated for all post-confirmation services at the greater of 5% of all distributions made under the Plan, or \$395.00 per hour.

Trustee's Exculpation of Liability. The Plan Trustee of the Revested Debtor shall have no liability for any act or event, for any claim of liability by any Creditor, Interest Holder, or

Party In Interest or any third party for the operations of the Revested Debtor except for actual and intentional fraud or gross negligence, each determined by clear and convincing evidence. The Plan Trustee shall not be required to give any bond or surety or other security for the performance of his duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Plan Trustee is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Revested Debtor. Further, the Plan Trustee shall be entitled to indemnity from the Revested Debtor as provided in the bylaws of the Revested Debtor, and shall be entitled to obtain errors and omissions insurance coverage, with the cost of such coverage borne by the Revested Debtor.

Management and Transactions of the Reorganized Debtor Subject to the terms of the Plan and the Confirmation Order, the Plan Trustee shall be empowered and have full standing to pursue or: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated under the Plan; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Plan Trustee by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Plan Trustee to be necessary and proper to implement the provisions of the Plan.

To avoid all doubt, the Plan Trustee shall have all management authority and have all power and corporate authority for (including the standing to bring and pursue) all litigation and liquidation decisions, as the chapter 11 trustee/plan trustee made applicable to the reorganized debtor, including but not limited to:

1. Retention of any and all professionals for the purpose of Litigation, Liquidation, or Operations of the Revested and Reorganized Debtor
2. Decisions to bring, continue, settle or resolve any and all Litigation or Dispute or Disputed Claims resolution;
3. Decisions to determine distributions to Allowed Claims from time to time consistent with the provisions and priorities of the Confirmed Plan;
4. Decisions to deposit, invest, and protect all assets of the Revested Debtor;
5. Decisions regarding all accounting and reporting of transactions, including reports, tax returns, UST Reports and all other required or advised record keeping;
6. Decisions regarding all incurring of operating expenses and costs deemed necessary to accomplish the Litigation and Liquidation of all assets of the Revested Debtor;
7. Decisions regarding the net operating loss of the Debtor and the Revested Debtor;
8. As authorized by prior order(s) of the Bankruptcy Court, decisions regarding all affiliates or subsidiaries of the Debtor and Revested Debtor;

9. Decisions regarding amendments to the terms and conditions of the Reorganized Debtor's charter and bylaws, include the right to purchase insurance coverage and the right to indemnity from the Reorganized Debtor;
10. Decisions regarding the business affairs of the Reorganized Debtor including any business combinations, mergers, or corporate or stock transactions.

Claims Administration Responsibilities. Except as otherwise specifically provided in the Plan, after the Effective Date, the Plan Trustee shall have the sole authority: (1) to file, withdraw, or litigate to judgment objections to Claims or Interests; (2) to settle or compromise any Disputed Claim or Disputed Interest without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

Vesting of Assets. Upon the Effective Date of the Plan, all property of the Estate, shall vest in the Reorganized Debtor subject to the control and treatment by the Plan Trustee, including the continuation of the standing for the Plan Trustee to represent the Reorganized Debtor in any case pending on the Effective Date or brought subsequent to the Effective Date.

Dissolution of the Board of the Debtor On the Effective Date, the existing board of directors or managers, as applicable, of the Debtor is dissolved and all officers, managers, and employees are dismissed. As of the Effective Date, the Post-Confirmation Plan Trustee shall act as the Debtor's sole officer, director, and manager, as applicable, with respect to the Debtor's affairs. Subsequent to the Effective Date, the Plan Trustee may make such amendments to the Reorganized Debtor's corporate charter, to its by laws, articles, or such other operational or administrative documents, as the Plan Trustee deems in the best interest of the Reorganized Debtor in his sole and unfettered discretion. Accordingly, the Plan Trustee may determine and shall have the exclusive right to name a new board of directors at any time deemed advisable by the Plan Trustee, and provide for the vesting in that board of directors all or any such restricted rights of a board of directors as the laws, statutes, and corporate governance documents may permit.

## **L. PROVISIONS COVERING DISTRIBUTIONS**

Claims. Claims are defined in the Plan. The Plan is intended to deal with all Claims against the Debtor of whatever character, whether or not contingent or liquidated, and whether or not allowed by the Bankruptcy Court pursuant to § 502(a) of the Bankruptcy Code; however, only those Claims Allowed pursuant to § 502(a) of the Bankruptcy Code will be entitled to and receive payment under the Plan.

Compliance with Plan. Any Person, including a Creditor, which has not, within the time provided in the Plan, performed any act required in the Plan or in the Confirmation Order, shall not be entitled to participate in any distribution under the Plan.

Method of Payment. Payments to be made in cash pursuant to the Plan shall be made by check drawn on a domestic bank or by wire transfer from a domestic bank, such mode of payment to be at the sole discretion of the Debtor.

Timing of Distributions. Distributions on Allowed Claims shall be made at a time determined by the Plan Trustee to be, in his sole judgment, in the best interest of the Revested Debtor.

Delivery of Distributions. Distributions and deliveries to holders of an Allowed Claim shall be made to the holder at the address set forth on the latest-filed proof of claim filed by such holder or at the last known address of such holder if no proof of claim is filed. If any holder's distribution is returned as undeliverable, the Reorganized Debtor shall hold the distribution until notified of such holder's new address or the first anniversary of the Effective Date occurs, at which time the undelivered distribution shall revert and become the property of the Debtor and the Claim shall be discharged and forever barred.

Time Bar to Cash Payments. Checks issued to holders of Allowed Claims shall be null and void if not cashed within ninety (90) days of the date of issuance thereof. Requests for re-issuance of any checks shall be made directly to the Debtor by the holder of the Allowed Claim to whom such check originally was issued. Any Claim for reissuance of a voided check shall be made on or before the later of the first anniversary of the Effective Date or ninety (90) days after the date of issuance of such check. After such date, all Claims upon which such checks were delivered shall be discharged and forever barred.

Estimation of Claims and Interests. As of the Effective Date, the Plan Trustee, may (but is not required to) at any time, request that the Bankruptcy Court estimate any Claim pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code and/or Bankruptcy Rule 3012, for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, including during the litigation of any objection to any Claim or during the pendency of any appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Trustee or the Buyer, as applicable, may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before fourteen (14) days after the date on which such Claim is estimated. Each of the foregoing Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently

compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

Disallowance of Claims. Any Claims held by Entities from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums due, if any, to the Debtor by that Entity have been turned over or paid to the Buyer. **Except as provided herein or otherwise agreed, any and all Proofs of Claim filed after the Claims Bar Date shall be deemed disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless on or before the Confirmation Hearing such late Claim has been deemed timely filed by a Final Order. Once a Claim has been time barred, any action on that Claim by the Holder in any Court, including the Bankruptcy Court, shall entitle the Reorganized Debtor to recover all such attorneys fees and costs incurred, against such time barred Claimant.**

Compliance with Tax Requirements/Allocations. In connection with the Plan, to the extent applicable, the Plan Trustee may request distributees to provide appropriate documentation that may be required for an exemption from withholding or reporting, and shall comply with all tax withholding and reporting requirements imposed on it by any Governmental Unit, and all distributions pursuant hereto shall be subject to such withholding and reporting requirements unless an exception applies. Failure to provide tax information requested in writing by the Plan Trustee for more than 30 days after such request, shall result in such Creditor's or Interest Holder's Claim being discharged and forever barred. Notwithstanding any provision in the Plan to the contrary, the Plan Trustee shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms it believes is reasonable and appropriate. The Plan Trustee reserves the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

Claims Paid by Third Parties. The Plan Trustee shall reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not the Debtor on account of such Claim, such Holder shall, within 14 days of receipt thereof, repay or return the distribution to the Plan Trustee to the extent the Holder's total recovery on account of such



Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Plan Trustee annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

Claims Payable By a Third Party. No distributions under the Plan shall be made on account of a Claim that is payable by a third party (including by an Entity that is jointly and severally liable on such Claim and/or by one or more of the Debtor's insurers pursuant to one of the Debtor's insurance policies) until the Holder of such Claim has exhausted all rights and remedies with respect to such third party (including adjudicating any liability of any Entity that is jointly and severally liable on such Claim and/or adjudicating its rights under any applicable insurance policy). To the extent that any third party (including one or more of the Debtor's insurers) agrees to satisfy in full or in part a Claim or such Claim is adjudicated by the Bankruptcy Court or another court of competent jurisdiction, the applicable portion of such Claim shall be automatically expunged without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

Reservation of Claims Against Insurers. Distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtor or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

No Distributions Pending Allowance. If an objection to a Claim or portion thereof is Filed, or if such Claim is scheduled as Disputed, no payment or distribution provided under the Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

Amendments to Claims. On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim may not be Filed or amended without the prior authorization of the Plan Trustee, as applicable, and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further action.

#### **M. PROVISIONS FOR RESOLVING DISPUTED CLAIMS**

Allowed Claims. Only Allowed Claims will be paid by the Reorganized Debtor under the Plan. Any holders of Claims that have not been Allowed will not be entitled to any distributions on account of such Claims unless they are Allowed by the Court. After the Effective Date, the Plan Trustee shall have and retain any and all rights and defenses the Debtor had with respect to any Claim or any Interest immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court

has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Case allowing such Claim.

Attorneys' Fees. Unless the Court orders otherwise, attorneys' fees shall not be included in Allowed Claims.

Objections to Claims. If an objection is filed, then to the extent that such Claims are unsecured claims, cash sufficient to pay the disputed Claims shall be reserved and paid if and when they become Allowed Claims. To the extent that an objection to a secured Claim is filed, if any, the Reorganized Debtor shall deposit such payments as would be made if the Claim were allowed in full into a claims escrow account, unless and until the claim becomes an Allowed Secured Claim. Any party in interest may also object to any claim.

Bar Date For Objecting To Claims. The Bar Date for objecting to claims shall be 180 days after the Effective Date, except as may be extended by the Court upon motion of the Plan Trustee. An extension motion may be granted by the Court upon a showing of cause without providing any notice or opportunity to object to any creditor or party in interest. All claim objections not filed within such time shall be deemed waived.

Controversies Regarding Impairment. If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

Subordinated Claims. The allowance, classification, and treatment of all Allowed Claims and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtor, through the Plan Trustee, such consent not to be unreasonably withheld or conditioned, reserve the right to re-classify any Allowed Claim in accordance with any contractual, legal, or equitable subordination relating thereto.

Treatment of Causes of Action. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, settled, assigned, and/or otherwise conveyed in the Plan or a Bankruptcy Court order, the Reorganized and Revested Debtor reserves, any and all Causes of Action, whether arising before or after the Petition Date, and preserve the right to commence, prosecute, or settle such Causes of Action, notwithstanding the occurrence of the Effective Date. The Reorganized and Revested Debtor may pursue such Causes of Action in its sole discretion. No Entity may rely on the absence of a specific reference in the Plan, any Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Reorganized and Revested Debtor will not pursue any and all available Causes of Action against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or

otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

#### **N. EFFECT OF CONFIRMATION**

Except as otherwise provided herein, the rights afforded in the Plan shall be in exchange for and in complete satisfaction, discharge and release of all claims of any nature whatsoever, including any interest accrued thereon, against the Debtor, or any of its assets or property. Except as otherwise provided herein, on the Effective Date, in accordance with 11 U.S.C. § 1141, all such claims against the Debtor shall be satisfied, discharged, and released in full. Except as otherwise provided herein, any Creditor or Interest Holder shall be precluded from asserting against the Debtor or its assets or properties any other or further claim based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date; provided, however, that nothing contained in this Plan shall alter the legal, equitable, and contractual right of the holder of any Claim or Interest specifically designated as being unimpaired in the Plan, it being intended that such rights, if any exist, are to remain unaltered by the Plan, or any right to realize upon, utilize or sell the NOL.

Settlement, Compromise, and Release of Claims and Interests. Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to or in connection with the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete settlement, compromise, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Debtor), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor, the Trustee or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtor before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Proof of Interest based upon such debt, right, or Interest is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default by the Debtor or their Affiliates with respect to any Claim or Interest that existed immediately before or on account of the Filing of the Chapter 11 Case shall be deemed cured on the Effective Date.

Injunction. Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan, or Confirmation Order, all Entities who have held,

hold, or may hold claims or interests that have been released pursuant to the Plan, compromised and settled pursuant to the Plan, or are subject to exculpation pursuant to the Plan shall be deemed to be permanently enjoined, on and after the Effective Date, from taking any of the following actions against, as applicable, the Debtor or the Trustee: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such released, compromised, settled, or exculpated claim or interest; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against the Debtor or the Trustee on account of or in connection with or with respect to any such released, compromised, settled, or exculpated claims or interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor or the Trustee or the property or the estates of the Debtor on account of or in connection with or with respect to any such released, compromised, settled, or exculpated claims or interests; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Debtor or the Trustee or against the property of the Debtor on account of or in connection with or with respect to any such released, compromised, settled, or exculpated claims or interests unless such entity has timely Filed a Proof of Claim with the Bankruptcy Court preserving such right of setoff, subrogation, or recoupment; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such released, compromised, settled, or exculpated claims or interests.

Protections Against Discriminatory Treatment. Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Debtor or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Debtor, or another Entity with whom the Debtor have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Case (or during the Chapter 11 Case but before the Debtor are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Case.

#### **O. RETENTION OF JURISDICTION**

The Court shall retain jurisdiction in the following matters after confirmation of the Plan until all payments and distributions called for under this Plan have been made:

- (a) To enable any party-in-interest to consummate any and all proceedings that it may bring to set aside liens or to recover preferences, fraudulent transfers, assets or damages to which it may be entitled under applicable bankruptcy, federal or state law;
- (b) To classify, allow or disallow claims and to direct distributions of funds under the Plan and to hear and determine all controversies pertaining thereto;
- (c) To determine and adjudicate all causes of action, controversies, disputes, arising either before or after the entry of the order for relief herein between the Debtor and any other party;

- (d) To correct any defect, cure any omission or reconcile any inconsistency in this Plan or in the order of confirmation of the Plan as may be necessary to carry out the purposes and intent of the Plan;
- (e) To modify this Plan after Confirmation of the Plan in accordance with applicable bankruptcy law;
- (f) To enforce and interpret the terms and conditions of the Plan;
- (g) To liquidate, estimate or determine the manner for such liquidation or estimation of any contingent or unliquidated claim; and
- (h) To make such orders as are necessary or appropriate to carry out the provisions of the Plan.
- (i) Adjudicate, decide or resolve any and all matters related to environmental law that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
- (j) Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;
- (k) Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
- (l) Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;
- (m) Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to the Plan;
- (n) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;
- (o) Adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;
- (p) Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

- (q) To hear and determine all matters of the Plan Trustee's standing to bring suits, claims, litigation in any state, federal, arbitration, or agency proceeding as a representative of the Debtor and Reorganized Debtor, as the case may be.
- (r) Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.
- (s) Hear any other matter not inconsistent with the Bankruptcy Code;
- (t) Enforce the injunction, release, and exculpation provisions set forth in the Plan or the Confirmation Order.
- (u) Enforce all orders previously entered by the Bankruptcy Court;
- (v) Hear and determine all disputes involving the existence, nature, or scope of the Debtor's release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;
- (w) Hear and determine matters concerning section 1145 of the Bankruptcy Code;
- (x) Hear and determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code or the Plan;
- (y) Hear and determine any issues regarding the NOL and net operating loss of the Debtor and the rights or obligations of the Reorganized Debtor or any third party Entity or Person with respect thereto.
- (z) Hear and determine any claims made against the Plan Trustee.

**P. MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

Modification and amendments. Except as otherwise specifically provided in the plan, the Debtor's Chapter 11 Trustee reserve the right to modify the plan, whether materially or immaterially, and seek confirmation, in each instance, to the extent permitted under the bankruptcy code. Subject to certain restrictions and requirements set forth in section 1127 of the bankruptcy code and bankruptcy rule 3019 and those restrictions on modifications set forth in the plan, the debtor expressly reserves their rights to alter, amend, or modify materially the plan with respect to the Debtor, one or more times, after confirmation, and, to the extent necessary, may initiate proceedings in the bankruptcy court to so alter, amend, or modify the plan, or remedy any defect or omission, or reconcile any inconsistencies in the plan, the disclosure statement, or the confirmation order, in such matters as may be necessary to carry out the purposes and intent of the plan. Any such modification or supplement shall be considered a modification of the plan and shall be made in accordance with article X of the plan.

Effect of confirmation on modifications. Entry of a confirmation order shall mean that all modifications or amendments to the plan occurring after the solicitation thereof and before the confirmation date are approved pursuant to section 1127(a) of the bankruptcy code and do not require additional disclosure or re-solicitation under bankruptcy rule 3019.

Revocation or withdrawal of the plan. The Trustee reserves the right to revoke or withdraw the plan with respect to the debtor before the confirmation date or the effective date and to file subsequent plans under chapter 11 of the bankruptcy code. If the Trustee revokes or withdraws the plan, or if confirmation or consummation does not occur with respect to the debtor, then: (1) the plan with respect to the debtor shall be null and void in all respects; (2) any settlement or compromise embodied in the plan with respect to the debtor (including the fixing or limiting to an amount certain of any claim or interest or class of claims or interests), assumption and assignment or rejection of executory contracts or unexpired leases effected by the plan with respect to the debtor, and any document or agreement executed pursuant to the plan with respect to the debtor, shall be deemed null and void; and (3) nothing contained in the plan with respect to the debtor shall: (a) constitute a waiver or release of any claims or interests; (b) prejudice in any manner the rights of the debtor or any other entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the debtor or any other entity.

#### **Q. MISCELLANEOUS PROVISIONS**

1. Headings. All headings utilized in the Plan are for convenience and reference only, and shall not constitute a part of the Plan for any other purpose.

2. Exculpation and Releases. The Plan contains the following exculpation and release provisions:

NEITHER THE DEBTOR, THE CHAPTER 11 TRUSTEE, ATTORNEYS OR AGENTS SHALL HAVE OR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST FOR ANY ACT, EVENT, OR OMISSION IN CONNECTION WITH, OR ARISING OUT OF, THE BANKRUPTCY CASE, THE CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, OR THE ADMINISTRATION OF THE PLAN OR PROPERTY TO BE DISTRIBUTED UNDER THE PLAN, EXCEPT FOR WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

3. Safe Harbor. Issuance of stock in conjunction with the Plan is exempt from securities laws pursuant to § 1145(a)(1) of the Bankruptcy Code.

4. Due Authorization. Each and every holder of a Claim who elects to participate in the distributions provided for herein warrants that such holder is authorized to accept, in consideration of such Claim against the Debtor, the distributions provided for in the Plan and that there are not outstanding commitments, agreements, or understandings, expressed or implied, that may or can in any way defeat or modify the rights conveyed or obligations undertaken by such holder of a Claim under the Plan.

5. Authorization of Corporate Action. All matters and actions provided for under the Plan involving the structure of the Debtor or action to be taken by or required of the Debtor or Reorganized Debtor shall be deemed to have occurred and be effective as provided herein, and shall be deemed to be authorized and approved in all respects by the Plan Trustee without any requirement for further action by the Debtor or Reorganized Debtor.

6. Exemption from Certain Taxes and Fees. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, filing or recording fee, or other similar tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Such exemption specifically applies to: (1) the creation of any mortgage, deed of trust, Lien, or other security interest; (2) the making or assignment of any lease or sublease; (3) any Restructuring Transaction; and/or (4) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including: (a) any merger agreements; (b) agreements of consolidation, restructuring, disposition, liquidation, or dissolution; (c) deeds; (d) bills of sale; and/or (e) assignments executed in connection with any Restructuring Transaction occurring under the Plan.

7. Further Assurances and Authorizations. The Debtor and the Reorganized Debtor, if and to the extent necessary, shall seek such orders, judgments, injunctions, and rulings that may be required to carry out further the intentions and purposes, and to give full effect of the provisions, of the Plan.

8. Applicable Law. Except to the extent that the Bankruptcy Code or other federal law is applicable, the rights, duties and obligations arising under the Plan shall be governed by and construed and enforced in accordance with the laws of the State of Texas.

9. Notices. All notices, requests or demands in connection with the Plan shall be in writing and shall be deemed to have been given when received or, if mailed, five (5) days after the date of mailing, provided such writing shall have been sent by registered or certified mail, postage prepaid, return receipt requested, and sent to the following parties, addressed to:

Trustee:  
Westech Capital Corporation  
c/o Gregory S. Milligan  
Chapter 11 Post-Confirmation Plan Trustee  
P. O. Box 90099  
Austin, TX 78709-0099



Trustee's Counsel:

Shelby A. Jordan  
Nathaniel Peter Holzer  
Jordan, Hyden, Womble, Culbreth & Holzer, PC  
500 N. Shoreline Blvd., Suite 900  
Corpus Christi, TX 78401

All notices and requests to holders of Claims and Interests shall be sent to them at the address listed on the last-filed proof of claim and if no proof of claim is filed, at the last known address. Service by either method is deemed to be proper, adequate, and sufficient service of all notices.

After the Effective Date, the Reorganized Debtor has authority to send a notice to Entities that to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtor is authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

10. Notice of Default. In the event of any alleged default under the Plan, any Creditor or party-in-interest must give a written default notice to the Reorganized Debtor with copies to their respective counsel of record specifying the nature of the default. Upon receipt of the default notice, the Reorganized Debtor, as the case may be, shall have thirty (30) days to cure such default from the time of receipt of the default notice. If such default has not been cured within the applicable time period, the Creditor or party in interest shall have the right to proceed with any all available remedies under applicable law.

11. Enforcement of Confirmation Order. On and after the Effective Date, the Reorganized Debtor, and the Plan Trustee as applicable, shall be entitled to enforce the terms of the Confirmation Order and the Plan.

12. Payment of Statutory Fees. All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Post-Confirmation Revested Debtor for each quarter (including any fraction thereof) until the Chapter 11 Case is converted, dismissed, or closed, whichever occurs first.

13. Term of Injunctions or Stays. Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order (including the Injunction) shall remain in full force and effect in accordance with their terms.

14. Entire Agreement. Except as specifically set forth herein, the Plan, the Confirmation Order, and any Plan Supplement or modification, supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and

representations made in these Chapter 11 Case, all of which have become merged and integrated into the Plan.

15. Nonseverability of Plan Provisions. If, before Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtor; and (3) nonseverable and mutually dependent.

16. Reservation of Rights. The Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtor or the Plan Trustee with respect to the Plan or any other restructuring document shall be or shall be deemed to be an admission or waiver of any rights of any Debtor or the Plan Trustee with respect to the Holders of Claims or Interests before the Effective Date.

17. Immediate Binding Effect. Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the Plan (and the Plan Supplement, if any) shall be immediately effective and enforceable and deemed binding upon the Debtor, any and all Holders of Claims or Interests (irrespective of whether the Holders of such Claims or Interests accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunction described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtor.

18. Successors and Assigns. The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor, or assign, Affiliate, officer, director, manager, trustee, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

19. Waiver or Estoppel. Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtor or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court before the Confirmation Date.

DATED: May 22, 2017.

WESTECH CAPITAL CORP.

/s/ Gregory S. Milligan

Gregory S. Milligan, Chapter 11 Trustee

/s/ Nathaniel Peter Holzer

Shelby A. Jordan

SBN: 11016700

Nathaniel Peter Holzer

SBN: 00793971

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11 TRUSTEE FOR WESTECH CAPITAL CORP.**