

IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

In Re:	NO. 18-41245-BDL
FRASER'S BOILER SERVICE, INC.,	DISCLOSURE STATEMENT
Debtor.	

COMES NOW Fraser's Boiler Service, Inc., ("FBS" or "Debtor"), by and through its attorneys, Darren R. Krattli and Katrina F. Self of Eisenhower Carlson PLLC, and files this Disclosure Statement. This Disclosure Statement was sent to creditors on or about March 23, 2018 in an attempt to solicit votes as part of a pre-packaged plan.

DISCLOSURE STATEMENT

THIS SOLICITATION IS BEING CONDUCTED, PRIOR TO THE FILING OF A VOLUNTARY PETITION UNDER CHAPTER 11 OF TITLE 11 OF THE UNITED STATES CODE, IN ORDER TO OBTAIN SUFFICIENT VOTES IN FAVOR OF A CHAPTER 11 PLAN OF REORGANIZATION TO ENABLE CONFIRMATION OF SUCH PLAN. BECAUSE NO CHAPTER 11 CASE HAS YET BEEN COMMENCED, THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING "ADEQUATE INFORMATION" WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE. FOLLOWING COMMENCEMENT OF ITS CHAPTER 11 CASE, FRASER'S

1 **BOILER SERVICE, INC. EXPECTS TO SEEK PROMPTLY AN ORDER OF THE**
2 **BANKRUPTCY COURT APPROVING THIS DISCLOSURE STATEMENT, AS**
3 **WELL AS THE SOLICITATION OF VOTES, AND CONFIRMING THE**
4 **PREPACKAGED PLAN OF REORGANIZATION DESCRIBED HEREIN.**

5
6 **SUMMARY OF THE PLAN OF REORGANIZATION**

7 **Introduction**

8 Fraser's Boiler Service, Inc. (the "Debtor" or "FBS"), in cooperation with the general
9 receiver for FBS (the "Receiver"), is soliciting votes for the acceptance of its Plan of
10 Reorganization ("Plan") from holders of Class 2 Claims (General Unsecured Claims) and
11 Class 3 Claims (Asbestos-Related Personal Injury or Wrongful Death Claims).¹ The purpose
12 of this Disclosure Statement is to provide information concerning the Plan to creditors who
13 are entitled to vote to accept or reject the Plan.
14

15 **Summary of Classification and Treatment Under the Plan**

16 Under the Plan, Claims and equity interests will be classified into the following
17 classes with the following treatments:

- 18 • Class 1 (Other Priority Claims): Each Class 1 claimant will be entitled to full
19 satisfaction of their Claim. These Claims are not impaired and not entitled to vote.
20
21 • Class 2 (General Unsecured Claims): Each Class 2 claimant will be entitled to a pro
22 rata distribution from the Unsecured Creditor Fund. These Claims are impaired and
23 entitled to vote.
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26 ¹ Capitalized terms used in this Disclosure Statement but not defined herein shall have the meanings given to them in the Plan, a copy of which is annexed hereto as Exhibit A.

- Class 3 (Asbestos-Related Personal Injury Or Wrongful Death Claims): Each Class 3 claimant will be entitled to distributions in accordance with the Trust Distribution Procedures. These Claims are impaired and entitled to vote.
- Class 4 (Equity Interests): Class 4 claimants will receive no distribution. These Claims are impaired, are deemed to reject the Plan, and are not entitled to vote.

Pursuant to the Plan, holders of General Unsecured Claims will be entitled to a pro rata distribution from the Unsecured Creditor Fund, which contains \$50,000, and holders of Asbestos-Related Personal Injury and Wrongful Death Claims will be entitled to distributions in accordance with the Trust Distribution Procedures, which provide that certain Claims may be liquidated by the Liquidating Trust and other Claims resolved by litigation by the claimant. Claims liquidated by the Liquidating Trust shall be paid by the Liquidating Trust in full from amounts received from proposed settlements with certain Settled Insurers and any subsequent amounts received on account of the Insurance Rights. The Trust Distribution Procedures provide for significant limitations on the types of Claims that will be liquidated by the Liquidating Trust and the maximum values at which such Claims can be resolved. Claims liquidated through litigation by the claimant will be tendered by the Liquidating Trustee to Non-Settled Insurers. In general these Claims liquidated through litigation will be paid after settlement or judgment by the Non-Settled Insurers, although the Trust Distribution Procedures do provide for some payments by the Liquidating Trust to Claims resolved by judgment to the extent that portions of such Claims are unpaid as a result of insurance settlements or insolvencies.

The Liquidating Trust

Under the Plan, the Liquidating Trust shall be established for the sole purposes of: (i) liquidating and distributing its assets, in accordance with applicable provisions of the Internal Revenue Code of 1986, as amended (the “Tax Code”), and any applicable Treasury Regulations, with no objective to continue or engage in the conduct of a trade or business; (ii) holding and managing the Post-Confirmation Debtor corporate entity that will not be conducting any trade or business but will instead be managing further Asbestos-Related Personal Injury or Wrongful Death Claims that may arise over time; and (iii) assisting with and overseeing litigation related to any Insurance Rights and defending against any Claim brought by any Insurance Carrier or its agent to limit any Insurance Policies or Insurance Rights. The primary initial funding for the Liquidating Trust is expected to be from proposed settlements with certain Settled Insurers.

Voting on the Plan

Not every claimant is entitled to vote on the Plan. Under the Bankruptcy Code, only those classes of Claims or Equity Interests that are impaired and are entitled to receive a distribution of (or retain) property under a plan of reorganization are entitled to vote to accept or reject the plan. Under FBS’s Plan, only Class 2 holders of General Unsecured Claims and Class 3 holders of Asbestos-Related Personal Injury or Wrongful Death Claims are impaired and are entitled to vote.

FBS and the Receiver for FBS are seeking acceptance of the Plan by holders of these Claims. Please review the voting procedures accompanying the ballot provided for detailed instructions regarding how to vote. If you did not receive a ballot, it is because FBS believes that you are (i) not entitled to vote on the Plan, or (ii) an individual holder of an Asbestos-

1 Related Personal Injury or Wrongful Death Claim who is represented by counsel to whom a
2 ballot has been sent.

3 If you have any questions about the type of ballot you received, please contact
4 counsel for the Receiver of FBS, Gilbert LLP (the "Balloting Agent"), by mail at 1100 New
5 York Ave. NW, Suite 700, Washington DC 20005, c/o Elaine Andersen or by email at
6 andersene@gotofirm.com. Parties that did not receive the Plan and this Disclosure Statement
7 may obtain copies upon request to the Balloting Agent at the address above.
8

9 **The last day to vote to accept or reject the Plan is April 6, 2018. To be counted**
10 **your ballot must be postmarked or actually received by the Balloting Agent by such**
11 **date.**

12 Only actual votes cast by April 6, 2018 (the "Voting Deadline") will be counted. A
13 vote will be cast if returned via U.S. mail and postmarked on or before April 6, 2018, or
14 returned and actually received by the Balloting Agent by 5:00 pm Pacific Daylight Time on
15 April 6, 2018, or returned via email to the Balloting Agent by 5:00 pm Pacific Daylight Time
16 on April 6, 2018. Failure to return a ballot will not be counted as either a vote for or against
17 the Plan. Any improperly completed or late ballot will not be counted. Any ballot that
18 indicates both an acceptance and rejection of the Plan will not be counted. If a creditor casts
19 more than one ballot voting the same Claim or interest before the Voting Deadline, the latest
20 dated ballot received before the Voting Deadline will be deemed to reflect the voter's intent
21 and thus to supersede any prior ballots. Once an order confirming the Plan is issued by the
22 Bankruptcy Court, the Plan will bind all holders of Claims against and Equity Interests in
23 FBS, whether or not they are entitled to vote or did vote on the Plan and whether or not they
24 receive (or retain) any distributions or property under the Plan. Thus, you are encouraged to
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1 read this Disclosure Statement carefully. In particular, holders of Class 2 Claims and Class 3
2 Claims who are entitled to vote on the Plan are encouraged to read this Disclosure Statement,
3 the Plan and the exhibits, schedules to the Plan and to the Disclosure Statement, and the form
4 of ballot included herewith carefully and in their entirety before voting to accept or to reject
5 the Plan.
6

7 **Disclosure Statement Enclosures**

8 Accompanying this Disclosure Statement are copies of:

- 9 1. A Class 2 ballot ("Class 2 Ballot") to holders of Class 2 Claims (General Unsecured
10 Claims) for the purpose of indicating acceptance or rejection of this Plan; and
11 2. A Class 3 ballot ("Class 3 Ballot") to holders of Class 3 Claims (Asbestos-Related
12 Personal Injury or Wrongful Death Claim) for the purpose of indicating acceptance or
13 rejection of this Plan.
14

15 Annexed hereto are copies of the following:

- 16 Exhibit A The Plan of Reorganization;
17 Exhibit B The Receiver's three most recent Monthly Financial Reports submitted
18 to the Receivership Court, as of February 28, 2018, January 31, 2018,
19 and December 31, 2017;
20 Exhibit C List of the Subject Insurance Policies;
21 Exhibit D Debtor's liquidation analysis under a hypothetical Chapter 7 case;
22 Exhibit E Liquidating Trust Agreement; and
23 Exhibit F Trust Distribution Procedures.
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1 **Recommendation to Accept the Plan**

2 **THE DEBTOR, THE RECEIVER, AND THE UNOFFICIAL ASBESTOS**
3 **CLAIMANTS COMMITTEE (THE “COMMITTEE”) BELIEVE THAT THE PLAN**
4 **PROVIDES THE BEST POSSIBLE RECOVERY TO CREDITORS AND EQUITY**
5 **INTEREST HOLDERS. THE DEBTOR, THE RECEIVER, AND THE COMMITTEE**
6 **THEREFORE BELIEVE THAT ACCEPTANCE OF THE PLAN IS IN THE BEST**
7 **INTERESTS OF ALL CREDITORS AND OTHER PARTIES IN INTEREST AND**
8 **RECOMMEND AND ENCOURAGE THAT YOU VOTE TO ACCEPT THE PLAN.**

10 **Disclaimers**

11 **This Disclosure Statement contains summaries of certain provisions of the Plan,**
12 **certain statutory provisions, certain documents related to the Plan, certain anticipated**
13 **events in the bankruptcy case and certain financial information. Although FBS and the**
14 **Receiver believe that the Disclosure Statement, and related document summaries, are**
15 **fair and accurate, they are qualified to the extent they do not set forth the entire text of**
16 **the Plan, such documents or any statutory provisions. The terms of the Plan govern in**
17 **the event of any inconsistency with this Disclosure Statement. All exhibits to the**
18 **Disclosure Statement are incorporated into and are a part of this Disclosure Statement**
19 **as if set forth in full herein. The statements contained in this Disclosure Statement are**
20 **made as of the date hereof, unless otherwise specified, and FBS disclaims any obligation**
21 **to update any such statements after the hearing on approval of the Disclosure**
22 **Statement.**

25 **All forward-looking statements contained herein or otherwise made by FBS**
26 **involve material risks and uncertainties and are subject to change based on numerous**

1 factors, including factors that are beyond FBS's control. Such factors include, but are
2 not limited to, those described in this Disclosure Statement. The financial information
3 contained herein has not been audited by a certified public accountant and has not
4 necessarily been prepared in accordance with Generally Accepted Accounting
5 Principles.
6

7 In connection with FBS's and the Receiver's solicitation of acceptances of the
8 Plan pursuant to Section 1126(b) of the Bankruptcy Code, FBS and the Receiver are
9 furnishing a solicitation package, consisting of the Disclosure Statement, the enclosures
10 hereto, and a ballot to each known holder of Claims eligible to vote or its counsel. This
11 Disclosure Statement is to be used by each such eligible holder solely in connection with
12 its evaluation of the Plan; use of this Disclosure Statement for any other purpose is not
13 authorized. This Disclosure Statement may not be reproduced or provided to anyone
14 other than advisors to the recipient without the prior written consent of FBS.
15

16 FBS has not commenced a reorganization case under Chapter 11 of the
17 Bankruptcy Code as of the date of the distribution of this Disclosure Statement. If
18 however, FBS and the Receiver receive properly completed ballots (that are not
19 subsequently revoked) indicating acceptance of the Plan in sufficient number and
20 amount to meet the voting requirements prescribed by Section 1126 of the Bankruptcy
21 Code, FBS intends to file with the Bankruptcy Court a voluntary petition for relief
22 under Chapter 11 of the Bankruptcy Code and to seek, as promptly thereafter as
23 practicable, confirmation of the Plan. There can be no assurance, however, as to
24 whether or when confirmation of the Plan actually will occur.
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1 **If FBS and the Receiver do not receive sufficient votes in favor of the Plan, FBS**
2 **may have to file a petition for a traditional, non-prepackaged case under Chapter 11 of**
3 **the Bankruptcy Code. No provisions of the Plan shall be binding on any party in such a**
4 **scenario and there can be no assurances that a Plan in a form substantially similar to**
5 **the one proposed shall be proposed or possible in such a scenario. FBS and the**
6 **Receiver believe that the Plan—as presently proposed and as submitted through a**
7 **prepackaged case—enables the Debtor to emerge from Chapter 11 successfully and**
8 **expeditiously and allows holders of Claims to realize the highest recoveries under the**
9 **circumstances. Additionally, there can be no assurance that FBS might not be forced**
10 **into liquidation under Chapter 7 of the Bankruptcy Code. FBS believes that, if it is**
11 **liquidated under Chapter 7, creditors would receive smaller distributions, if any, than**
12 **those provided for in the Plan.**

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15 **This Disclosure Statement has been prepared in accordance with Section 1125 of**
16 **the Bankruptcy Code and Rule 3016(c) of the Federal Rules of Bankruptcy Procedure,**
17 **and not necessarily in accordance with federal or state securities laws or other non-**
18 **bankruptcy law. This Disclosure Statement was prepared with the intent to provide**
19 **“adequate information” (as defined in the Bankruptcy Code) to enable holders of**
20 **Claims against FBS to make informed judgments about the Plan.**
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1 **ARTICLE I**

2 **INTRODUCTION**

3 **A. Introduction**

4 FBS and the Receiver are soliciting votes from holders of Class 2 Claims (General
5 Unsecured Claims) and Class 3 Claims (Asbestos-Related Personal Injury or Wrongful Death
6 Claims) for the acceptance of its Plan prior to filing a voluntary petition that will commence
7 a case under Chapter 11 of the Bankruptcy Code.
8

9 This Disclosure Statement sets forth certain information regarding FBS's history, the
10 terms and provisions of the Plan, certain alternatives to the Plan, the effects of confirmation
11 of the Plan, certain risk factors associated with the Plan, and the manner in which
12 distributions will be made under the Plan and from the Liquidating Trust. In addition, this
13 Disclosure Statement discusses the confirmation process and the voting procedures that
14 holders of Claims eligible to vote must follow for their votes to be counted.
15

16 Although FBS and the Receiver believe that the descriptions and summaries
17 contained in this Disclosure Statement are fair and accurate in all material respects, they are
18 qualified in their entirety to the extent that they do not set forth the entire text of the
19 documents and statutory provisions discussed. Except where otherwise specifically noted,
20 factual information contained in this Disclosure Statement has been prepared from
21 documents and information provided by FBS.
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1 **ARTICLE II**

2 **GENERAL INFORMATION CONCERNING THE DEBTOR**

3 **A. Company History and Description of Business**

4 FBS, the Debtor, is a Washington corporation. Since 1949, the Debtor has been
5 engaged in erecting and repairing marine, industrial, and commercial boilers. FBS began its
6 operations in Seattle, Washington, then expanded operations to include Portland, Oregon in
7 1960 and San Diego, California in 1972. In 1979, FBS sold off its Washington and Oregon
8 operations.
9

10 FBS's business has declined over recent years, and after several years losing money,
11 FBS was insolvent by late 2014. FBS petitioned for the appointment of a receiver in the
12 Superior Court of Washington for King County (the "Receivership Court") and on January
13 22, 2015, the Receivership Court appointed a receiver, Resource Transition Consultants
14 LLC, and ordered the Receiver to take charge over FBS's assets. At present, FBS does not
15 conduct sales or obtain income.
16

17 **B. Asbestos-Related Claims Against FBS**

18 Since its inception, FBS has focused its operations on erecting and repairing marine,
19 industrial, and commercial boilers. FBS never mined, milled, or manufactured any asbestos
20 or asbestos-containing materials.
21

22 During the 1990s, individuals with asbestos diseases began making Claims against
23 FBS. Since that time, over 1,700 asbestos bodily injury cases have been filed against FBS in
24 various jurisdictions across California, Oregon, and Washington. Over 50 of those cases are
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26

1 still active.² Of the cases that are now closed, FBS was dismissed in over 600 and settled
2 over 500. FBS has yet to be involved in a trial to its conclusion in an asbestos bodily injury
3 case. FBS has paid over \$17 million in settlements and over \$18 million in defense costs
4 across all of these Claims.

5 **C. FBS's Insurance Coverage**

6 FBS is insured under Comprehensive General Liability ("CGL") insurance policies
7 that provide or may provide coverage for the Debtor's liability in connection with asbestos-
8 related Claims. Specifically, FBS is insured under primary and excess (including umbrella
9 excess) CGL insurance policies issued from 1964 through 2000. Such policies obligate the
10 insurers to pay for the Debtor's liability in connection with, among other things, Claims
11 alleging bodily injury. Generally, such policies also obligate the insurers to pay defense
12 costs, either in addition to any otherwise applicable limits of liability of the policies or
13 subject to such limits of liability.
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16 The primary policies were issued by the following carriers for the following periods
17 of time:

<u>Carrier</u>	<u>Time Period</u>
National Union Fire Insurance Company of Pittsburgh, PA	10/21/64–10/21/66
Insurance Company of North America	10/21/66–10/21/67
Continental Casualty Company	10/21/67–10/21/74
Providence Washington Insurance Company	10/21/74–01/01/79
Hartford Accident and Indemnity Company	01/01/79–01/01/85

25 ² The Disclosure Statement sent to creditors on or about March 23, 2018 inadvertently stated
26 "500" cases were still active due to typographical error. The Disclosure Statement is now
corrected to reflect the correct number.

Travelers Indemnity Company	01/01/90–01/01/92
Various London market insurers	01/01/85–01/01/90 and 01/01/92–01/01/93
Golden Eagle Insurance Company	04/03/92–01/01/00

The umbrella and excess policies were issued by the following carriers: Allianz Underwriters Insurance Company, Chicago Insurance Company, Insurance Company of North America, Maine Bonding and Casualty Company, Pacific Employers Insurance Company, Signal Insurance Company, Pine Top Insurance Company, Admiral Insurance Company, various London market insurers, and Golden Eagle Insurance Company.

The primary policies issued by Continental Casualty Company have been exhausted through the payment of Claims. Additionally, FBS has reached settlement agreements with a number of these carriers to provide lump sum payments in exchange for releases. In December 2016, FBS finalized a settlement agreement (the “PWIC Settlement”) with Providence Washington Insurance Company (“PWIC”). Under this settlement agreement, FBS will receive \$1,950,000.00 (less any amounts paid by PWIC toward defense or indemnity of asbestos Claims after November 15, 2016) in exchange for a release. This settlement agreement was approved by the Receivership Court on January 31, 2018, although the approval is subject to pending appeals. In January 2018, FBS executed a settlement agreement (the “January 2018 Settlement”) with: (1) Allianz Underwriters Insurance Company, Chicago Insurance Company (collectively, “Allianz”), (2) Century Indemnity Company (as successor to CCI Insurance Company, as successor to Insurance Company of North America), Pacific Employers Insurance Company (collectively, “Century”), (3) Hartford Accident and Indemnity Company (“Hartford”), and (4) Zurich American Insurance

1 Company (as successor-in-interest to Maine Bonding and Casualty Company) (“Zurich”).
2 FBS’s sole shareholder is also a party to the January 2018 Settlement. Under the January
3 2018 Settlement, FBS will receive \$11,657,996.14 in exchange for releases. It is expected
4 that these settlements will provide the primary initial funding for the Liquidating Trust.

5 Attached as Exhibit C to the Plan is a list of all of the CGL insurance policies issued
6 to FBS that are currently known to FBS and to the Receiver.
7

8 **ARTICLE III**

9 **PRE-PETITION NEGOTIATIONS**

10 As noted above, the Receiver was appointed on January 22, 2015 to take charge of
11 FBS’s assets, and in December 2016 the PWIC settlement was finalized.

12 A number of other Insurance Carriers raised objections in the Receivership Court to
13 the PWIC Settlement. In the summer of 2017, The Receiver and these Insurance Carriers
14 began to discuss the concept of a broad settlement resolution in an effort both to resolve these
15 Insurance Carriers’ objections to the PWIC Settlement and to resolve many, if not all, of the
16 Insurance Carriers’ continuing obligations for FBS asbestos-related claims. For several
17 months, the Receiver and various Insurance Carriers discussed potential frameworks for
18 settlements, as well as monetary and non-monetary terms. The proposals exchanged by the
19 Receiver and various Insurance Carriers during the opening months of their discussions did
20 not specify which Insurance Carriers would be part of any potential resolution if any
21 resolution would involve less than all known insurers. The discussions at this time also did
22 not involve the asbestos claimants, but the Receiver made clear that it would seek the
23 asbestos claimants’ input on settlement structures and insurer financial contributions.
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1 On November 2, 2017, the Receiver made the following settlement amount proposal
2 to Allianz, Century, Hartford, Zurich, and various London market insurers: Allianz would
3 pay \$3.5 million, Century would pay \$3.2 million, Hartford would pay \$3.8 million, Zurich
4 would pay \$1.8 million, and the various London market insurers would pay \$4.7 million.
5 Century and Hartford accepted these settlement amount proposals. Such proposal of
6 settlement amounts was still subject to further refinement of settlement terms and subject to
7 general consent by asbestos claimant representatives. Allianz responded to this settlement
8 amount proposal with a proposal of \$3 million, which the Receiver accepted generally,
9 subject to finalization of other settlement matters. Zurich responded to this settlement
10 amount proposal with a proposal of \$1,657,996.14, which the Receiver accepted generally,
11 subject to finalization of other settlement matters. The various London market insurers did
12 not accept, or rejected, this settlement amount proposal, and no settlement was reached with
13 the various London market insurers. As noted above, the agreements between the Receiver
14 and Allianz, Century, Hartford, and Zurich were eventually memorialized in the January
15 2018 Settlement, which provided, among other things, that Allianz, Century, Hartford, and
16 Zurich would no longer actively pursue their objections to the PWIC Settlement before the
17 Receivership Court.

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20 Allianz, Century, Hartford, and Zurich conditioned their monetary offers on, among
21 other things, FBS agreeing to go through a bankruptcy proceeding that would permit these
22 Insurance Carriers to obtain a bankruptcy court injunction, under Section 105(a) of the
23 Bankruptcy Code, against future asbestos-related claims. In light of this demand, the
24 Receiver, the shareholders of FBS, and key representatives for the asbestos claimants
25 engaged in discussions regarding the possibility of an FBS bankruptcy, and concluded that a
26

1 bankruptcy under Chapter 11 pursuant to a prepackaged plan or reorganization was
2 appropriate in these circumstances. FBS, in cooperation with the Receiver and the
3 Committee, drafted the Plan and Plan Documents, which FBS and the Receiver believe will
4 provides the best possible recovery to creditors and equity interest holders.

5 **ARTICLE IV**

6 **SOLICITATION OF VOTES**

7 **A. Solicitation of Holders of Class 2 Claims (General Unsecured Claims) and Class** 8 **3 Claims (Asbestos-Related Personal Injury or Wrongful Death Claims)**

9 FBS and the Receiver have jointly commenced solicitation of votes on the Plan as of
10 the date hereof by mailing (via first-class U.S. mail, postage prepaid) the solicitation
11 packages as described below. FBS and the Receiver are soliciting the votes of only holders
12 of Class 2 Claims (General Unsecured Claims) and Class 3 Claims (Asbestos-Related
13 Personal Injury or Wrongful Death Claims) either directly or through their attorneys. No
14 other parties in interest are entitled to vote on the Plan, as all other parties in interest are
15 either not deemed Classes for purposes voting rights, not impaired under the Plan, or deemed
16 to reject the Plan. The Balloting Agent will file vote certifications (the "Vote Certifications")
17 certifying acceptances from the creditors entitled to vote and who actually vote.
18

19 For Class 2 Claims, FBS and the Receiver are sending a solicitation package (the
20 "Class 2 Solicitation Package") directly to potential general unsecured creditors who filed a
21 proof of claim in the Receivership or are otherwise known to the Receiver.
22

23 The Class 2 Solicitation Package shall include:

- 24 (1) the Disclosure Statement (to which the Plan is annexed as an exhibit);
25 (2) a ballot;
26

- (3) a preaddressed return envelope; and
- (4) a cover letter describing the contents of the solicitation package and instructions.

For Class 3 Claims, FBS and the Receiver are sending a solicitation package (the “Class 3 Solicitation Package”) to counsel who have filed suit in the tort system on behalf of a holder of a Class 3 Claim. FBS and the Receiver will also send solicitation packages directly to the holders of Class 3 Claims who either contact FBS or the Receiver directly or whose counsel ask that a package be sent directly to the Claimant.

The Class 3 Solicitation Package shall include:

- (1) the Disclosure Statement (to which the Plan is annexed as an exhibit);
- (2) a ballot;
- (3) a preaddressed return envelope; and
- (4) a cover letter describing the contents of the solicitation package and instructions.

Attorneys who are unable to vote on behalf of a holder of a Class 3 Claim or wish to have the holder cast his or her own ballot on the Plan are requested to furnish the Balloting Agent with the name and address of each such holder promptly so that a solicitation package can be sent to that Claimant.

As clearly stated on the ballots, in order to be counted, completed ballots must be received by the Balloting Agent by the Voting Deadline of 5:00 p.m., Pacific Daylight Time, on April 6, 2018. Accordingly, claimants and their counsel will have approximately 12 to 14 days from the mailing of the Disclosure Statement to vote. FBS and the Receiver believe that they will solicit votes on the Plan from substantially all holders of Class 2 Claims and

1 Class 3 Claims by its distribution of the Class 2 Solicitation Packages and Class 3
2 Solicitation Packages.

3 **B. Notice to Holders of Administrative Expense Claims, Priority Tax**
4 **Claims, Class 1 Claims (Other Priority Claims), and Class 4 Claims**
5 **(Equity Interests)**

6 Holders of Administrative Expense Claims and Priority Tax Claims are not deemed
7 Classes for purposes of applying the provisions of Sections 1122–1129 of the Bankruptcy
8 Code with respect to, among other things, voting rights and impairment of classes of
9 creditors. Thus, holders of Administrative Expense Claims and Priority Tax Claims are not
10 deemed to be members of voting Classes and will not receive ballots. Moreover, Other
11 Priority Claims (Class 1) are not impaired and will not receive ballots. Additionally, holders
12 of an Equity Interest (Class 4) are deemed to reject the Plan and will not receive ballots.

13 **ARTICLE V**

14 **ANTICIPATED EVENTS DURING THE CHAPTER 11 CASE**

15 If FBS and the Receiver receive the requisite acceptances in response to the
16 solicitation, FBS intends to commence promptly a Chapter 11 Case and seek to confirm
17 expeditiously the Plan. FBS intends to seek all necessary and appropriate relief from the
18 Bankruptcy Court in order to facilitate its reorganization goals, including the matters
19 described below.
20

21 **A. Approval of the Disclosure Statement and Prepetition Solicitation, and**
22 **Scheduling of Confirmation Hearing**

23 FBS will file this Disclosure Statement and the Plan on or promptly after the
24 Commencement Date. To facilitate the prompt Confirmation and consummation of the Plan,
25 FBS intends to file a motion seeking an order scheduling a hearing to: (i) approve the
26

1 Disclosure Statement as containing adequate information, as defined in Section 1125 of the
2 Bankruptcy Code; (ii) approve the prepetition solicitation procedures; and (iii) schedule a
3 hearing on confirmation of the Plan, for a date immediately following the end of the
4 minimum notice period therefor, or as soon thereafter as the Bankruptcy Court's calendar
5 permits.
6

7 **B. Creditors Committee**

8 FBS will seek to have the Committee appointed as the statutory committee of
9 creditors.

10 **ARTICLE VI**

11 **PLAN OF REORGANIZATION**

12 **A. Summary**

13 The Plan and the Plan Documents provide a method for the resolution of Claims and
14 interests. This summary is intended merely to highlight some of the major provisions of this
15 Claims resolution process. All parties are urged to review the Plan and the Plan Documents
16 attached as exhibits to the Plan for a complete description of these procedures.
17

18 Upon the Effective Date, pursuant to Section 1141(b) and (c) of the Bankruptcy
19 Code, all property of the Debtor shall vest in the Post-Confirmation Debtor free and clear of
20 all Claims, Liens, encumbrances, charges, and other interests, except as provided in the Plan,
21 and as set forth herein, the assets shall be transferred to the Liquidating Trust. Moreover, on
22 the Effective Date, all Equity Interests in Fraser Boiler Service, Inc. will be transferred by
23 existing owners to the Liquidating Trust which shall thereafter be the sole shareholder of
24 Fraser Boiler Service, Inc.
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1 Holders of General Unsecured Claims are entitled to a pro rata distribution from the
2 Unsecured Creditor Fund, to be made promptly after the later of (i) sixty (60) days after the
3 Effective Date, or (ii) the date on which all of the General Unsecured Claims filed on or
4 before the Bar Date have been allowed or disallowed. The Unsecured Creditor Fund is a
5 fund of \$50,000.00 reserved from the initial settlements with the Settled Insurers.
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7 As to Asbestos-Related Personal Injury and Wrongful Death Claims, the Trust
8 Distribution Procedures will initially provide that certain Claims may be liquidated by the
9 Liquidating Trust and that all other Claims will be resolved pursuant to litigation initiated by
10 the claimant in the non-bankruptcy courts with appropriate jurisdiction. The Trust
11 Distribution Procedures contemplate that the Liquidating Trustee will tender such Claims to
12 Non-Settled Insurers. A limited number of Claims will be eligible for payment as Pre-Suit
13 Settlement Claims with a maximum settlement value of \$20,000, or such higher Pre-Suit
14 Settlement Cap as may be later established. This will include Trust Claims (i) for which the
15 claimant would be willing to accept compromise and settlement at no more than the Pre-Suit
16 Settlement Cap, and (ii) that are sufficiently similar to the body of Claims previously asserted
17 against and settled by the Debtor or the Trust that a settlement value consistent with previous
18 settlement practices can be established by the Trustee with reasonable certainty. Claims that
19 do not apply for Pre-Suit Settlement or are not resolved by Pre-Suit Settlement will be
20 entitled to initiate suit in a non-bankruptcy court of competent jurisdiction. The Trustee will
21 tender such Claims to Non-Settled Insurers to defend. Claimants will prosecute such Claims
22 to settlement or judgment as they may wish. To the extent that any share of a final judgment
23 on a Trust Claim is unpaid as a result of the insolvency or prior release of certain insurers,
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1 the Trust will generally pay those shares. No Trust Claimant will be obligated to apply for
2 Pre-Suit Settlement consideration prior to initiating a suit.

3 The Plan provides that the Liquidating Trust shall be funded by amounts received as a
4 result of settlements with insurers and any subsequent amounts received on account of the
5 Insurance Rights. After the Effective Date, the Liquidating Trustee shall have the right to
6 require that the Debtor or Post-Confirmation Debtor promptly transfer to the Liquidating
7 Trust any payment received by the Debtor or Post-Confirmation Debtor in connection with
8 any Insurance Rights or under any Insurance Policies and the Liquidating Trust will assume
9 the rights and powers to prosecute or defend litigation, or to oversee and assist the Post-
10 Confirmation Debtor with litigation, related to the Insurance Rights, and the rights and
11 powers appropriate to permit the Liquidating Trust to compromise, settle, release and receive
12 the proceeds related to the Insurance Policies. The primary initial funding for the
13 Liquidating Trust is expected to be from proposed settlements with certain Settled Insurers.
14 Additionally, Post-Confirmation, the Liquidating Trustee shall have the authority, with the
15 consent of the Trust Advisory Committee, to enter into settlements with Non-Settled
16 Insurers. All holders of Class 3 Claims are deemed to grant to the Liquidating Trust the right
17 and power to bind them to a settlement of Insurance Rights and the related limitations on
18 their Class 3 Claims as described in the Plan. The Liquidating Trust may be further funded
19 by contributions from beneficiaries of the Liquidating Trust of any assets such beneficiaries
20 are willing to contribute and that the Liquidating Trustee deems advisable to accept. The
21 Liquidating Trustee may also seek to obtain financing to fund the ongoing administrative
22 obligations of the Liquidating Trust or to continue the litigation of any insurance-related
23 lawsuits.
24
25
26

1 The Liquidating Trustee shall be authorized to adjust the liquidation procedures
2 provided for by the Trust Distribution Procedures if the Liquidating Trust settles with
3 additional insurers, some Non-Settled Insurers policy limits are exhausted or near exhaustion,
4 or the Liquidating Trustee believes such adjustments are in the best interests of the
5 Liquidating Trust and the holders of then pending Asbestos-Related Personal Injury or
6 Wrongful Death Claims.
7

8 As part of the Confirmation Order, the Debtor will also seek an injunction,
9 discussed in more detail in Paragraph VII.B., concerning Asbestos-Related Personal
10 Injury or Wrongful Death Claims under Sections 363 and 105(a) of the Bankruptcy
11 Code and the provisions of the Plan, pursuant to which the Debtor and the Settled
12 Insurers shall have no obligation, as of the Effective Date, to pay any liability of any
13 nature and description to the holders of Asbestos-Related Personal Injury or Wrongful
14 Death Claims, except as provided in the Trust Distribution Procedures or applicable
15 settlement agreements.
16

17 **B. Classification and Treatments Under the Plan**

18 The Plan provides for the division of holders of all Claims and interests into the
19 classifications and Classes described below.
20

21 **1. Class 1. Other Priority Claims**

22 Not impaired. Not entitled to vote. Except to the extent that a holder of an Allowed
23 Other Priority Claim against a Debtor agrees to a less favorable treatment, each such holder
24 shall receive, in full satisfaction of such Allowed Other Priority Claim, Cash in an amount
25 equal to such Allowed Other Priority Claim, on or as soon as reasonably practicable after the
26 later of (i) the Effective Date, or (ii) the date such Claim becomes Allowed.

1 **2. Class 1A. Priority Tax Claims**

2 Not impaired. Not entitled to vote. Except to the extent that a holder of an Allowed
3 Priority Tax Claim has been paid by the Debtor prior to the Effective Date or agrees to a less
4 favorable treatment, each holder of an Allowed Priority Tax Claim shall receive, at the sole
5 option of the Debtor or the Post-Confirmation Debtor: (i) Cash in an amount equal to such
6 Allowed Priority Tax Claim on or as soon as reasonably practicable following the later to
7 occur of (a) the Effective Date, or (b) the date on which such Administrative Priority Tax
8 Claim shall become an Allowed Priority Tax Claim; (ii) equal semi-annual Cash payments in
9 an aggregate amount equal to such Allowed Priority Tax Claim, together with interest at the
10 applicable non-bankruptcy rate, commencing upon the later of the Effective Date and the
11 date such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter
12 as is practicable and continuing over a period of eighteen (18) months (but in no event
13 exceeding five (5) years from and after the Commencement Date); or (iii) such other
14 treatment as shall be determined by the Bankruptcy Court to provide the holder of such
15 Allowed Priority Tax Claim deferred Cash payments having a value, as of the Effective Date,
16 equal to such Allowed Priority Tax Claim.
17
18

19 **3. Class 2. General Unsecured Claims**

20 Impaired. Entitled to vote. Except to the extent that a holder of a General Unsecured
21 Claim agrees to a less favorable treatment, each such holder shall receive, in full satisfaction
22 of such Claim, a pro rata distribution from the Unsecured Creditor Fund. Such distributions
23 shall be made promptly after the later of (i) sixty (60) days after the Effective Date, or (ii) the
24 date on which all of the General Unsecured Claims filed on or before the General Bar Date
25 have been allowed or disallowed.
26

1 **4. Class 3. Asbestos-Related Personal Injury or Wrongful Death Claims**

2 Impaired. Entitled to vote (with each Class 3 Claim entitled to cast one vote in the
3 amount of \$1.00, regardless of damages sought for such Asbestos-Related Personal Injury or
4 Wrongful Death Claim). Each Class 3 claimant will be entitled to distributions on its Claim
5 as liquidated from assets of the Liquidating Trust only in accordance with the Trust
6 Distribution Procedures, as they may be amended from time to time. Any Class 3 claimant
7 who initiates litigation to liquidate his or her Claim in accordance with the Trust Distribution
8 Procedures may collect and retain all amounts contracted for or paid by any Non-Settled
9 Insurer as part of a settlement of such Claim and may collect and retain from any Non-Settled
10 Insurer all amounts such insurer is obligated to pay pursuant to its policy and applicable law
11 as a result of any Claim liquidated by judgment.
12

13 **5. Class 4. Equity Interests.**

14 Impaired. Not entitled to vote, deemed to reject the Plan. There will be no
15 distribution on account of Equity Interests in Fraser Boiler Service, Inc. On the Effective
16 Date, all Equity Interests in Fraser Boiler Service, Inc. will be transferred by existing owners
17 to the Liquidating Trust which shall thereafter be the sole shareholder of Fraser Boiler
18 Service, Inc.
19

20 **C. Section 1930 Fees**

21 All fees and charges payable under Section 1930 of Title 28 of the United States
22 Code, as determined by the hearing on Confirmation of the Plan, will be paid upon the
23 Effective Date.
24
25
26

1 **D. Retiree Benefits**

2 The Plan does not adversely affect any retiree benefits, as that term is defined in
3 Bankruptcy Code Section 1114.

4 **E. Executory Contracts and Unexpired Leases**

5 Pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, all executory
6 contracts and unexpired leases that exist between the Debtor and any person or entity shall be
7 deemed rejected by the Debtor as of the Effective Date, except for any executory contract or
8 unexpired lease (i) that has been assumed, assumed and assigned, or rejected pursuant to the
9 Plan or pursuant to an order of the Bankruptcy Court entered on or before the Effective Date,
10 or (ii) as to which a motion for approval of the assumption, assumption and assignment, or
11 rejection has been filed and served prior to the Confirmation Date, which motion is thereafter
12 approved by the Bankruptcy Court.
13

14 Notwithstanding anything contained in the Plan to the contrary, unless specifically
15 rejected by order of the Bankruptcy Court prior to the Effective Date, all of the Insurance
16 Policies, to the extent such policies are executory contracts, shall be deemed assumed
17 pursuant to the Plan effective as of the Effective Date.
18

19 **F. Disputed Claims**

20 **1. Objections to Non-Asbestos-Related Claims**

21 Only Claims that are Allowed shall be entitled to distributions under the Plan.
22 Objections to all Claims against the Debtor other than Asbestos-Related Personal Injury or
23 Wrongful Death Claims may be interposed and prosecuted only by the Debtor and the Post-
24 Confirmation Debtor. The Post-Confirmation Debtor shall be entitled to object to any Claim
25 through and after the Effective Date. Any objections to Claims other than Asbestos-Related
26

1 Personal Injury and Wrongful Death Claims shall be served and filed with the Bankruptcy
2 Court on or before the later of (i) 180 days after the Effective Date, as such time may be
3 extended by order of the Bankruptcy Court, and (ii) such later date as may be fixed by the
4 Bankruptcy Court, whether fixed before or after the date specified in clause (i) above.

5 **2. Procedures for Resolving Disputed Claims**

6 Unless otherwise ordered by the Bankruptcy Court or agreed to by written stipulation
7 of the Debtor, the Debtor shall litigate the merits of each Disputed Claim until determined by
8 a Final Order.
9

10 **3. Timing of Payments and Distributions With Respect to Disputed Claims**

11 To the extent that a Disputed Claim becomes an Allowed Claim, the Disbursing
12 Agent shall distribute to the holder of such Claim, the property distributable with respect to
13 such Claim in accordance with Article IV of the Plan. Such distributions shall be made as
14 soon as practicable after the later of: (i) the date that the order or judgment of the
15 Bankruptcy Court allowing such Disputed Claim (or portion thereof) becomes a Final Order;
16 (ii) the date on which any objection to such Disputed Claim has been withdrawn; or (iii) the
17 date on which such Disputed Claim has been settled, compromised, or otherwise resolved.
18

19 **4. Estimation of Claims**

20 Requests for estimation of all Claims against the Debtors may be interposed and
21 prosecuted only by the Debtor and the Post-Confirmation Debtor. The Debtor and the Post-
22 Confirmation Debtor may at any time request that the Bankruptcy Court estimate any
23 Contingent Claim, Unliquidated Claim, or Disputed Claim pursuant to Section 502(c) of the
24 Bankruptcy Code regardless of whether any of the Debtor or the Post-Confirmation Debtor
25 previously objected to such Claim or whether the Bankruptcy Court has ruled on any such
26

1 objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time
2 during litigation concerning any objection to any Claim, including, without limitation, during
3 the pendency of any appeal relating to any such objection. In the event that the Bankruptcy
4 Court estimates any Contingent Claim, Unliquidated Claim, or Disputed Claim, the amount
5 so estimated shall constitute either the Allowed amount of such Claim or a maximum
6 limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount
7 constitutes a maximum limitation on the amount of such Claim, the Debtor or the Post-
8 Confirmation Debtor may pursue supplementary proceedings to object to the allowance of
9 such Claim. All of the aforementioned objection, estimation, and resolution procedures are
10 intended to be cumulative and not exclusive of one another. Claims may be estimated and
11 subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by
12 the Bankruptcy Court.
13
14

15 **5. Trust Distribution Procedures**

16 Asbestos-Related Personal Injury and Wrongful Death Claims shall be administered
17 in accordance with the Trust Distribution Procedures.

18 **G. Releases, Exculpation, and Retention of Causes of Action/Reservation of Rights**

19 Releases: Except as otherwise specifically provided by the Plan and the Plan
20 Documents, effective as of the Confirmation Date but subject to the occurrence of the
21 Effective Date, and in consideration of the services provided to the Debtor by the present
22 director, officer, and employee of the Debtor who acted in such capacities after the
23 Commencement Date, each holder of a Claim that votes to accept the Plan (or is deemed to
24 accept the Plan), and to the fullest extent permissible under applicable law as such law may
25 be extended or integrated after the Effective Date, each holder of a Claim that does not vote
26

1 to accept the Plan shall release unconditionally and forever such present director, officer, and
2 employee of the Debtor, in all his respective capacities, and from any and all Claims or
3 causes of action that exist as of the Effective Date and arise from or relate to, in any manner,
4 in whole or in part, the operation of the Debtor, the subject matter of, or the transaction or
5 event giving rise to the Claim or interest of such holder, the business or contractual
6 arrangements between any Debtor and such holder, or any act, omission, occurrence, or event
7 in any manner related to such subject matter, transaction or obligation, or arising out of the
8 Chapter 11 Case, including, but not limited to, the pursuit of confirmation of the Plan, the
9 consummation thereof, the administration thereof, or the property to be distributed
10 thereunder; provided that the foregoing shall not operate as a waiver of or release from any
11 causes of action arising out of the willful misconduct, gross negligence, fraud, criminal
12 conduct, intentional unauthorized misuse of confidential information that causes damages, or
13 *ultra vires* acts of any such person or entity.
14

15
16 Exculpation: As of the Confirmation Date but subject to the occurrence of the
17 Effective Date, neither the Debtor, any Creditors' Committee, nor the Receiver, in all their
18 respective capacities, and their respective agents, attorneys, financial advisors, accountants,
19 investment bankers, members, directors, officers, employees, and representatives, successors,
20 and assigns shall have or incur any liability for any Claim, cause of action or other assertion
21 of liability for any act taken or omitted to be taken since the Commencement Date in
22 connection with, or arising out of, the Chapter 11 Cases, the formulation, dissemination,
23 confirmation, consummation, or administration of the Plan, the Plan, the Disclosure
24 Statement or any contract, instrument, document, or other agreement related thereto;
25
26 *provided, however,* that the foregoing shall not affect the liability of any person that would

1 otherwise result from any such act or omission to the extent such act or omission is
2 determined by a Final Order to have constituted willful misconduct, gross negligence, fraud,
3 criminal conduct, intentional unauthorized misuse of confidential information that causes
4 damages, or *ultra vires* act.

5 Retention of Causes of Action/Reservation of Rights: Except as otherwise
6 specifically provided by the Plan and the Plan Documents:
7

8 a. Nothing contained in the Plan or the Confirmation Order shall be deemed to
9 be a waiver or relinquishment of any rights or causes of action that the Debtor
10 or the Post-Confirmation Debtor may have or which the Post-Confirmation
11 Debtor may choose to assert on behalf of its estates under any provision of the
12 Bankruptcy Code or any applicable non-bankruptcy law, including (i) any and
13 all Claims against any person or entity, to the extent such person or entity
14 asserts a cross-claim, a counterclaim, and/or a Claim for setoff that seeks
15 affirmative relief against the Debtor, the Post-Confirmation Debtor, their
16 officers, directors, or representatives, including the Liquidating Trust or the
17 Liquidating Trustee, and (ii) the turnover of any property of the Debtor's
18 estate.
19

20 b. Nothing contained in the Plan or the Confirmation Order shall be deemed to
21 be a waiver or relinquishment of any Claim, cause of action, right of setoff, or
22 other legal or equitable defense that the Debtor had immediately prior to the
23 Commencement Date, against or with respect to any Claim left unimpaired by
24 the Plan. Subject to the foregoing, the Post-Confirmation Debtor shall have,
25 retain, reserve, and be entitled to assert all such Claims, causes of action,
26

1 rights of setoff, and other legal or equitable defenses that the Debtor had
2 immediately prior to the Commencement Date as fully as if the Chapter 11
3 Cases had not been commenced, and all of the Post-Confirmation Debtor's
4 legal and equitable rights respecting any Claim that are left unimpaired by the
5 Plan may be asserted after the Confirmation Date to the same extent as if the
6 Chapter 11 Cases had not been commenced.
7

8 **ARTICLE VII**

9 **DESCRIPTION OF THE LIQUIDATING TRUST AND THE** 10 **PLAN DOCUMENTS**

11 The following summarizes the terms of the Liquidating Trust and the Plan
12 Documents. It is intended only to be a summary, and claimants should review the Plan
13 Documents. A copy of the Liquidating Trust Agreement is annexed hereto as Exhibit E. A
14 copy of the Trust Distribution Procedures is annexed hereto as Exhibit F. Creditors are
15 referred to the foregoing for a complete understanding of the operations of the Liquidating
16 Trust. The following summary is qualified in its entirety by such documents.

17 **A. Creation of the Asbestos Personal Injury Trust**

18 On the Effective Date, the Liquidating Trust shall be created and established pursuant
19 to the terms of the Plan Documents. The Liquidating Trust shall be established for the sole
20 purposes of: (i) liquidating and distributing its assets, in accordance with applicable
21 provisions of the Tax Code, and any applicable Treasury Regulations, with no objective to
22 continue or engage in the conduct of a trade or business; (ii) holding and managing the Post-
23 Confirmation Debtor corporate entity that will not be conducting any trade or business but
24 will instead be managing further Asbestos-Related Personal Injury or Wrongful Death
25
26

1 Claims that may arise over time; and (iii) assisting with and overseeing litigation related to
2 any Insurance Rights and defending against any Claim brought by any Insurance Carrier or
3 its agent to limit any Insurance Policies or Insurance Rights. Upon the Effective Date,
4 pursuant to Section 1141(b) and (c) of the Bankruptcy Code, all property of the Debtor shall
5 vest in the Post-Confirmation Debtor free and clear of all Claims, Liens, encumbrances,
6 charges, and other interests, except as provided in the Plan, and as set forth herein, the assets
7 shall be transferred to the Liquidating Trust. The Liquidating Trust shall be entitled to
8 exercise and enforce all of the Insurance Rights and obligations of the Debtor and the Post-
9 Confirmation Debtor under or related to the Non-Settled Insurance Policies, including
10 directing the Debtor's or Post-Confirmation Debtor's litigation of any disputes related to the
11 Non-Settled Insurers' coverage obligations.
12

13 **B. Permanent Injunction**

14 **FBS intends to seek injunctive relief under Sections 363 and 105(a) of the**
15 **Bankruptcy Code to protect Settled Insurers (and Non-Settled Insurers who, Post-**
16 **Confirmation, are designated by the Liquidating Trustee as a Settled Insurer following**
17 **a settlement with the Liquidating Trustee) in connection with Claims or potential**
18 **Claims by Class 3 claimants. If such injunctive relief is granted, following the Effective**
19 **Date all Asbestos-Related Personal Injury or Wrongful Death Claims will be subject to**
20 **an injunction pursuant to Sections 363 and 105(a) of the Bankruptcy Code and the**
21 **provisions of the Plan, pursuant to which the Debtor and the Settled Insurers shall have**
22 **no obligation to pay any liability of any nature and description to the holders of**
23 **Asbestos-Related Personal Injury or Wrongful Death Claims, except as provided in the**
24 **Trust Distribution Procedures or applicable settlement agreements.**
25
26

1 More specifically, FBS intends to seek an injunction providing the following, or
2 substantially similar, terms:

3 Pursuant to Sections 363 and 105(a) of the Bankruptcy Code, upon the
4 Effective Date, all rights, titles and interests in Insurance Policies issued
5 by any Settled Insurers will be deemed to have been sold, transferred,
6 and conveyed to those Settled Insurers, free and clear of all Claims, liens,
7 encumbrances and interests of any kind or nature whatsoever. In order
8 to effectuate the sale, transfer and conveyance of these Insurance Policies,
9 effective upon entry of the Confirmation Order but subject to the
10 Effective Date later occurring and the termination of the settlement
11 agreement(s) with the Settled Insurers not occurring pursuant to the
12 terms of those agreement(s), all persons and Entities shall be hereby
13 permanently enjoined, barred and estopped from taking any action
14 against the Settled Insurers and their property and assets, including the
15 Insurance Policies issued by the Settled Insurers, for the purpose of
16 directly or indirectly collecting, recovering, receiving or asserting any
17 Claims, liens, encumbrances or interests of any kind or nature based
18 upon or arising out of the Insurance Policies issued by the Settled
19 Insurers, including, but not limited to any Claims, liens, encumbrances or
20 interests such person or Entity had, has, or may have against or in the
21 Debtor or its estate or successors.
22
23
24
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1 **C. Appointment and Duties of Liquidating Trustee**

2 The Liquidating Trustee shall be appointed in conformity with the provisions of the
3 Plan Documents and shall have such duties and rights as are provided in the Plan Documents.
4 Subject to approval by the Bankruptcy Court as part of the Confirmation Order, the initial
5 Liquidating Trustee will be David Gordon.
6

7 **D. Compensation to and Indemnification of the Trustees**

8 The Trustees shall receive compensation for their services, and shall be indemnified,
9 in accordance with the terms of the Plan Documents.

10 **E. Retention of Counsel**

11 The Liquidating Trust and the Liquidating Trustee may retain the services of counsel
12 in accordance with the terms and provisions of the Plan Documents.

13 **F. Trust Advisory Committee**

14 The Trust Advisory Committee ("TAC") shall consult with and advise the
15 Liquidating Trustee. The TAC shall have such other duties and rights as set forth in the Plan
16 Documents. The fees and expenses of the TAC shall be paid by the Liquidating Trust and
17 the Liquidating Trust shall indemnify the members of the TAC in accordance with the terms
18 of the Plan Documents. In addition, the TAC may retain the services of attorneys,
19 accountants, valuation experts, and other professionals necessary to the performance of its
20 duties. The TAC shall be deemed to be (and the Confirmation Order shall provide that the
21 TAC is) a "party in interest" within the meaning of Section 1109(b) of the Bankruptcy Code
22 for post-Confirmation Date purposes.
23
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1 **G. Preservation of Rights and Defenses**

2 The Liquidating Trust shall have, retain, reserve, and be entitled to assert all such
3 Claims, causes of action, rights of setoff, and other legal or equitable defenses that the Debtor
4 had immediately prior to the Commencement Date as fully as if the Chapter 11 Cases had not
5 been commenced, and all of the Post-Confirmation Debtor's legal and equitable rights
6 respecting any Claim that are left unimpaired by the Plan may be asserted after the
7 Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.
8

9 **H. Trust Distribution Procedures**

10 As summarized in Article VI, the Liquidating Trust shall implement the Trust
11 Distribution Procedures in accordance with the terms of the Plan Documents.

12 **ARTICLE VIII**

13 **ACCEPTANCE AND CONFIRMATION**

14 **A. Confirmation Hearing**

15 Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after
16 appropriate notice, to hold a hearing on confirmation of a plan of reorganization. Upon
17 commencement of the Chapter 11 Case, FBS will move to schedule a hearing on
18 confirmation of the Plan on the earliest possible date that complies with the Bankruptcy Code
19 or the Bankruptcy Court's calendar.
20

21 **B. General Requirements of Section 1129**

22 At the confirmation hearing, the Bankruptcy Court will determine whether the
23 following confirmation requirements specified in Section 1129 of the Bankruptcy Code have
24 been satisfied:
25

- 26 1. The Plan complies with the applicable provisions of the Bankruptcy Code.

2. FBS has complied with the applicable provisions of the Bankruptcy Code.
3. The Plan has been proposed in good faith and not by any means proscribed by law.
4. Any payment made or promised by FBS or by a person issuing securities or acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.
5. FBS has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director or officer of FBS or a successor to FBS under the Plan. The appointment of (or continuance by) such individual to (or in) such position or office is consistent with the interests of creditors and equity security holders and with public policy. FBS has disclosed the identity of any insider that will be employed or retained by FBS, and the nature of any compensation for such insider.
6. With respect to each Class of Claims or Equity Interests, each holder of an impaired Claim or impaired Equity Interest either has accepted the Plan or will receive or retain under the Plan, on account of such holder's Claim or Equity Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if FBS were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code.

- 1 7. Each Class of Claims or Equity Interests has either accepted the Plan or is not
2 impaired under the Plan. If this requirement is not satisfied, the Bankruptcy
3 Court may also confirm the Plan pursuant to Section 1129(b) of the
4 Bankruptcy Code.
- 5 8. Except to the extent that the holder of a particular Claim has agreed to
6 different treatment of such Claim, the Plan provides that Administrative
7 Expense Claims and Priority Claims (other than Priority Tax Claims) will be
8 paid in full on the Effective Date, and Priority Tax Claims will be paid, over a
9 period not exceeding five years after the date of the order for relief, regular
10 installments of Cash payments, equal to the Allowed amount of such Claims
11 (as of the Effective Date) and in a manner no less favorable than the most
12 favored non-priority unsecured Claim provided for by the plan, and, with
13 respect to a secured Claim that would otherwise meet the description of an
14 unsecured Claim of a governmental unit under section 507(a)(8) of the
15 Bankruptcy Code, but for the secured status of that Claim, the holder of that
16 Claim will receive on account of that Claim, Cash payments, in the same
17 manner as described in this paragraph.
- 18 9. At least one Class of impaired Claims has accepted the Plan, with the
19 determination of such Class acceptance not including any acceptance of the
20 Plan by any insider holding a Claim in such Class.
- 21 10. Confirmation of the Plan is not likely to be followed by the liquidation or the
22 need for further financial reorganization of FBS or any successor to FBS
23
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1 under the Plan, unless such liquidation or reorganization is proposed in the
2 Plan.

3 **C. Classification of Claims and Interests**

4 In addition to the requirements set forth in Section 1129, the Bankruptcy Code
5 requires that the Plan place each Claim and each interest in a class with other Claims or
6 interests which are “substantially similar.” The Plan establishes three (3) classes of Claims
7 and one (1) class of Equity Interests. Creditors of similar or like kind have been categorized
8 together, and will thereby be treated in exactly the same or in a substantially similar manner.
9 The Debtor believes that the Plan meets the classification requirements of the Bankruptcy
10 Code.
11

12 **D. Acceptance by Impaired Classes of Claims**

13 Pursuant to Section 1126(c) of the Bankruptcy Code, the Class 2 impaired class shall
14 have accepted the Plan if: (i) the holders (other than Claims held by any holder designated
15 pursuant to Section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in dollar
16 amount of the Allowed Claims actually voting in such class have voted to accept this Plan;
17 and (ii) more than one-half (1/2) in number (other than Claims held by any holder designated
18 pursuant to Section 1126(e) of the Bankruptcy Code) of such Allowed Claims actually voting
19 in such class have voted to accept this Plan.
20

21 Pursuant to Section 1126(c) of the Bankruptcy Code, the Class 3 impaired class shall
22 have accepted the Plan if: (i) the holders (other than Claims held by any holder designated
23 pursuant to Section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in dollar
24 amount of the Allowed Claims actually voting in such class have voted to accept this Plan;
25 and (ii) more than one-half (1/2) in number (other than Claims held by any holder designated
26

1 pursuant to Section 1126(e) of the Bankruptcy Code) of such Allowed Claims actually voting
2 in such class have voted to accept this Plan.

3 **E. Presumed Acceptance of Plan**

4 Class 1 is not impaired under the Plan and, therefore, is conclusively presumed to
5 have accepted this Plan pursuant to Section 1126(f) of the Bankruptcy Code.

6 **F. Best Interests Test**

7
8 With respect to each impaired Class of Claims, confirmation of the Plan requires that
9 each holder of a Claim either (i) accept the Plan, or (ii) receive or retain under the Plan
10 property of a value, as of the Effective Date, that is not less than the amount such holder
11 would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy
12 Code. To determine what holders of Claims of each impaired class would receive if the
13 Debtor were liquidated under Chapter 7, the Bankruptcy Court must determine the dollar
14 amount that would be generated from the liquidation of the Debtor's assets, augmented by
15 the unencumbered Cash held by the Debtor at the time of the commencement of the
16 liquidation Case. Such Cash amount would be reduced by the amount of the costs and
17 expense of the liquidation and by such additional administrative and priority Claims that may
18 result from the termination of the Debtor's business and the use of Chapter 7 for the purposes
19 of liquidation.
20

21 The Debtor's costs of liquidation under Chapter 7 would include the fees payable to a
22 trustee in bankruptcy, as well as those which might be payable to attorneys and other
23 professionals that such a trustee may engage. In addition, Claims would arise by reason of
24 the breach or rejection of obligations incurred, and leases and executory contracts assumed or
25 entered into by the Debtor-in-Possession during the pendency of the Chapter 11 Case. The
26

1 foregoing types of Claims and other Claims which may arise in a liquidation Case or result
2 from the pending Chapter 11 Case, including any unpaid expenses incurred by the Debtor in
3 Possession during the Chapter 11 Case, such as compensation for attorneys and accountants,
4 would be paid in full from the liquidation proceeds before the balance of those proceeds
5 would be made available to pay pre-petition General Unsecured Claims.
6

7 To determine if the Plan is in the best interests of each impaired Class, the present
8 value of the anticipated distributions from the proceeds of the liquidation of the Debtor's
9 unencumbered assets and properties, after subtracting the amounts attributable to the
10 foregoing Claims, are then compared with the value of the property offered to such Classes
11 of Claims under the Plan.
12

13 After considering the effects that a Chapter 7 liquidation would have on the ultimate
14 proceeds available for distribution to creditors in a Chapter 11 Case, including: (i) the
15 increased costs and expenses of a liquidation under Chapter 7 arising from fees payable to a
16 trustee in bankruptcy and professional advisors to such trustee; (ii) the erosion in value of
17 assets in a Chapter 7 Case in the context of the expeditious liquidation required under
18 Chapter 7 and the "forced sale" atmosphere that would prevail; and (iii) the substantial
19 increases in Claims which would be satisfied on a priority basis or in parity with creditors in
20 the Chapter 11 Case, the Debtor has determined that Confirmation of the Plan will provide
21 each holder of an Allowed Claim with a recovery that is not less, and is in fact projected to
22 be more, than such holder would receive pursuant to liquidation of the Debtor under Chapter
23 7.
24
25
26

1 **G. Feasibility**

2 The Bankruptcy Code requires that confirmation of a plan is not likely to be followed
3 by liquidation or the need for further financial reorganization. For purposes of determining
4 whether the Plan meets this requirement, the Debtor has analyzed its ability to meet its
5 obligations under the Plan. The Debtor believes that it will be able to make all of the
6 payments required under the Plan and that confirmation of the Plan is not likely to be
7 followed by liquidation.
8

9 **ARTICLE IX**

10 **ALTERNATIVES TO THE PLAN**

11 The Debtor and the Committee believe that the Plan affords holders of Claims the
12 potential for the greatest realization of assets from the estate and, therefore, that it is in the
13 best interests of creditors. In reaching this conclusion, the Debtor and the Committee have
14 considered alternatives to the Plan as set forth below.
15

16 **A. Alternative Plan of Reorganization**

17 If the Plan is not confirmed and consummated, the Debtor's alternatives include (i)
18 liquidation of the Debtor under Chapter 7 or 11 of the Bankruptcy Code, and (ii) the
19 preparation and presentation of an alternative plan of reorganization.
20

21 The Debtor believes that the Plan enables the Debtor to emerge from Chapter 11
22 successfully and expeditiously and allows holders of Claims to realize the highest recoveries
23 under the circumstances.

24 **B. Chapter 11 Liquidation**

25 In a liquidation under Chapter 11 of the Bankruptcy Code, it is assumed the assets of
26 the Debtor would be sold in an orderly fashion over a more extended period of time than in a

1 liquidation under Chapter 7, and a trustee need not be appointed. Accordingly, creditors
2 could receive greater recoveries than in a hypothetical Chapter 7 liquidation. Although a
3 Chapter 11 liquidation generally is preferable to a Chapter 7 liquidation, the Debtor believes
4 that a liquidation under Chapter 11 is much less attractive to holders of Claims and Equity
5 Interests because a greater return is provided to holders of Claims and Equity Interests in the
6 Plan.
7

8 **C. Chapter 7 Liquidation**

9 If no Chapter 11 plan can be confirmed and consummated, the Chapter 11 Case may
10 be converted to a case under Chapter 7 of the Bankruptcy Code in which a trustee would be
11 elected or appointed to liquidate the assets of the Debtor. The Debtor believes that
12 liquidation under Chapter 7 would result in smaller distributions, if any, being made to
13 creditors than those provided for in the Plan because of the (i) additional administrative
14 expenses involved in the appointment of a trustee, attorneys, and other professionals to assist
15 such trustee; (ii) additional expenses and Claims, some of which could be entitled to priority,
16 which would be generated during the liquidation; and (iii) erosion in value of assets in a
17 Chapter 7 Case in the context of the expeditious liquidation required under Chapter 7 and the
18 “forced sale” atmosphere that would prevail. Additionally, outside of the Chapter 11 context,
19 Class 3 claimants would likely have no incentive to permit any portion of the amounts
20 received on account of the Insurance Rights to be diverted to fund any payment to Class 2
21 claimants, and since there are no other FBS assets that could be liquidated to pay Class 2
22 Claims, it is likely that there would be no recovery for Class 2 claimants outside the Chapter
23 11 context.
24
25
26

1 The Debtor has analyzed what it believes would be the financial result of a forced
2 liquidation of their business. Attached hereto as Exhibit E is the Debtor's liquidation
3 analysis.

4 **ARTICLE X**

5 **GENERAL RISK FACTORS TO BE CONSIDERED**

6
7 HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR
8 SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW,
9 AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE
10 STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND
11 INCORPORATED BY REFERENCE), PRIOR TO VOTING TO ACCEPT OR REJECT
12 THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS
13 CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN
14 AND ITS IMPLEMENTATION.
15

16 **A. Insurance Coverage**

17 The ultimate recoveries, if any under the Plan to holders of Asbestos-Related
18 Personal Injury or Wrongful Death Claims depend upon the amount from recoveries realized
19 by the Liquidating Trust or by individual holders of Asbestos-Related Personal Injury or
20 Wrongful Death Claims under the Insurance Policies. The Non-Settled Insurers have
21 asserted or may assert defenses to their obligations to indemnify and defend the Debtor
22 and/or the Liquidating Trust under Non-Settled Insurance Policies. While the Debtor and the
23 Committee believe that these defenses do not insulate the Non-Settled Insurers from their
24 obligations under the Non-Settled Insurance Policies there can be no guaranty as to the
25 existence and amount of coverage that will be available to satisfy Asbestos-Related Personal
26

1 Injury or Wrongful Death Claims or the timing of payments, if any, under the Non-Settled
2 Insurance Policies.

3 **B. The Injunction**

4 The Debtor intends to seek injunctive relief under Section 105(a) of the Bankruptcy
5 Code. However, there can be no assurance that, in the future, courts might not invalidate all
6 or a portion of any injunction issued under Section 105(a).
7

8 **ARTICLE XI**

9 **CERTAIN TAX CONSEQUENCES OF THE PLAN**

10 The following discussion is a general summary of certain federal income tax aspects
11 of the Plan, and should not be relied upon for purposes of determining the specific tax
12 consequences of the Plan with respect to a particular holder of a Claim or interest. The
13 following discussion is based upon existing provisions of the Tax Code, existing and
14 proposed regulations thereunder, and current administrative rulings and court decisions. No
15 assurance can be given that legislative or administrative changes or court decisions may not
16 be forthcoming which would require significant modification of the statements expressed in
17 this section. Certain tax aspects of the Plan are uncertain due to recent legislation and the
18 lack of applicable regulations and other tax precedent.
19

20 THE DEBTOR IS NOT REQUESTING A RULING FROM THE INTERNAL
21 REVENUE SERVICE (THE "IRS") WITH RESPECT TO ANY OF THE TAX ASPECTS
22 OF THE PLAN AND NO OPINION OF COUNSEL HAS BEEN OBTAINED BY THE
23 DEBTOR WITH RESPECT THERETO. ACCORDINGLY, NO REPRESENTATIONS OR
24 ASSURANCES ARE BEING MADE WITH RESPECT TO THE FEDERAL INCOME
25 TAX CONSEQUENCES AS DESCRIBED HEREIN. THE TAX CONSIDERATIONS
26

1 APPLICABLE TO CERTAIN HOLDERS (SUCH AS PENSION OR PROFIT-SHARING
2 TRUSTS OR FOREIGN INVESTORS) MAY BE DIFFERENT THAN THE GENERAL
3 DISCUSSION CONTAINED HEREIN. THERE MAY ALSO BE STATE, LOCAL OR
4 FOREIGN TAX CONSIDERATIONS APPLICABLE TO EACH HOLDER OF A CLAIM
5 OR INTEREST WHICH ARE NOT ADDRESSED HEREIN. EACH HOLDER OF A
6 CLAIM OR INTEREST AFFECTED BY THE PLAN SHOULD CONSULT HIS OR HER
7 OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES OF THE
8 PLAN WITH RESPECT TO THAT HOLDER'S CLAIM OR INTEREST. THIS
9 INFORMATION MAY NOT BE USED OR QUOTED IN WHOLE OR IN PART IN
10 CONNECTION WITH ANY OFFERING FOR SALE OF SECURITIES.
11

12 **A. Tax Consequences to the Debtor**

13
14 A taxpayer generally is allowed a deduction for the payment of a tort liability Claim
15 only in the taxable year when the payment to a claimant actually is made. Section 468B of
16 the Tax Code, however, provides that if a taxpayer makes a payment to a qualified settlement
17 fund, the taxpayer will be entitled to a deduction at the time of payment although the ultimate
18 claimants, and the amount of their Claims, have not yet been identified. A qualified
19 settlement fund includes a trust established under applicable state law pursuant to a court
20 order to resolve Claims arising out of certain identified liabilities, including tort liabilities.
21 The Debtor anticipates that the Liquidating Trust will be treated as a qualified settlement
22 fund subject to the tax regime set forth in Section 468B of the Tax Code. If, however, the
23 Liquidating Trust does not qualify under Section 468B of the Tax Code, the Liquidating
24 Trust will be deemed a grantor trust of the Debtor which would not allow the Debtor to take a
25 tax deduction in the year of the payment to the Liquidating Trust, but rather, take the
26

1 deduction in the year the funds were paid to holders of Asbestos-Related Personal Injury or
2 Wrongful Death Claims. Also, if the Liquidating Trust were deemed a grantor trust, earnings
3 on funds after receipt from the Debtor would be taxed at the Debtor's higher corporate tax
4 rate.

5 **B. Tax Treatment of the Liquidating Trust**

6
7 The Liquidating Trust will be subject to federal income tax at the maximum rate
8 applicable to a trust on its gross income, including interest, dividends, and any gains on
9 investments, reduced by any administrative costs (including legal accounting, actuarial
10 expenses, and state and local taxes) incurred in the operation of the Liquidating Trust and
11 which would be deductible if incurred by a corporation. Such deductible administrative
12 costs, however, do not include claimants' attorneys' fees. Distributions made to claimants
13 will not be deductible in determining the Liquidating Trust's taxable income. The
14 Liquidating Trust will be required to file tax returns reporting its own income and expenses,
15 as well as information on returns with respect to distributions made to holders of Claims.
16 The Debtor's contributions to the Liquidating Trust on the Effective Date should not be
17 treated as taxable income to the Liquidating Trust under Section 468B of the Tax Code.

18
19 The transfer of the assets to the Liquidating Trust, and all subsequent transfers
20 permitted under subparagraph (c) of this section, shall be treated for all purposes of the Tax
21 Code as a deemed transfer by the Debtor to the Liquidating Trust Beneficiaries, followed by
22 a deemed transfer by the Liquidating Trust Beneficiaries to the Liquidating Trust. The
23 Liquidating Trust Beneficiaries shall be treated as the grantors and deemed owners of the
24 trust assets that they are deemed to transfer to the Liquidating Trust. Whether or not the
25 Liquidating Trust establishes reserves to pay future trust expenses, all Liquidating Trust
26

1 income shall be treated as subject to tax on a current basis. The Liquidating Trustee shall
2 allocate the Liquidating Trust income for each taxable year among the Liquidating Trust
3 Beneficiaries in accordance with their respective interest in the Liquidating Trust, as
4 determined from time to time by the Liquidating Trustee, and the Liquidating Trust
5 Beneficiaries shall be responsible for any tax liability that results from said income. The
6 Liquidating Trustee shall execute and file tax returns on behalf of the Liquidating Trust as a
7 grantor trust pursuant to Treasury Regulation Section 1.671.4(a). The Liquidating Trust shall
8 also be responsible for preparing and filing all tax returns for the Debtors due after the
9 Effective Date for any period prior to the Effective Date.
10

11 **C. Tax Consequences to Holders of Claims and Interests**

12 THE DEBTOR MAKES NO REPRESENTATIONS OR WARRANTIES
13 CONCERNING THE TAX CONSEQUENCES, IF ANY, OF THIS PLAN TO ITS
14 CREDITORS AND EQUITY HOLDERS. EACH CREDITOR AND EQUITY HOLDER
15 SHOULD CONSULT WITH HIS, HER, OR ITS TAX ADVISOR CONCERNING THE
16 PLAN.
17

18 **1. Holders of Asbestos-Related Personal Injury and Wrongful Death Claims**

19 Generally, Section 104 of the Tax Code provides that amounts received as
20 compensation for personal injuries are not includable in income, except to the extent
21 attributable to deductions for medical expenses previously taken by the recipient under
22 Section 213 of the Tax Code. Thus, the amounts paid in the future from the Liquidating
23 Trust to holders of Asbestos-Related Personal Injury or Wrongful Death Claims should not
24 be taxable to such holders, except to the extent that such payments are attributable to medical
25
26

1 expense deductions taken by such individuals under Section 213 of the Tax Code for prior
2 taxable years.

3 **2. Holders of General Unsecured Claims**

4 The holders of Class 2 Claims will not recognize gain or loss, for tax purposes, to the
5 extent that the payment made by the Debtor shall be equal to their respective Claims.
6

7 **D. Information Reporting and Backup Withholding**

8 Under the backup withholding rules of the Tax Code, a holder of a Claim may be
9 subject to backup withholding at a rate of 31% with respect to distributions or payments
10 made pursuant to the Plan, including payments by the Liquidating Trust, unless such holder
11 (i) comes within certain exempt categories (generally including corporations) and when
12 required, demonstrates this fact, or (ii) provides a correct taxpayer identification number, and
13 certifies under penalties of perjury that the taxpayer identification number is correct and that
14 the holder is not subject to backup withholding because of a failure to report all dividend and
15 interest income. If holders do not provide adequate documentation, the Debtor or the
16 Liquidating Trust, as the case may be, will be required to withhold tax.
17

18 **ARTICLE XII**

19 **VOTING PROCEDURES**

20 Detailed voting instructions are provided with the ballot accompanying this
21 Disclosure Statement. For purposes of the Plan, only holders of Class 2 Claims and Class 3
22 Claims are entitled to vote. If your Claim is not a Class 2 Claim or Class 3 Claim, you are
23 not entitled to vote on the Plan and you will not receive a ballot with this Disclosure
24 Statement. If you are a holder of a Claim in Class 2 or Class 3, you should read your ballot
25
26

1 and follow the listed instructions carefully. Please use only the ballot that accompanies this
2 Disclosure Statement.

3 **IF YOU HAVE ANY QUESTIONS CONCERNING THE BALLOT, YOU MAY**
4 **CONTACT THE BALLOTING AGENT:**

- 5 1. By mail at 1100 New York Ave. NW, Suite 700, Washington DC 20005, c/o
6 Elaine Andersen; or
7 2. By email at andersene@gotofirm.com.

8 **A. Vote Required for Acceptance by Classes Entitled to Vote**

9 Pursuant to Section 1126(c) of the Bankruptcy Code, the Class 2 impaired class shall
10 have accepted the Plan if: (i) the holders (other than Claims held by any holder designated
11 pursuant to Section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in dollar
12 amount of the Allowed Claims actually voting in such class have voted to accept this Plan;
13 and (ii) more than one-half (1/2) in number (other than Claims held by any holder designated
14 pursuant to Section 1126(e) of the Bankruptcy Code) of such Allowed Claims actually voting
15 in such class have voted to accept this Plan.
16

17 Pursuant to Section 1126(c) of the Bankruptcy Code, the Class 3 impaired class shall
18 have accepted the Plan if: (i) the holders (other than Claims held by any holder designated
19 pursuant to Section 1126(e) of the Bankruptcy Code) of at least two-thirds (2/3) in dollar
20 amount of the Allowed Claims actually voting in such class have voted to accept this Plan;
21 and (ii) more than one-half (1/2) in number (other than Claims held by any holder designated
22 pursuant to Section 1126(e) of the Bankruptcy Code) of such Allowed Claims actually voting
23 in such class have voted to accept this Plan.
24
25
26

1 **B. Classes Not Entitled to Vote**

2 Holders of Administrative Expense Claims and Priority Tax Claims are not deemed to
3 be members of voting Classes and will not receive ballots. Holders of Other Priority Claims
4 (Class 1) are not impaired and will not receive ballots. Holders of an Equity Interest (Class
5 4) are deemed to reject the Plan and will not receive ballots.
6

7 **C. Voting**

8 In order for your vote to be counted, it must be either postmarked actually received by
9 the Balloting Agent at the following address before the Voting Deadline of 5:00 p.m., Pacific
10 Daylight Time, on April 6, 2018: by mail at 1100 New York Ave. NW, Suite 700,
11 Washington DC 20005, c/o Elaine Andersen or by email at andersene@gotofirm.com.
12

13 If a ballot is damaged or lost, you may contact the Balloting Agent at the address set
14 forth above. Any ballot that is executed and returned but that does not indicate an acceptance
15 or rejection of the Plan will not be counted.

16 If the instructions on your ballot require you to return the ballot to your attorneys, you
17 must deliver your ballot to them in sufficient time for them to process it and return it to the
18 Balloting Agent before the Voting Deadline.

19 **ARTICLE XIII**

20 **CONCLUSION**

21 The Debtor and the Committee believe that confirmation and implementation of the
22 Plan is preferable to any of the alternatives described above because it will provide the
23 greatest recoveries to holders of Claims. In addition, other alternatives would involve
24 significant delay, uncertainty, and substantial additional administrative costs. **THE**
25 **DEBTOR AND THE COMMITTEE URGE HOLDERS OF CLASS 2 GENERAL**
26

1 UNSECURED CLAIMS AND CLASS 3 ASBESTOS-RELATED PERSONAL INJURY
2 OR WRONGFUL DEATH CLAIMS TO VOTE TO ACCEPT THE PLAN AND TO
3 EVIDENCE SUCH ACCEPTANCE BY RETURNING THEIR BALLOTS SO THAT
4 THEY WILL BE POST-MARKED ON OR BEFORE APRIL 6, 2018 OR ACTUALLY
5 RECEIVED NO LATER THAN 5:00 P.M. (PACIFIC DAYLING TIME) ON APRIL 6,
6 2018.

8 Fraser's Boiler Service, Inc.

10 By: /s/ David J. Gordon

12 Date: 3/23/2018

14 DATED this 20th day of April, 2018.

15 EISENHOWER CARLSON PLLC

16 By: /s/ Katrina F. Self
17 Darren R. Krattli, WSBA #39128
18 Katrina F. Self, WSBA #52359
19 Attorneys for Debtor