How Distressed Investors Think About Things

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ABI 2016 Winter Leadership Conference

December 1-3, 2016

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Alert

Seventh Circuit Limits Bankruptcy Safe Harbor Protection

September 8, 2016

The safe harbor protection of Bankruptcy Code ("Code") §546(e) does not protect "transfers that are simply conducted *through* financial institutions," held the U.S. Court of Appeals for the Seventh Circuit on July 28, 2016. *FTI Consulting Inc. v. Merit Management Group LP*, 2016 WL 4036408, *1 (7th Cir. July 28, 2016). Because the debtor's transfer of funds to the transferee passed through a financial institution acting only as a conduit that was not one of the parties covered by §546(e) (i.e., "commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency"), the asserted fraudulent transfer was not protected by §546(e) and was thus recoverable, said the court when reversing the district court's dismissal of the trustee's claim.

Relevance
Appellate courts, including the Seventh Circuit, have generally agreed on the vitality and breadth of the safe harbor defense contained in §546(e). It insulates from the trustee's fraudulent transfer or preference attack a "settlement payment" or "margin payment" on a "securities contract," "commodity contract," or "forward contract … made by or to (or for the benefit of)" certain "financial institutions," except when the debtor makes the payment with "actual intent to hinder, delay, or defraud" creditors under Code §548(a)(1)(A).

Despite policy arguments by trustees, creditors and academics, the Courts of Appeals have generally refused to add to the Code's plain language. See, e.g., *In re Quebecor World (USA) Inc.*, 719 F.3d 94 (2d Cir. 2013) (*held*, payments by debtor to institutional noteholder trustee for noteholders "in exchange for private placement notes … clearly fell within the safe harbor for 'transfers made … in connection with a securities contract.'"); *In re QSI Holdings, Inc.*, 57 F.3d 545, 551 (6th Cir. 2009) (bank's role in leveraged buyout "sufficient to satisfy the requirement that the transfer was made to a financial institution," although bank was only an exchange agent). In *FTI*, however, the Seventh Circuit refused to "interpret the safe harbor so expansively that it covers any transaction involving securities that uses a financial institution … as a conduit for funds." 2016 WL 4036408, at *6, agreeing with *In re Munford, Inc.*, 98 F.3d 604, 610 (11th Cir. 1996) (2-1) (Code §546(e) inapplicable to payments made by debtor to shareholders when financial institutions acted as mere conduits). As the Seventh Circuit stressed, Congress never said "that acting as a conduit for a transaction between non-named entities is enough to qualify for the safe harbor … ." 2016 WL 4036408, at *7. The court, of course, recognized that it was "taking a different position from the one adopted by five of our sister circuits, which have interpreted section 546(e) to include the conduit situation." *Id.* at *6. This circuit split makes *FTI* a likely candidate for Supreme Court review.

Facts
"Buyer" agreed to buy all of the shares of an entity known as B from certain entities, including "Seller," a 30-percent shareholder of B, for $55 million, borrowing the funds from a group of lenders, with the transfer of the funds flowing through "Bank." As the Seventh Circuit noted, "neither [Buyer] nor [Seller] were 'parties in the securities industry,' [but were] simply corporations that wanted to exchange money for privately held stock." *Id.* at *6.

After Buyer later filed a Chapter 11 petition, its litigation trustee sued Seller under Code §548 and applicable state law to recover $16.5 million, representing Seller's 30-percent equity interest paid by Buyer to Seller. Seller argued that the transfer was "made by or to (or for the benefit of)" an entity named in Code §546(e)," namely, a "financial institution" (i.e., Bank), and was, therefore, protected by the safe harbor. Because the funds passed through Bank, the district court dismissed the trustee's complaint, agreeing with Seller that the transfer had passed through a financial institution. Seller "did not rely on its own status …, because ... neither [Buyer] nor [Seller] is a commodity broker, forward contract merchant, stock broker, financial institution, financial participant, or securities clearing agency (the entities named in section 546(e))." *Id.* at *1. Rather, Seller argued that the safe harbor applied because of "the minor involvement of [Bank and the lenders]." *Id.*

Analysis
The Seventh Circuit carefully examined the language of §546(e), its statutory context, its legislative history and its significance in the securities industry.

Statutory Language. First, said the court, the "language of the statute, standing alone … is unclear whether the safe harbor was meant to include intermediaries, or if it is limited to what we might think of as the real parties in interest — here, [Buyer and Seller]." *Id.* at *2. Because Code §548 refers to the avoidance of transfers to or for the benefit of entities subject to fraudulent transfer liability, the court understood "the safe harbor as applying to the transfers that are eligible for avoidance in the first place." *Id.* at *3. And "because the safe harbor is meant to protect covered entities against avoidance where it might occur, … [§]546(e) provides a safe harbor only where the debtor has [made a transfer] to the covered entity." *Id.* Most important, the court explained, the "$16.5 million transferred to [Seller] … was one made by the debtor using a bank as a conduit." *Id.* Indeed, it is "the receipt of value [that] … gives an entity the safe-harbor protections of 546(e) … . [I]t is the economic substance of the transaction that matters." *Id.* at *4.

Relying on one of its earlier decisions, the court reasoned "that transfers 'made by or to (or for the benefit of)' in the context of 546(e) [apply only] to transfers made to 'transferees'… .". *Id.* at *5, citing *Bonded Financial Services, Inc. v. European American Bank*, 838 F.2d 890, 893 (7th Cir. 1988). In that case, when a bank "acted as a financial intermediary" and "received no benefit," the court held it was not a "transferee" and, therefore, was not liable under the Code. In other words, Bank here was not a transferee, but only a conduit, and could not be held liable.

Legislative History. When Congress created the safe harbor in 1982, "[n]othing … indicated that the safe harbor applied to financial institutions in their capacity as intermediaries." *Id.*, at *5. As the court had previously acknowledged in *Grede v. FCStone LLC*, 746 F.3d 244, 252 (7th Cir. 2014), Congress intended to "protect … the market from systemic risk and allow … parties in the securities industry to enter into transactions with greater confidence," and to prevent "one large bankruptcy from rippling through the securities industry." *Id.* Although the Seventh Circuit and other appellate courts have held that section

546 should be construed "broadly," there are still "limits" on its construction. Here, neither Buyer nor Seller were "parties in the securities industry." *Id.* at *6. "The safe harbor addresses cases where the debtor-transferor or transferee is a financial institution or the other named entity." *Id.* Moreover, if the transfer to Seller were avoided here, "there is no evidence that it would have any impact on [the lenders, Bank] or any other bank or entity named in section 546(e)." *Id.* at *6.

Circuit Split. The Seventh Circuit acknowledged that "five of our sister circuits … have interpreted section 546(e)" differently, but noted that the Eleventh Circuit "agrees with us." *Id.*, citing *In re Munford*, 98 F.3d 604, 610 (11th Cir. 1996) (2-1). Despite Seller's argument that Congress had impliedly rejected *Munford* with a 2006 amendment, the Seventh Circuit did "not believe that Congress would have jettisoned *Munford*'s rule" indirectly. Nor had Congress said "that acting as a conduit for a transaction between non-named entities is enough to qualify for the safe harbor." *Id.* at *7.

Comment

FTI confirms that entities uncovered by §546(e) will not be able to rely on the safe harbor because of the coincidental flow of funds through a "financial institution" intermediary. The Seventh and Eleventh Circuits, for example, would reverse a decision such as *AP Services LLP v. Silva*, 483 B.R. 63, 68–69, 71 (S.D.N.Y. 2012) (*held*, §546(e) required dismissal of the fraudulent transfer complaint when failed leverage buyout preceded bankruptcy; debtor transferred funds "directly to [the selling shareholder defendants'] bank accounts and [the funds] did not pass … through a clearinghouse or [similar] intermediary."). In contrast, as noted, the Second, Third, Sixth, Eighth and Tenth Circuits do not accept the Seventh Circuit's analysis. The issue may still remain open in the First, Fourth, Fifth, Ninth and D.C. Circuits. Only the Supreme Court can resolve this circuit split and prevent forum shopping.

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Alert

District Court Affirms Cramdown Plan in *Momentive* Case

May 14, 2015

The U.S. District Court for the Southern District of New York, on May 4, 2015, affirmed U.S. Bankruptcy Judge Robert D. Drain's decision confirming the reorganization plan for Momentive Performance Materials Inc. and its affiliated debtors.[1] The Bankruptcy Court's decision was controversial because it forced the debtors' senior secured creditors to accept new secured notes bearing interest at below-market rates. The secured creditors are expected to appeal to the U.S. Court of Appeals for the Second Circuit. This ruling is noteworthy (and troubling for secured creditors, especially those who provide financing to distressed companies) because it sets a road map for Chapter 11 debtors to pursue reorganization plans that seek to force secured lenders to accept new secured notes at below-market rates. And as troubling as that may be in a relatively low interest rate environment, this impact will be amplified as interest rates increase. Consequently, secured creditors will need to re-evaluate pricing to compensate for this increased risk.[2]

Formula Approach Versus Market Approach

In the *Momentive* case, the debtors proposed a reorganization plan that offered a choice to its senior secured creditors: (1) vote to accept the plan and receive full payment in cash, *but* waive the right to seek payment of a $200-million make-whole payment; or (2) vote to reject the plan and receive new secured notes and retain the right to litigate the allowance of the make-whole claim. The creditors voted to reject the plan, and the Bankruptcy Court determined they were not entitled to the make-whole. To confirm the plan over the objection of the class of secured creditors (a so-called "cramdown" plan), the Bankruptcy Court had to determine whether the plan was "fair and equitable." A plan is "fair and equitable" in its treatment of a class of secured creditors if it provides that the creditors will: (1) retain their liens; and (2) receive deferred cash payments with a "present value" equal to the amount of their secured claim.[3] To determine the present value of the new notes, the Bankruptcy Court had to determine the appropriate interest, or discount, rate.

The dispute concerned the methodology for determining the interest rate on the new notes. There were two different approaches — the formula approach or the market approach. The "formula approach"

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[1] *See U.S. Bank Nat'l Ass'n v. Wilmington Savings Fund Society, FSB (In re MPM Silicones, LLC)*, No. 14-7471, slip op. (S.D.N.Y. May 4, 2015) ("Ruling").

[2] Our analysis of the lower court decision on the cramdown rate was the subject of a prior SRZ *Alert*, "Bankruptcy Court Approves Non-Market Cramdown Rate on Momentive Secured Creditors," available at www.srz.com/Bankruptcy_Court_Approves_Non-Market_Cramdown_Rate_on_Momentive_Secured_Creditors. The District Court also affirmed Judge Drain's decision to deny payment of a make-whole premium because the applicable credit documents did not clearly provide that payment was due after acceleration of the indebtedness.

[3] Ruling at 15-16; *see also* Bankruptcy Code § 1129(b)(2)(A)(i).

starts with a risk-free (or low-risk) base rate (such as the Treasury rate or prime rate) and is adjusted by the Bankruptcy Court, in this case in the range of 1 to 3 percent, to account for risks based on the circumstances of the case, the nature of the collateral, the terms of the new note and feasibility of the plan.[4] The U.S. Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465, 479-80 (2004) approved the use of the formula approach in determining the cramdown rate on a new note given to an existing lender in a Chapter 13 consumer case where the note was secured by a used truck. The "market approach" refers to the rate of interest the debtor/borrower would be required to pay for the same financing in an efficient market.[5] In a footnote in *Till*, the Supreme Court noted that where there is a free market of willing debtors in possession and exit lenders, "it might make sense to ask what rate an efficient market would produce."[6]

In *Momentive*, there was indisputable evidence of the market rate because the debtors had obtained an exit facility commitment to refinance the secured debt in case the secured creditors voted in favor of the plan. The market rate on the committed exit facility was higher than the rate provided in the new notes under the plan. Judge Drain decided to apply the formula approach.

A summary of the existing debt and new notes is set forth below:

	Prepetition First Lien Notes	New First Lien Note		Prepetition 1.5 Lien Notes	New 1.5 Lien Note
Principal	$1 billion	$1 billion		$250,000	$250,000
Maturity	8 years (issued in 2012 and due in 2020)	7 years (issued in 2014 and due in 2021)		8 years due (issued in 2012 and due in 2020)	7.5 years (issued in 2014 and due in 2021)
Collateral	Blanket lien	Same		Blanket lien subordinate to first lien notes	Same
Interest Rate	8.875%	3.6% (7 year Treasury plus risk premium of 1.5%)		10%	4.1% (7.5 year Treasury plus risk premium of 2%)
		As compared to a market rate of 5%			As compared to a market rate of 7%

[4] Ruling at 17.

[5] *Id.* at 16-17.

[6] *Till*, 541 U.S. at 476 n.14.

District Court Affirms Use of Formula Approach

On appeal, the creditors argued that Judge Drain erred in applying the formula approach. They argued that the market approach, unlike the formula approach, was consistent with "basic principles of finance." Moreover, they posited, other courts have applied the market approach in corporate Chapter 11 cases after the Supreme Court's decision in *Till.*[7]

The District Court, like the Bankruptcy Court, rejected the market approach. The District Court held that the use of the market rate would: (1) impose "significant evidentiary costs" and would aim to "make each individual creditor whole rather than to ensure the debtor's payments have the required present value"; and (2) "overcompensate" creditors because it would cover lenders' transaction costs and profits, neither of which is relevant in the context of cramdown loans.[8]

The District Court further noted that consideration of the market was not required in Chapter 11 cases, and that the Bankruptcy Code did not require putting creditors "in the same position they would have been in had they arranged a new loan."[9] On this point, the District Court noted that the Second Circuit (a court whose decisions are binding on the District Court) had endorsed this reasoning in a pre-*Till* case. Specifically, in *In re Valenti*, 105 F.3d 55 (2d Cir. 1997), the Second Circuit had "rejected the efficient market approach," explaining that:

> [T]he cramdown interest rate is meant "to put the creditor in the same economic position that it would have been in had it received the value of its claim immediately. The purpose is *not* to put the creditor in the same position that it would have been in had it arranged a 'new' loan … [T]he value of a creditor's allowed claim does not include any degree of profit. There is no reason, therefore, that the interest rate should account for profit … Otherwise, the creditor will receive more than the present value of its allowed claim."[10]

The secured creditors also argued that the formula approach was misapplied. Specifically, they argued that Judge Drain erred in using the Treasury rate as the base risk-free rate, given that the higher prime rate (then 3.25 percent) had been applied by the Supreme Court in *Till*. Moreover, they argued that adding an "artificial" and "arbitrary" risk premium of 1 to 3 percent to that base rate was also wrong.

The District Court rejected these arguments, stating that the Bankruptcy Court was not required under *Till* to choose the prime rate as the base rate and that its choice of the Treasury rate was not reversible error.[11] The District Court further held that the risk premium adjustment by the Bankruptcy Court was "well within the bounds of reasonableness" and was appropriate given that the Bankruptcy Court had found that no "extreme risks" existed in this case.[12] Thus, the District Court affirmed the Bankruptcy

[7] *See, e.g.*, *In re American HomePatient*, 420 F.3d 559 (6th Cir. 2005).

[8] Ruling at 17.

[9] *Id.* at 19.

[10] *Id.* at 17-18 (citing *Valenti*, 105 F.3d at 63-64) (emphasis in original).

[11] *Id.* at 20-21.

[12] *Id.* at 21.

Court's use of a Treasury rate plus a risk premium in the 1 to 3 percent range as appropriate to cram down secured creditors under a plan.[13]

Conclusion

The decision represents a significant risk that secured creditors must evaluate at the time a new loan is originated or purchased in the secondary market. We anticipate that more debtors will be pursuing cramdown plans to obtain the benefits afforded by long-term below-market financing that would not otherwise be available. We further anticipate that other constituents, and in particular unsecured creditors, will be supportive of such plans because they will permit those constituents to capture the difference in value created by application of the formula approach over the market approach.

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[13] *Id.*

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Second Circuit Holds Safe Harbor Defense Bars Creditors' State Law Fraudulent Transfer Claims

March 29, 2016

Creditors of a Chapter 11 debtor asserting "state law, constructive fraudulent [transfer] claims … are preempted by Bankruptcy Code Section 546(e)," held the U.S. Court of Appeals for the Second Circuit on March 29, 2016. *In re Tribune Company Fraudulent Conveyance Litigation*, 2016 WL ____, at *1 (2d Cir. March 29, 2016), *as corrected*. Section 546(e), the so-called "safe harbor" defense, "shields from avoidance proceedings brought by a bankruptcy trustee transfers by or to financial intermediaries effectuating settlement payments in securities transactions or made in connection with a securities contract, except through an intentional fraudulent [transfer] claim." *Id.* Affirming the district court's dismissal of the creditors' suit, the Second Circuit rejected the district court's analysis, relying instead on a preemption analysis. In a separate summary unpublished order, the court affirmed another district court decision dismissing a similar suit on preemption grounds "for substantially [the same] reasons." *Whyte v. Barclays Bank PLC*, No. 13-2653-CV (March 24, 2016).

The court in *Tribune* explicitly rejected the district court's holding that Section 546(e) bars only a bankruptcy trustee from avoiding a settlement payment (i.e., Congress never intended to prohibit individual creditors from avoiding settlement payments under state law). *In re Tribune Company Fraudulent Conveyance Litigation*, 499 B.R. 310, 318-20 (S.D.N.Y. 2013). The debtor in *Tribune* had transferred "over $8 billion to a 'securities clearing agency' [and another] 'financial institution,'… [who acted] as intermediaries in [a leveraged buyout ("LBO")] transaction," but the plaintiff creditors sued only the shareholders who ultimately received the funds, *not* the intermediaries. 2016 WL ____, at *1.

Relevance

Lower courts had been split as to whether the Bankruptcy Code ("Code") preempted individual creditors from prosecuting state law claims in the context of a bankruptcy case. *See, e.g.*, *In re Lyondell Chem. Co.*, 503 B.R. 348, 372-73 (Bankr. S.D.N.Y. 2014), *as corrected* (Jan. 16, 2014) (Section 546(e) does *not* protect "LBO payments to stockholders [when they] are the ultimate beneficiaries … and can give the money back to injured creditors"). *Contra*, *Whyte v. Barclays Bank PLC (In re SemCrude, L.P.)*, 494 B.R. 196, 201 (S.D.N.Y. 2013) (Code's safe harbor defense "impliedly preempts state-law fraudulent" transfer suits).

Imaginative lawyers have diligently tried to work around the Second Circuit's two recent decisions broadly reading Section 546(e). *See Enron Creditors Recovery Corp. v. Alfa, S.A.B. de C.V.*, 651 F.3d 329, 339 (2d Cir. 2011); and *In re Quebecor World (USA) Inc.*, 719 F.3d 94 (2d Cir. 2013). These lawyers have asked creditors to assign their claims to the trustee, *Whyte*, *supra*, or argued that individual creditors could sue on their own. *Tribune*, *supra*.

The Second Circuit's *Tribune* and *Whyte* decisions resolve the preemption issue. As shown below, the court also responded to commentators who complained about the negative financial impact on debtors' estates caused by decisions broadly construing the Code's safe harbor defense. *See, e.g.*, Oscar N. Pinkas & David A. Pisciotta "To Boldly Go Where No Court Has Gone Before: *Enron* and the Application of § 546(e)," *ABI Journal* (Oct. 2011) ("[S]ince [*Enron*] was rendered, lender recoveries and unsecured creditor distributions will be diminished by literally billions of dollars."); Jonathan Stepanian, "Will Bankruptcy Preference Decision [*Enron*] 'Imperil Decades of Cases'?" *Litigation News* (Fall 2011).

Facts

Unsecured creditors sued the debtor's shareholders, asserting "state law, constructive fraudulent [transfer] claims." 2016 WL ____, at *2. Essentially, they asserted that the debtor made cash transfers "for less than reasonably equivalent value when the debtor was insolvent or was rendered so by the transfer." Because the creditors' committee in the pending Chapter 11 case had not brought these claims within the Code's two-year statute of limitations, the creditors argued that the state law claims had "reverted to individual creditors." *Id.* The bankruptcy court allowed the creditors to sue but stressed that it was not "resolving the issues of whether the individual creditors had statutory standing to bring such claims or whether such claims were preempted by Section 546(e)." *Id.* at *3. Under the debtor's judicially confirmed reorganization plan, the individual creditors were permitted to pursue "any and all LBO-related Causes of Action arising under state fraudulent conveyance law," except for any federal intentional fraudulent transfer claims and other related claims being pursued by a Litigation Trust authorized to pursue those claims. *Id.*

The district court consolidated the individual creditors' claims with those asserted by the Litigation Trust. "It later dismissed their claims, reasoning that the … Code's automatic stay … deprived [the creditors] of statutory standing to pursue their claims so long as the Litigation Trustee was pursuing the avoidance of the same transfers." *Id.* Rejecting the defendant shareholders' preemption argument under Section 546(e), the district court held that the section "applied only to a bankruptcy trustee … and [that] … Congress had declined to extend Section 546(e) to state law, fraudulent conveyance claims brought by creditors." *Id.* at *4.

The Second Circuit

Preemption

The court easily found that the bankruptcy court's orders and the confirmed reorganization plan permitted the creditors to assert "actionable state law, constructive fraudulent conveyance claims." *Id.* at 5. More important, however, the court held that the creditors' claims were "preempted because they conflict with … Section 546(e)." *Id.* Despite the language of the section "limiting avoidance by a trustee," but "not creditors acting on their behalf," preemption was, in the court's view, still possible. First, "detailed, preemptive federal regulation of creditors' rights has … existed for over two centuries," and the "Bankruptcy Code constitutes a wholesale preemption of state laws regarding creditors' rights." *Id.* at *7. Indeed, explained the court, the creditors' "state law claims were preempted when the Chapter 11 [case] commenced." Once the debtor "entered bankruptcy, the creditors' avoidance claims were vested in the federally appointed trustee." Any constructive fraudulent transfer claim, assertable by a trustee under the Code, "is a claim arising under federal law." Finally, disposition of these claims has "everything to do with the … Bankruptcy Code's balancing of debtors' and creditors' rights, … or rights among creditors, … and nothing to do with the vindication of state police powers." *Id.* Moreover, "the policies reflected in Section 546(e) relate to securities markets which are subject to extensive federal

regulation… . [T]here is no measurable concern about federal intrusion into traditional state domains." *Id.* at *8.

The Language of Section 546(e)
Section 544(b) enables a trustee to "avoid a 'transfer … [by] the debtor … voidable under applicable law by a[n] [unsecured] creditor," but Section 546(e) "expressly prohibits trustees … from using [these] avoidance powers … against the transfers specified in [that section]." *Id.* Thus, "Section 546(e) covers all transfers by or to financial intermediaries that are 'settlement payment[s]' or 'in connection with a securities contract.' Transfers in which either the transferor or transferee is not such an intermediary are clearly included in [Section 546(e)]. So long as the transfer sought to be avoided is within the language [of Section 546(e)], the Section includes avoidance proceedings in which the intermediary would escape a … judgment." *Id.*

No Automatic Reversion of Claims to Creditors
The court rejected the creditors' argument that the claims "automatically" reverted to them after the applicable statute of limitations had expired "or by the bankruptcy court's lifting of the stay." *Id.* at *9-10. First, reasoned the court, the Code does not support the creditors' argument. "Section 544's statute of limitations … says nothing about the reversion of claims vested in the trustee … by Section 544." *Id.* at *11. Because a statute of limitations is "intended to limit the assertion of stale claims and to provide peace to possible defendants … , and not to change the identity of the authorized plaintiffs without some express language to that effect," the creditors' argument failed. Also, because Section 546(e) permits a trustee to bring an intentionally fraudulent transfer claim, it would be anomalous, reasoned the court, to allow the trustee to bring these claims "while not extinguishing constructive fraud claims but rather leaving them to be brought later by individual creditors. In particular, enforcement of the intentional fraud claim [by the trustee] is undermined if creditors can later bring state law, constructive fraudulent [transfer] claims involving the same transfers. Any trustee would have grave difficulty negotiating more than a nominal settlement in the federal action if it cannot preclude state claims attacking the same transfers … . As happened [here], … the trustee's … action awaits the pursuit of piecemeal actions by creditors … [,] precisely [contrary to] the intent of the Code's procedures." *Id.*

Effect on Securities Markets
Finally, the court rejected the creditors' argument, based on their "imagined" view of the securities market, that Section 546(e) limits only the *trustee's* avoidance powers but permits actions by individual creditors. *Id.* at *12. The creditors argued that "actions by trustees … are a greater threat to securities markets than are actions by individual creditors," but, said the court, this "argument lacks any support whatsoever in the legislative deliberations that led to Section 546(e)'s enactment." "Moreover," added the court, "[the creditors'] arguments understate the number of creditors who would sue, if allowed, and the corresponding extent of the danger to securities markets." *Id.*

Effect on Creditor Recoveries
The court rejected the creditors' argument that its reading of Section 546(e) would undermine "the goal of maximizing the assets available to creditors." *Id.* According to the court, the purpose of the Section is "to protect a national, heavily regulated market by limiting creditors' rights … . Section 546(e) cannot be trumped by the Code's goal of maximizing the return to creditors without thwarting the Section's purposes." *Id.* at *19.

Whyte v. Barclays Bank PLC

The Second Circuit, in an accompanying unpublished summary order, affirmed a district court's holding that the Code "section 546(g) 'safe harbor' impliedly preempts state-law fraudulent conveyance actions seeking to avoid 'swap transactions' as defined by the Code." *Whyte v. Barclays Bank PLC*, 494 B.R. 196, 201 (S.D.N.Y. 2013). The court affirmed "for substantially the reasons stated in" the *Tribune* opinion. In *Whyte*, the district court rejected a trustee's "clever" assignment of state law fraudulent transfer claims to avoid the Code's "swap agreement" safe harbor contained in Section 546(g). Like Section 546(e), Section 546(g) insulates pre-bankruptcy transfers "made by or to … a swap participant … under or in connection with any swap agreement." *Id.* at 199.

Five weeks prior to bankruptcy, the defendant bank in *Whyte* had acquired the debtor's "portfolio of commodities derivatives traded on the New York Mercantile Exchange" for roughly $143 million. That portfolio later became profitable, apparently causing creditors to assert that the transaction was a fraudulent transfer under applicable state law. *Id.* at 198. Although the debtor's Chapter 11 plan documents provided that "certain creditors … and the relevant debtors … putatively assigned 'any and all' of their claims, [including fraudulent transfer claims,] to the [litigation] trust," the district court relied on implied preemption to dismiss the complaint. According to the district court, the trustee's "clever" attempt to rely on her state law rights as an "assignee," but not as the "trustee of the bankruptcy estate … would, in effect, render section 546(g) a nullity." *Id.* at 199.

Comment

Tribune and *Whyte* are consistent with the broad reading of the Code's safe harbor defense by appellate courts. *Enron Creditors Recovery Corp.v. Alfa, S.A.B. de C.V.*, 651 F.3d 329, 339 (2d Cir. 2011) (trustee barred from recovering settlement payments for debtor's early redemption of publicly traded commercial paper) [1]; *In re Quebecor World (USA) Inc.*, 719 F.3d 94 (2d Cir. 2013) (debtor's payments to redeem private placement notes insulated from preference attack by Sections 546(e)); *In re QSI Holdings*, 571 F.3d 545, 550 (6th Cir. 2009) (same); *In re Bevill, Bresler & Schulman Asset Mgmt Corp.*, 898 F.2d 742, 751-52 (3d Cir. 1989) (same); *In re Kaiser Steel Corp.*, 952 F.2d 1230, 1237-40 (10th Cir. 1991); *In re Comark*, 971 F.2d 322, 326 (9th Cir. 1992); *In re Resorts Int'l. Inc.*, 181 F.3d 505, 514-16 (3d Cir. 1999) (payments to shareholders in LBO are settlement payments for purposes of Section 546(e)); *Contemporary Indus. Corp. v. Frost*, 564 F.3d 981, 987 (8th Cir. 2009) (payments to selling shareholders in LBO insulated by Section 546(e)).

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[1] SRZ represented Alfa in the *Enron* litigation and certain shareholders in the *Tribune* litigation.

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Alert

Seventh Circuit Voids Lien Securing Rescue Loan but Rejects Equitable Subordination Claim

January 14, 2016

A "bank [making a secured rescue loan] had information that should have created the requisite suspicion … to conduct a diligent search for possible dirt" — i.e., whether the debtor had the right to pledge $312 million of customer securities, held the U.S. Court of Appeals for the Seventh Circuit on Jan. 8, 2016. *In re Sentinel Management Group, Inc.*, 2016 WL 98601, at *2 (7th Cir. Jan. 8, 2016) ["*Sentinel V*"]. The Seventh Circuit reversed the district court, voided the defendant bank's lien as a fraudulent transfer, and rejected the bank's good faith defense. Based on the district court's detailed findings of inquiry notice, the Seventh Circuit stressed that "the bank had lent approximately $300 million to a company that had capital equal to roughly 1/150th of that amount" at a time when the debtor was mysteriously "able to secure the entire loan." *Id.* at *3. Because the "obvious" source of the collateral "was the [debtor's] customer accounts," and because "the bank had … documents [showing] on even a casual perusal … that [the debtor] lacked authority to pledge" the assets, the bank "was on inquiry notice that the assets … had been fraudulently" pledged to it. *Id.* at *6. Nevertheless, the court of appeals affirmed the district court's refusal to subordinate the bank's unsecured claim because the bank's "negligence" was not "an adequate basis for imposing equitable subordination." *Id.* at *5. According to the court, "the trustee ha[d] not proved" that the bank knew the debtor "was securing the bank's loans with customers' money without their consent." *Id.*

Relevance

Sentinel V provides lenders with helpful guidance in the making of rescue loans. It not only shows the importance of "inquiry notice" to a lender's asserted "good faith" defense, but it also shows what constitutes "egregious and conscience shocking" conduct for a lender's claim to be subordinated on equitable grounds. *In re Sentinel Management Group, Inc.*, 2014 WL 6990322, at *1 (N.D. Ill. Dec. 10, 2014) ("*Sentinel IV*"). *Sentinel V* is the fifth reported decision on this dispute in eight years of litigation. The transfers under attack were made in 2007; the district court's original decision came down in 2010; and the Seventh Circuit handed down two prior opinions in 2012 and 2013. Before rendering its 2010 decision, *In re Sentinel Management Group, Inc.*, 441 B.R. 864 (N.D. Ill. 2010) ("*Sentinel I*"), the district court had "struggled with the issues following a seventeen day bench trial. After hearing from more than a dozen witnesses, listening to audio recordings between [the parties], and reviewing hundreds of exhibits," it had initially dismissed the trustee's claims six years ago. *In re Sentinel Management Group, Inc.*, 728 F.3d 660, 666 (7th Cir. 2013) ("*Sentinel III*").

The Seventh Circuit *In Sentinel III* had held that the debtor investment manager's "failure to keep client funds properly segregated" and its later pledge of those funds "to secure an overnight loan" from the

defendant bank to stay in business may have constituted (1) a fraudulent transfer; and (2) grounds for equitably subordinating the bank's $312-million secured claim. *Id.* at 668, 670-72. Reversing and remanding the case to the district court for further litigation over the bank's asserted "good faith" defense because of "inconsistencies" in that court's *Sentinel I* decision, the Seventh Circuit found that the debtor-manager's "pledge of segregated funds as collateral for loans" was likely a fraudulent transfer based on its "actual intent to hinder, delay or defraud" creditors under Bankruptcy Code ("Code") Section 548(a)(1)(A). *Id.* at 666. *See* M.L. Cook, "Seventh Circuit Reverses 'Inconsistent' District Court Fraudulent Transfer and Equitable Subordination Ruling," 31 *Bankr. Strategist*, No. 1 (November 2013). When remanding, the Seventh Circuit stressed in *Sentinel III* that the bank's good-faith-for-value defense on remand will be "very difficult" because it will have to prove "that it was not on inquiry notice of [the debtor's] possible insolvency." *Id.* at 668 n.2. The Seventh Circuit in *Sentinel III* directed the lower court, on remand, to "clarify … exactly" what the lender knew and whether its "failure to investigate" the debtor was "reckless" or "deliberately indifferent." *Id.* at 672.

The district court, in *Sentinel IV*, purportedly clarifying its prior *Sentinel I* opinion, held that the bank's "good faith" insulated it under Code Section 548(c) from liability. It also held that the bank had not engaged in "egregious conduct" sufficient to subordinate its lien on equitable grounds. Conceding the debtor's "actual intent to defraud [its creditors]," the district court in *Sentinel IV* still upheld the bank's good faith defense in accepting the pledge of customer securities. *Id.* at *8.

Facts

The debtor investment manager ("Sentinel") had "marketed itself to its customers as providing a safe place to put their excess capital, assuring solid short-term returns, but also promising ready access to the capital." Sentinel further "represented that it would maintain customer funds in segregated accounts as required under the Commodity Exchange Act." Thus, "at all times a customer's accounts held assets equal to the amount [the debtor] owed the customer, and … [the debtor] treated and dealt with the assets 'as belonging to such customer.'" 728 F.3d at 662-63. It "maintained segregated accounts [with] assets that could not be subject to any [lender's] lien." The bank agreed it had no lien and would "not assert" a "lien against securities held in a Segregated Account." Although Sentinel was responsible "for keeping assets at appropriate levels of segregation," the bank's "main concern was ensuring that [the debtor] had sufficient collateral in the lienable accounts to keep its … loan secured." *Id.* at 664.

Sentinel went through a liquidity crunch during the summer of 2007. In a series of transactions, it moved securities from segregated accounts to "lienable accounts in a series of transactions." *Id.* A lienable account, however, could contain only securities and other assets that belonged to Sentinel or that were not subject to segregation. When Sentinel's "segregation deficit grew to $644 million, [the bank] became suspicious." A managing director of the bank emailed colleagues involved with the debtor's accounts, asking how the debtor had "so much collateral? With less than [$2 million] in capital I have to assume that most of this collateral is for somebody else's benefit. Do we really have rights on the whole $300 MM?" The bank's officials knew Sentinel "had an agreement that gave the [bank] a lien on any securities in clearing accounts." By Aug. 13, 2007, Sentinel told its customers "that it was halting redemptions because of problems in the credit market," causing the bank to cut the debtor's "remote access to its systems, … [to send] its officials to [the debtor's] offices, demand … full repayment of the loan and threaten … to liquidate the collateral." Sentinel then filed a Chapter 11 petition, owing the bank $312 million. *Id.* at 665.

The bankruptcy court ordered the appointment of a trustee who later became the post-plan confirmation liquidating trustee. When the bank filed a $312-million secured claim, the trustee sued it in the district court, alleging that Sentinel had "fraudulently used customer assets to finance the loan to cover its house trading activity"; the bank allegedly "knew about it, and, as a result, acted inequitably and unlawfully," giving rise to fraudulent transfer and equitable subordination claims, including invalidation of the bank's lien. *Id.*

Sentinel V

No Good Faith. The Seventh Circuit criticized the district court "on remand" for its failure to "conduct an evidentiary hearing" or make "additional findings." 2016 WL 98601 at *2. More important, the district court misunderstood "the [bank's] inquiry notice." *Id.* As the Seventh Circuit explained, the bank could not have "been acting in good faith" because it had "inquiry notice." *Id.* at *1. "The term signifies awareness of suspicious facts that would have led a reasonable firm, acting diligently, to investigate further and by doing so discover wrongdoing." *Id.*, citing *In re M&L Business Machine Co.*, 84 F.3d 1330, 1335-38 (10th Cir. 1996); *In re Sherman*, 67 F.3d 1348, 1355 (8th Cir. 1995); and *In re Agricultural Research & Technology Group, Inc.*, 916 F.2d 528, 535-36 (9th Cir. 1990). In other words, "inquiry notice is not knowledge of fraud or other wrongdoing, but merely knowledge that would lead a reasonable, law-abiding person to inquire further — would make him … suspicious enough to conduct a diligence search for possible dirt." 2016 WL 98601, at *2.

The defendant bank, had, as noted, documentary information (e.g., financials) "that should have created the requisite suspicion." *Id.* The internal emails, mentioned above, placed "the bank on inquiry notice and thus require[d] it to conduct an investigation of what Sentinel was using to secure a $300 million debt when it had capital of no more than $3 million." *Id.* According to the court, the bank had "more than enough" notice of a possible fraud so as to require it to "investigate." *Id.* at *3. Indeed, "all that is required to trigger" the duty to investigate was "information that would cause a *reasonable* person to be suspicious enough to investigate." *Id.* The Seventh Circuit stressed that the district court's fact findings in its original 2010 opinion (*Sentinel I*) "actually prove inquiry notice." *Id.* at *4.

No Equitable Subordination. The court of appeals affirmed the district court's holding that the trustee had not proved the defendant bank's knowledge of Sentinel's "securing the bank's loans with customers' money without their consent." *Id.* at *6. "Even though the bank's secured claim [went] down the drain because it was on inquiry notice of Sentinel's fraud, it still has an unsecured claim in bankruptcy — a claim for the money it lost when Sentinel failed to repay the bank's loan to it of $312 million." *Id.* at *4-5. According to the court, "the defendant's conduct must be not only 'inequitable' but seriously so ('egregious,' 'tantamount to fraud,' and 'willful' are the most common terms employed) and must harm other creditors." *Id.* at *5, citing *Carhart v. Carhart-Halaska Int'l, LLC*, 788 F.3d 687, 692 (7th Cir. 2015). Although other creditors had been "harmed by the bank's accepting the accounts of Sentinel's customers as security for its loan," that was not tantamount to fraud. The court agreed "with the district judge that the trustee has not satisfied that high standard. To suspect potential wrongdoing yet not bother to seek confirmation of one's suspicion is negligent, and negligence has not been thought an adequate basis for imposing equitable subordination." The bank had suspicions and should have followed up, but it was merely negligent.

Bank Retains Unsecured Claim. Finally, the court rejected two other defenses raised by the bank "to losing its status as a secured creditor." Although Code Section 550(b)(1) provides a defense to a lender who "gave value for the transfer in good faith," that provision was inapplicable, for the trustee did not

seek to recover assets, but only to avoid the bank's lien. Nor was the trustee seeking "a double recovery," for the bank was "still owed Sentinel's debt to it. It has just lost its security interest." *Id.* at *6.

Comments

- Rescue lending is still alive despite *Sentinel V*. The U.S. Supreme Court's seminal *Dean v. Davis* decision, 242 U.S. 438, 444-45 (1917), confirms that an arm's-length, good faith commercial loan will not be undone: Securing a loan to an insolvent debtor for payment of "a pre-existing debt does not necessarily imply an intent to hinder, delay or defraud creditors. The mortgage may be made in the expectation that thereby the debtor will extricate himself from a particular difficulty and be enabled to promote the interests of all other creditors by continuing his business. The lender … may be acting in perfect 'good faith' … . It is a question of fact in each case what the intent was with which the loan was sought and made." The bank in *Sentinel V* lost its good faith defense because it had inquiry notice and failed to investigate, but still accepted a third party's property as collateral.
- The district court's failure in *Sentinel IV*, after a 17-day trial, to conduct another "evidentiary hearing" or to make "additional findings" triggered the Seventh Circuit's reversal. 2016 WL 98601, at *2. Nevertheless, "in fairness to the [district] judge," the court of appeals conceded that the panel in *Sentinel III* could have reversed *Sentinel I* "outright." *Id.* at *5. There had been "no need to remand," it reasoned, due to the district court's ample findings in *Sentinel I* that "the bank had … been on inquiry notice." *Id.*
- Another lender successfully relied on the "good faith" defense in the past two years. *See Gold v. First Tennessee Bank, N.A.*, 743 F.3d 423 (4th Cir. 2014) (2-1) (applying "objective good-faith standard"; bank investigated debtor before lending; when debtor offered excuses for non-payment, bank visited collateral "properties," reviewed records and understood market conditions, consistent with industry practice; bank had no "information" requiring it to "investigate further").

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or the author.

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EXHIBIT INDEX

Exhibit Number	Description
10.1	Restructuring Support Agreement dated April 15, 2016.
99.1	Press release issued by Seventy Seven Energy Inc. dated April 19, 2016.
99.2	Certain projections dated as of March 31, 2016.

Exhibit 10.1

Execution Version
April 15, 2016

SEVENTY SEVEN ENERGY INC.

RESTRUCTURING SUPPORT AGREEMENT

April 15, 2016

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF VOTES WITH RESPECT TO A CHAPTER 11 PLAN OF REORGANIZATION. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR, AS APPLICABLE, PROVISIONS OF THE BANKRUPTCY CODE. THIS RESTRUCTURING SUPPORT AGREEMENT CONTAINS MATERIAL NONPUBLIC INFORMATION AND, THEREFORE, IS SUBJECT TO FEDERAL SECURITIES LAWS.

This Restructuring Support Agreement (together with the exhibits and schedules attached hereto, which includes, without limitation, the Plan Term Sheet (as defined below) attached hereto as **Exhibit A**,[1] as each may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof, this "Agreement"), dated as of April 15, 2016, is entered into by and among: (i) Seventy Seven Energy Inc. ("HoldCo"); Seventy Seven Finance Inc. ("SSF"); Seventy Seven Operating LLC ("OpCo"); Great Plains Oilfield Rental, L.L.C. ("Great Plains"); Seventy Seven Land Company LLC; Nomac Drilling, L.L.C. ("Nomac"); Performance Technologies, L.L.C. ("PTL"); PTL Prop Solutions, L.L.C.; SSE Leasing, LLC; Keystone Rock & Excavation, L.L.C.; and Western Wisconsin Sand Company, LLC (each, a "Debtor" and, collectively, the "Debtors")[2]; (ii) the lender parties to that certain Incremental Term Supplement (Tranche A), dated as of May 13, 2015 (as amended, restated, modified, supplemented or replaced from time to time prior to the Petition Date, the "Incremental Term Loan"), by and among OpCo, as borrower, HoldCo, the guarantors thereunder, Wilmington Trust, N.A., as administrative agent, and the lenders thereunder (the "Incremental Term Loan Lenders") that are (and any Incremental Term Loan Lenders that may become in accordance with Section 14 and/or Section 15 hereof) signatories hereto (collectively, the "Consenting Incremental Term Loan Lenders"); and (iii) the holders of OpCo Notes (each such holder, on behalf of itself and the funds it represents, an "OpCo Noteholder") issued pursuant to that certain Indenture dated October 28, 2011 (as amended, restated, modified, supplemented, or replaced from time to time prior to the Petition Date, the "OpCo Notes Indenture") for the 6.625% Senior Notes Due 2019 (the "OpCo Notes"), by and among OpCo, SSF, the guarantors named thereunder, and The Bank of New York Mellon Trust Company, N.A., as trustee, that are (and any OpCo Noteholder that may become in accordance with Section 14 and/or Section 15 hereof) signatories hereto (collectively, the "Consenting OpCo Noteholders" and together with the Consenting Incremental Term Loan Lenders, the "Restructuring Support Parties"). This Agreement collectively refers to the Debtors and the Restructuring Support Parties as the "Parties" and each individually as a "Party."

RECITALS

WHEREAS, the Parties have engaged in good faith, arm's-length negotiations and agreed to enter into certain restructuring transactions (the "Restructuring Transactions") pursuant to the terms and conditions set forth in this Agreement, including the preparation of (i) a joint plan of reorganization for the Debtors on terms consistent with the restructuring term sheet attached hereto as **Exhibit A** (the "Plan Term Sheet") and incorporated herein by reference pursuant to Section 2 hereof (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with this Agreement, the "Plan")[3]; and (ii) a disclosure statement containing "adequate information" (as that term is used in the Bankruptcy Code) with respect to the Plan and the Plan Term Sheet and otherwise in form and substance reasonably satisfactory to the Restructuring Support Parties (the "Disclosure Statement")[4];

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[1] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan Term Sheet.

[2] Until the occurrence of the Termination Date, every entity that is a debtor in the Chapter 11 Cases shall be a party to this Agreement.

[3] The Plan shall be filed in accordance with the Milestones (as defined below) set forth in Section 6 of this Agreement.

[4] The Disclosure Statement shall be filed in accordance with the Milestones set forth in Section 6 of this Agreement.

WHEREAS, it is anticipated that the Restructuring Transactions will be implemented through jointly-administered voluntary cases commenced by the Debtors (the " Chapter 11 Cases ") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (as amended, the " Bankruptcy Code "), in the United States Bankruptcy Court for the District of Delaware (the " Bankruptcy Court "), pursuant to the Plan, which will be filed by the Debtors in the Chapter 11 Cases;

WHEREAS, as of the date hereof, the Consenting Incremental Term Loan Lenders, in the aggregate, hold approximately $91,100,000 (92.0)% of the aggregate outstanding principal amount of the Incremental Term Loan Claims and the Incremental Term Loan Guaranty Claims;

WHEREAS, as of the date hereof, the Consenting OpCo Noteholders, in the aggregate, hold approximately $375,304,000 (57.7)% of the aggregate outstanding principal amount of the OpCo Notes and the OpCo Note Guaranty Claims; and

NOW, THEREFORE, in consideration of the promises, mutual covenants, and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties, intending to be legally bound, hereby agrees as follows:

AGREEMENT

1. RSA Effective Date. This Agreement shall become effective, and the obligations contained herein shall become binding upon the Parties, upon the first date (such date, the " RSA Effective Date ") that this Agreement has been executed by all of the following: (i) each Debtor;
(ii) Consenting Incremental Term Loan Lenders holding, in aggregate, 66.67% in principal amount outstanding of all claims against the Debtors arising on account of the Incremental Term Loan and the Incremental Term Loan Guaranty; and (iii) Consenting OpCo Noteholders holding, in aggregate, at least 50% in principal amount outstanding of all claims against the Debtors arising on account of the OpCo Notes (the " OpCo Note Claims ").

2. Exhibits and Schedules Incorporated by Reference. Each of the exhibits attached hereto (including the Plan Term Sheet) and any schedules to such exhibits (collectively, the " Exhibits and Schedules ") is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include the Exhibits and Schedules.

3. Definitive Documentation. The definitive documents and agreements (the "Definitive Documentation") governing the Restructuring Transactions shall include every order entered by the Bankruptcy Court, and every pleading, motion, proposed order, or document filed by the Debtors at any point prior to the Termination Date including, without limitation: (a) the Plan (and all exhibits thereto) and the confirmation order with respect to the Plan (the " Confirmation Order "); (b) the Disclosure Statement (and all exhibits thereto); (c) the solicitation materials with respect to the Plan (collectively, the " Solicitation Materials "); and (d) any documents or agreements in connection with the reorganized Debtors after the date of consummation of the transactions contemplated by the Plan (the " Plan Effective Date "), including, without limitation, any shareholders' agreements, amended certificates of incorporation or similar organizational documents, or other related transactional or corporate documents. The Definitive Documentation identified in the foregoing sentence remains subject to negotiation and shall, upon completion, contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement. Any document that is included within the definition of "Definitive Documentation," including any amendment, supplement, or modification thereof, shall be in a form and substance reasonably satisfactory to the Debtors and the Requisite Consenting Creditors; provided , that for documents, terms, and provisions of the Definitive Documentation that constitute a Supermajority Matter (as defined below), such documents, terms, and provisions shall be in form and substance acceptable to the Debtors and the Requisite Supermajority Consenting Creditors (as defined below). The Debtors acknowledge and agree that they will provide advance draft copies of all Definitive Documentation at least five (5) days prior to the date when the Debtors intend to file any such pleading or other document (and, if not reasonably practicable, as soon as reasonably practicable prior to filing) to Latham & Watkins LLP (" Latham "), as counsel to the Consenting Incremental Term Loan Lenders, and Weil, Gotshal & Manges LLP (" Weil "), as counsel to the Consenting OpCo Noteholders, and shall consult in good faith with Latham and Weil regarding the form and substance of any such proposed filing.

4. Requisite Consenting Creditors. Unless expressly provided otherwise, and subject to Section 5 of this Agreement, the term " Requisite Consenting Creditors " shall mean, as of the RSA Effective Date:

(a) with respect to all terms and provisions of this Agreement and/or the Definitive Documentation other than those described in Section 4(b) of this Agreement, such terms and provisions, including any amendment, supplement, or modification thereof, shall be in form and substance acceptable to (i) the Consenting Incremental Term Loan

Lenders holding at least two-thirds in amount of the outstanding Incremental Term Loan Claims and Incremental Term Loan Guaranty Claims held by all Consenting Incremental Term Loan Lenders as of such date; and (ii) the Consenting OpCo Noteholders holding at least a majority of the outstanding OpCo Note Claims held by all Consenting OpCo Noteholders as of such date;

(b) with respect to provisions of this Agreement and/or the Definitive Documentation related to (i) the debt capital structure of the post-Plan Effective Date reorganized Debtors (the " Reorganized Debtors ") upon the Plan Effective Date, excluding, for the avoidance of doubt, (A) any non-borrowed money debt incurred by the Debtors in the ordinary course of business or allocation of equity issued under the Plan and (B) the DIP ABL Credit Facility and the Exit Facility (each as defined in the Plan Term Sheet), other than as provided in Section 4(b)(ii) hereof; (ii) the commitment amount, the interest rate, the maturity date, and all financial covenants relating to the DIP ABL Credit Facility and the Exit Facility; (iii) any rights offering or other arrangement to contribute additional debt or equity capital on the Plan Effective Date (a " Proposed Contribution ") to the Reorganized Debtors; (iv) the corporate governance and organizational documents of the Reorganized Debtors; (v) the percentage of equity of the Reorganized Debtors distributable pursuant to any warrants distributed under the Plan, including the New Warrants (as defined in the Plan Term Sheet), the equity value at which such warrants are struck, and the expiration date of such warrants; (vi) the Management Incentive Plan (as defined in the Plan Term Sheet); (vii) the amount of equity distributed to the HoldCo Noteholders under the Plan on account of their HoldCo Note Claims; or (viii) such other matters specified in the attached Plan Term Sheet as being subject to a Requisite Supermajority Consenting Creditors consent or review, as applicable (collectively, the " Supermajority Matters "), such provisions, including any amendment, supplement, or modification thereof, shall be in form and substance acceptable to:

(i) the Consenting Incremental Term Loan Lenders holding at least 66.67% in amount of the outstanding Incremental Term Loan Claims and Incremental Term Loan Guaranty Claims held by all Consenting Incremental Term Loan Lenders as of the RSA Effective Date (the " Requisite Supermajority Consenting Incremental Term Loan Lenders "); and

(ii) at least two Consenting OpCo Noteholders holding in the aggregate at least 66.67% of the outstanding OpCo Note Claims (the " Supermajority Consenting OpCo Noteholders ") and at least two of the Consenting OpCo Noteholders signatories to this Agreement as of April 15, 2016 (such parties on behalf of themselves and the funds they represent, the " Existing Consenting OpCo Noteholders," and together with the Supermajority Consenting OpCo Noteholders, the " Requisite Supermajority Consenting OpCo Noteholders "); provided , however , that if at any time prior to the Plan Effective Date, any Existing Consenting OpCo Noteholder holds less than 7% of all outstanding OpCo Note Claims and there is no eligible Replacement Supermajority Consenting OpCo Noteholder (as defined below), this Section 4(b) shall not apply, and the Requisite Consenting Creditors shall be determined in accordance with Section 4(a) ((i) and (ii) together, the " Requisite Supermajority Consenting Creditors ").

5. Changes to "Requisite Consenting Creditors". If at any time prior to the Plan Effective Date, any Existing Consenting OpCo Noteholder holds less than 7% of all outstanding OpCo Note Claims, then (i) if such Existing Consenting OpCo Noteholder sells its OpCo Notes to a new noteholder that will thereafter hold in excess of 7% of all outstanding OpCo Note Claims, then such selling Existing Consenting OpCo Noteholder shall be replaced by such new noteholder that acquires its OpCo Notes (in accordance with Section 14 hereof), solely for the purpose of voting on any Supermajority Matter (each such party, a " Replacement Supermajority Consenting OpCo Noteholder "); and (ii) if such Existing Consenting OpCo Noteholder has sold its OpCo Notes such that it holds less than 7%, but no single acquiring noteholder holds in excess of 7% of the outstanding OpCo Note Claims, then all votes under this Agreement shall only require the consent of the Requisite Consenting Creditors, and no decisions under this Agreement shall require the consent of the Requisite Supermajority Consenting Creditors.

6. Milestones. As provided herein and subject to the terms of Section 8, the Debtors shall implement the Restructuring Transactions on the following timeline (each deadline, a " Milestone "):

(a) no later than April 22, 2016, the Debtors shall have commenced solicitation on the Plan by mailing the Solicitation Materials to parties eligible to vote on the Plan;

(b) no later than May 26, 2016, the Debtors shall commence the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code and any and all other documents necessary to commence the Chapter 11 Cases with the Bankruptcy Court (such filing date, the " Petition Date ");

(c) on the Petition Date, the Debtors shall file with the Bankruptcy Court: (i) the Plan; (ii) the Disclosure Statement; and (iii) a motion (the " Scheduling Motion ") seeking, among other things, to schedule the hearing to consider approval of the Disclosure Statement and confirmation of the Plan (the " Confirmation Hearing "); and (iv) a motion seeking to assume this Agreement (the " RSA Assumption Motion ");

(d) no later than June 9, 2016, the Bankruptcy Court shall have entered an order authorizing the assumption of this Agreement (the " RSA Assumption Order ");

(e) no later than June 29, 2016, the Bankruptcy Court shall have commenced the Confirmation Hearing;

(f) no later than July 6, 2016, the Bankruptcy Court shall have entered the Confirmation Order and an order approving the Disclosure Statement; and

(g) no later than July 22, 2016, the Debtors shall consummate the transactions contemplated by the Plan (the date of such consummation, the " Effective Date ").

The Debtors may extend a Milestone with the express prior written consent of the Requisite Consenting Creditors.

7. Commitment of Restructuring Support Parties. Each Restructuring Support Party shall (severally and not jointly), solely as it remains the legal owner, beneficial owner, and/or investment advisor or manager of or with power and/or authority to bind any claims held by it, provided , that any transfer of the Claims of the Restructuring Support Parties is made in accordance with Section 14 , from the RSA Effective Date until the occurrence of a Termination Date (as defined in Section 13) applicable to such Restructuring Support Party:

(a) support and cooperate with the Debtors to take all commercially reasonable actions necessary to consummate the Restructuring Transactions in accordance with the Plan and the terms and conditions of this Agreement and the Plan Term Sheet (but without limiting consent and approval rights provided in this Agreement and the Definitive Documentation), including: (i) voting all of its claims against, or interests in, as applicable, the Debtors now or hereafter owned by such Restructuring Support Party (or for which such Restructuring Support Party now or hereafter has voting control over) to accept the Plan in accordance with the applicable procedures set forth in the Disclosure Statement and the Solicitation Materials, upon receipt of Solicitation Materials and (ii) timely returning a duly-executed ballot in connection therewith; provided , that such vote shall be immediately revoked and deemed void *ab initio* upon termination of this Agreement prior to the consummation of the Plan pursuant to the terms hereof;

(b) not withdraw, amend, or revoke (or cause to be withdrawn, amended, or revoked) its tender, consent, or vote with respect to the Plan; provided , however , that nothing in this Agreement shall prevent any Restructuring Support Party from withholding, amending, or revoking (or causing the same) its timely consent or vote with respect to the Plan if this Agreement is terminated with respect to such Restructuring Support Party;

(c) not directly or indirectly object to, delay, impede, or take any other action to interfere with the Restructuring Transactions, or propose, file, support, or vote for any restructuring, workout, or chapter 11 plan for any of the Debtors other than the Restructuring Transactions and the Plan;

(d) not take any action (or encourage or instruct any other party including any agent or indenture trustee to take any action) in respect of any potential, actual, or alleged occurrence of any "Default" or "Event of Default" under the ABL Facility, the Term Loan, the Incremental Term Loan, the OpCo Notes Indenture, or the HoldCo Notes Indenture or that would be triggered as a result of the execution of this Agreement, the commencement of the Chapter 11 Cases, or the undertaking of any Debtor hereunder to implement the Restructuring Transactions through the Chapter 11 Cases;

(e) propose, file, or support any use of cash collateral or debtor-in-possession financing other than as proposed in the Plan; and

(f) not take any other action that is materially inconsistent with its obligations under this Agreement.

Notwithstanding the foregoing, nothing in this Agreement and neither a vote to accept the Plan by any Restructuring Support Party nor the acceptance of the Plan by any Restructuring Support Party shall (w) be construed to prohibit any Restructuring Support Party from contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement or the Definitive Documentation, (x) be construed to prohibit any Restructuring Support Party from appearing as a party-in-interest in any matter to be adjudicated in the Chapter 11 Cases, so long as, from the RSA Effective Date until the occurrence of a Termination Date applicable to

such Restructuring Support Party, such appearance and the positions advocated in connection therewith are not materially inconsistent with this Agreement and are not for the purpose of hindering, delaying, or preventing the consummation of the Restructuring Transactions, (y) affect the ability of any Restructuring Support Party to consult with other Restructuring Support Parties or the Debtors, or (z) impair or waive the rights of any Restructuring Support Party to assert or raise any objection permitted under this Agreement in connection with any hearing on confirmation of the Plan or in the Bankruptcy Court or prevent such Restructuring Support Party from enforcing this Agreement against the Debtors or any Restructuring Support Party. In addition, nothing in this Section 7 shall require any Restructuring Support Party to incur any unanticipated expenses or indemnification obligations as a result of satisfying its obligations under this Agreement.

8. Commitment of the Debtors.

(a) Subject to Sub-Clause (b) below, each of the Debtors (i) agrees to (A) support and complete the Restructuring Transactions set forth in the Plan and this Agreement, (B) negotiate in good faith all Definitive Documentation that is subject to negotiation as of the RSA Effective Date and take any and all necessary and appropriate actions in furtherance of the Plan and this Agreement, (C) take all commercially reasonable actions necessary to complete the Restructuring Transactions set forth in the Plan in accordance with each Milestone set forth in Section 6 of this Agreement, and (D) make commercially reasonable efforts to obtain any and all required regulatory and/or third-party approvals necessary to consummate the Restructuring Transactions; (ii) shall not undertake any action materially inconsistent with the adoption and implementation of the Plan and the speedy confirmation thereof, including, without limitation, filing any motion to reject this Agreement; and (iii) agrees to pay all fees and expenses of (i) Latham, as counsel to the Consenting Incremental Term Loan Lenders, and (ii) Weil and Moelis & Company, as advisors to the Consenting OpCo Noteholders, in accordance with their respective engagement letters and any other contractual arrangements.

(b) Notwithstanding anything to the contrary herein, nothing in this Agreement shall require the directors, officers, or managers of any Debtor (in such person's capacity as a director, officer, or manager of such Debtor) to (i) take any action that, after receiving advice from counsel, is inconsistent with such director's, officer's, or manager's fiduciary obligations under applicable law or (ii) refrain from taking any action that, after receiving advice from counsel, is consistent with such director's, officer's, or manager's fiduciary obligations under applicable law.

For the avoidance of doubt, nothing in this Section 8 shall be construed to limit or affect in any way (y) any Restructuring Support Party's rights under this Agreement, including upon occurrence of any Termination Event, or (z) the Debtors' ability to engage in marketing efforts, discussions, and/or negotiations with any party regarding financing necessary to administer the Chapter 11 Cases; provided , however , that to the extent the Debtors engage in any such marketing efforts, discussions, and/or negotiations, they shall provide updates to the Restructuring Support Parties (as frequently as reasonably requested by the Restructuring Support Parties) regarding such efforts including answering any and all information and diligence requests regarding such efforts, discussions, and/or negotiations.

9. Restructuring Support Party Termination Events. The Requisite Consenting Creditors shall have the right, but not the obligation, upon notice to the other Parties, to terminate the obligations of their respective Restructuring Support Parties under this Agreement upon the occurrence of any of the following events, unless waived, in writing, by such Requisite Consenting Creditors on a prospective or retroactive basis (each, a " Restructuring Support Party Termination Event "):

(a) the failure to meet any of the Milestones in Section 6 unless (i) such failure is the result of any act, omission, or delay on the part of any Restructuring Support Parties whose Requisite Consenting Creditors is seeking termination in violation of its obligations under this Agreement or (ii) such Milestone is extended in accordance with Section 6;

(b) the (i) filing by any Debtor of a motion or other request for relief seeking to dismiss any of the Chapter 11 Cases or convert any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or (ii) entry of an order by the Bankruptcy Court dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code;

(c) the appointment of a trustee, receiver, or examiner with expanded powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code in one or more of the Chapter 11 Cases;

(d) any Debtor amends or modifies, or files a pleading seeking authority to amend or modify, the Definitive Documentation in a manner that is inconsistent with this Agreement;

(e) any Debtor files or announces that it will file or joins in or supports any plan of reorganization other than the Plan, without the prior written consent of the Requisite Consenting Creditors;

(f) any Debtor files any motion or application seeking authority to sell any material assets, without the prior written consent of the Requisite Consenting Creditors in their sole discretion;

(g) the issuance by any governmental authority, including the Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any ruling or order enjoining the substantial consummation of the Restructuring Transactions on the terms and conditions set forth in the Plan Term Sheet or the Plan; provided , however , that the Debtors shall have five (5) business days after issuance of such ruling or order to obtain relief that would allow consummation of the Restructuring Transactions in a manner that (i) does not prevent or diminish in a material way compliance with the terms of the Plan and this Agreement, and (ii) is acceptable to the Requisite Consenting Creditors (or as to the Supermajority Matters, the Requisite Supermajority Consenting Creditors) in their sole discretion;

(h) the Debtors file any motion authorizing the use of cash collateral or the entry into post-petition financing that is not consented to by the Requisite Consenting Creditors, which consent shall not unreasonably be withheld;

(i) a material breach by any Debtor of any representation, warranty, or covenant of such Debtor set forth in this Agreement (it being understood and agreed that any actions required to be taken by the Debtors that are included in the Plan Term Sheet attached to this Agreement but not in this Agreement are to be considered "covenants" of the Debtors, and therefore covenants of this Agreement, notwithstanding the failure of any specific provision in the Plan Term Sheet to be re-copied in this Agreement) that (to the extent curable) remains uncured for a period of ten (10) business days after the receipt by the Debtors of written notice of such breach;

(j) either (i) any Debtor or any Restructuring Support Party files a motion, application, or adversary proceeding (or any Debtor or Restructuring Support Party supports any such motion, application, or adversary proceeding filed or commenced by any third party) (A) challenging the validity, enforceability, perfection, or priority of, or seeking avoidance or subordination of, (x) the Incremental Term Loan Claims or the Incremental Term Loan Guaranty Claims, (y) the liens securing such claims, or (z) the OpCo Note Claims; or (B) asserting any other cause of action against and/or with respect or relating to such claims or the prepetition liens securing such claims, to the extent applicable; or (ii) the Bankruptcy Court (or any court with jurisdiction over the Chapter 11 Cases) enters an order providing relief against the interests of any Restructuring Support Party with respect to any of the foregoing causes of action or proceedings;

(k) any Debtor terminates its obligations under and in accordance with this Agreement;

(l) any board, officer, or manager (or party with authority to act) of a Debtor (or the Debtors themselves) takes any action in furtherance of the rights available to it (or them) under Section 8(b) of this Agreement that are materially inconsistent with the Restructuring Transactions as contemplated by this Agreement and/or the Plan Term Sheet attached hereto as **Exhibit A** ;

(m) the Bankruptcy Court enters an order in the Chapter 11 Cases terminating any of the Debtors' exclusive right to file a plan or plans of reorganization pursuant to section 1121 of the Bankruptcy Code;

(n) the Bankruptcy Court denies approval of the RSA Assumption Motion;

(o) any Debtor requests that the United States Trustee appoint an official committee of equity security holders (either preferred or common or both) or supports any such request;

(p) the failure of any Definitive Documentation to comply with Section 3; or

(q) the occurrence of any other material breach of this Agreement or the Plan Term Sheet not otherwise covered in this list by any Debtor that has not been cured (if susceptible to cure) within three (3) business days after written notice to the Debtors of such breach by the Requisite Consenting Creditors (or as to the Supermajority Matters, the Requisite Supermajority Consenting Creditors) asserting such termination.

10. The Debtors' Termination Events. Each Debtor may, upon notice to the Restructuring Support Parties, terminate its obligations under this Agreement upon the occurrence of any of the following events (each a " Company Termination Event ," and together with the Restructuring Support Party Termination Events, the "Termination Events"), in which case this Agreement shall terminate with respect to all Parties, subject to the rights of the Debtors to fully or conditionally waive, in writing, on a prospective or retroactive basis, the occurrence of a Company Termination Event:

(a) a breach by a Restructuring Support Party of any representation, warranty, or covenant of such Restructuring Support Party set forth in this Agreement that could reasonably be expected to have a material adverse impact on the Restructuring Transactions or the consummation of the Restructuring Transactions that (to the extent curable) remains uncured for a period of ten (10) business days after the receipt by such Restructuring Support Party of written notice and description of such breach;

(b) the occurrence of a breach of this Agreement by any Restructuring Support Party that has the effect of materially impairing any of the Debtors' ability to effectuate the Restructuring Transactions and has not been cured (if susceptible to cure) within ten (10) business days after written notice to all Restructuring Support Parties of such breach and a description thereof;

(c) upon written notice to the Restructuring Support Parties, if the board of directors or board of managers, as applicable, of a Debtor determines, after receiving advice from counsel, that proceeding with the Restructuring Transactions (including, without limitation, the Plan or solicitation of the Plan) would be inconsistent with the exercise of its fiduciary duties;

(d) the issuance by any governmental authority, including the Bankruptcy Court, any regulatory authority, or any other court of competent jurisdiction, of any ruling or order enjoining the substantial consummation of the Restructuring Transactions; provided , however , that the Debtors have made commercially reasonable, good faith efforts to cure, vacate, or have overruled such ruling or order prior to terminating this Agreement;

(e) the Requisite Consenting Creditors terminate their obligations under and in accordance with Section 9 of this Agreement; or

(f) the failure to satisfy any requirement under Section 3 that the Plan, or any other agreement or document that is included in the Definitive Documentation, contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement and be reasonably satisfactory to the Debtors.

11. Mutual Termination; Automatic Termination. This Agreement and the obligations of all Parties hereunder may be terminated by mutual written agreement by and among the Debtors and the Requisite Supermajority Consenting Creditors. Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate automatically upon the occurrence of the Plan Effective Date.

12. Automatic Stay. The Parties acknowledge that after the commencement of the Chapter 11 Cases, the termination of this Agreement and the giving of notice of termination by any Party pursuant to this Agreement shall not be a violation of the automatic stay of section 362 of the Bankruptcy Code subject to the terms of any order authorizing the assumption of this Agreement; provided , that nothing herein shall prejudice any Party's rights to argue that the giving of notice of termination was not proper under the terms of this Agreement.

13. Effect of Termination. The earliest date on which termination of this Agreement as to a Party is effective in accordance with Sections 9 , 10 , or 11 of this Agreement shall be referred to, with respect to such Party, as a " Termination Date ." Upon the occurrence of a Termination Date, all Parties' obligations under this Agreement shall be terminated effective immediately, and the Parties hereto shall be released from all commitments, undertakings, and agreements hereunder, and any vote in favor of the Plan delivered by such Party or Parties shall be immediately revoked and deemed void *ab initio* ; provided , however , that each of the following shall survive any such termination: (a) any claim for breach of this Agreement that occurs prior to such Termination Date, and all rights and remedies with respect to such claims shall not be prejudiced in any way; (b) the Debtors' obligations in Section 16 of this Agreement accrued up to and including such Termination Date; and (c) Sections 13 , 18 , 21 , 23 , 24 , 25 , 26, 27, 28 , 29 , 30 , 31 , 35 and 36 hereof.

14. Transfers of Claims and Interests.

(a) Each Restructuring Support Party shall not (i) sell, transfer, assign, pledge, grant a participation interest in, or otherwise dispose of, directly or indirectly, its right, title, or interest in respect of any of such Restructuring Support Party's claims against, or interests in, any Debtor, as applicable, in whole or in part, or (ii) deposit any of such Restructuring Support Party's claims against or interests in any Debtor, as applicable, into a voting trust, or grant any proxies, or enter into a voting agreement with respect to any such claims or interests (the actions described in clauses (i) and (ii) are collectively referred to herein as a " Transfer " and the Restructuring Support Party making such Transfer is referred to herein as the " Transferor "), unless such Transfer is to another Restructuring Support Party or any other entity that first agrees in writing to be bound by the terms of this Agreement by executing and delivering to counsel to the Debtors, counsel to the Consenting Incremental Term Loan Lenders, and counsel to the Consenting OpCo Noteholders, a Transferee Joinder substantially in the form attached hereto as **Exhibit B** (the " Transferee Joinder "). With respect to claims against or interests in a Debtor held by the relevant transferee upon consummation of a Transfer in accordance herewith, such transferee is deemed to make all of the representations, warranties, and covenants of a Restructuring Support Party, as applicable, set forth in this Agreement. Upon compliance with the foregoing, the Transferor shall be deemed to relinquish its rights (and be released from its obligations, except for any claim for breach of this Agreement that occurs prior to such Transfer) under this Agreement to the extent of such transferred rights and obligations. Any Transfer made in violation of this Sub-Clause (a) of this Section 14 shall be deemed null and void *ab initio* and of no force or effect, regardless of any prior notice provided to the Debtors and/or any Restructuring Support Party, and shall not create any obligation or liability of any Debtor or any other Restructuring Support Party to the purported transferee.

(b) Notwithstanding Sub-Clause (a) of this Section 14, (i) an entity that is acting in its capacity as a Qualified Marketmaker shall not be required to be or become a Restructuring Support Party in order to effect any transfer (by purchase, sale, assignment, participation, or otherwise) of any claim against, or interest in, any Debtor, as applicable, by a Restructuring Support Party to a transferee; provided , that such transfer by a Restructuring Support Party to a transferee shall be in all other respects in accordance with and subject to Sub-Clause (a) of this Section 14 ; and (ii) to the extent that a Restructuring Support Party, acting in its capacity as a Qualified Marketmaker, acquires any claim against, or interest in, any Debtor from a holder of such claim or interest who is not a Restructuring Support Party, it may transfer (by purchase, sale, assignment, participation, or otherwise) such claim or interest without the requirement that the transferee be or become a Restructuring Support Party in accordance with this Section 14 . For purposes of this Sub-Clause (b) , a " Qualified Marketmaker " means an entity that (x) holds itself out to the market as standing ready in the ordinary course of its business to purchase from customers and sell to customers claims against, or interests in, the Debtors (including debt securities or other debt) or enter with customers into long and short positions in claims against, or interests in, the Debtors (including debt securities or other debt), in its capacity as a dealer or market maker in such claims against, or interests in, the Debtors, and (y) is in fact regularly in the business of making a market in claims against issuers or borrowers (including debt securities or other debt).

15. Further Acquisition of Claims or Interests. Except as set forth in Section 14, nothing in this Agreement shall be construed as precluding any Restructuring Support Party or any of its affiliates from acquiring additional ABL Claims, Term Loan Claims, Incremental Term Loan Claims, Incremental Term Loan Guaranty Claims, OpCo Note Claims, HoldCo Note Claims, Existing HoldCo Equity Interests, or interests in the instruments underlying the ABL Claims, Term Loan Claims, Incremental Term Loan Claims, Incremental Term Loan Guaranty Claims, OpCo Note Claims, HoldCo Note Claims, or Existing HoldCo Equity Interests; provided , however , that any additional ABL Claims, Term Loan Claims, Incremental Term Loan Claims, Incremental Term Loan Guaranty Claims, OpCo Note Claims, HoldCo Note Claims, Existing HoldCo Equity Interests, or interests in the underlying instruments acquired by any Restructuring Support Party and with respect to which such Restructuring Support Party is the legal owner, beneficial owner, and/or investment advisor or manager of or with power and/or authority to bind any claims or interests held by it shall automatically be subject to the terms and conditions of this Agreement. Upon any such further acquisition, such Restructuring Support Party shall promptly notify counsel to the Debtors, Latham, as counsel to the Consenting Incremental Term Loan Lenders, and Weil, as counsel to the Consenting OpCo Noteholders, and such acquisition shall become subject to the terms of this Agreement.

16. Fees and Expenses. Fees and expenses shall be paid according to the terms and conditions set forth in the Plan Term Sheet.

17. Consents and Acknowledgments. Each Party irrevocably acknowledges and agrees that this Agreement is not and shall not be deemed to be a solicitation for consents to the Plan. The acceptance of the Plan by each of the Restructuring Support Parties will not be solicited until such Parties have received the Disclosure Statement and related ballots in accordance with applicable law, and will be subject to sections 1125, 1126, and 1127 of the Bankruptcy Code. In addition, this Agreement does not constitute an offer to

issue or sell securities to any Person, or the solicitation of an offer to acquire or buy securities, in any jurisdiction where such offer or solicitation would be unlawful.

18. Representations and Warranties.

(a) Each Restructuring Support Party hereby represents and warrants on a several and not joint basis for itself and not any other person or entity that the following statements are true, correct, and complete as of the date hereof:

(i) it has the requisite organizational power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its respective obligations under, this Agreement;

(ii) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary corporate or other organizational action on its part;

(iii) the execution, delivery, and performance by it of this Agreement does not violate any provision of law, rule, or regulation applicable to it, or its certificate of incorporation, or bylaws, or other organizational documents;

(iv) it is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the " Securities Act "), with sufficient knowledge and experience to evaluate properly the terms and conditions of this Agreement and to consult with its legal and financial advisors with respect to its investment decision to execute this Agreement, and it has made its own analysis and decision to enter into this Agreement;

(v) it has reviewed, or has had the opportunity to review, with the assistance of professional and legal advisors of its choosing, all information it deems necessary and appropriate for it to evaluate the financial risks inherent in the Restructuring Transactions and to accept the terms of the Plan;

(vi) it (A) either (1) is the sole legal owner, beneficial owner, and/or investment advisor or manager of or with power and/or authority to bind the claims and interests identified below its name on its signature page hereof and in the amounts set forth therein, or (2) has all necessary investment or voting discretion with respect to the principal amount of claims and interests identified below its name on its signature page hereof, and has the power and authority to bind the owner(s) of such claims and interests to the terms of this Agreement; (B) does not directly own any ABL Claims, Term Loan Claims, Incremental Term Loan Claims, OpCo Note Claims, HoldCo Note Claims, or Existing HoldCo Equity Interests, other than as identified below its name on its signature page hereof; and (C) has made no assignment, sale, participation, grant, conveyance, pledge, or other transfer of, and has not entered into any other agreement to assign, sell, use, participate, grant, convey, pledge, or otherwise transfer any portion of its right, title, or interests in such claims; and

(vii) it has no agreement, understanding, or other arrangement (whether oral, written, or otherwise) with any other Restructuring Support Party regarding the transfer or sale of all or a material portion of the Debtors' assets to any party whatsoever.

(b) Each Debtor hereby represents and warrants on a joint and several basis (and not any other person or entity other than the Debtors) that the following statements are true, correct, and complete as of the date hereof:

(i) it has the requisite corporate or other organizational power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its respective obligations under, this Agreement;

(ii) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary corporate or other organizational action on its part;

(iii) the execution and delivery by it of this Agreement does not (A) violate its certificates of incorporation, or bylaws, or other organizational documents, or those of any of its affiliates, or (B) result in a breach of, or constitute (with due notice or lapse of time or both) a default (other than, for the avoidance of doubt, a breach or default that would be triggered as a result of the Chapter 11 Cases or any Debtor's undertaking to implement the Restructuring Transactions through the Chapter 11 Cases) under any material contractual obligation to which it or any of its affiliates is a party;

(iv) the execution and delivery by it of this Agreement does not require any registration or filing with, the consent or approval of, notice to, or any other action with any federal, state, or other governmental authority or regulatory body, other than, for the avoidance of doubt, the actions with governmental authorities or regulatory bodies required in connection with implementation of the Restructuring Transactions;

(v) (A) the offer and sale of the Reorganized Equity has not been, and will not be, registered under the Securities Act and (B) the offering and issuance of the Reorganized Equity is intended to be exempt from registration under the Securities Act pursuant to Section 4(2) of the Securities Act and Regulation D thereunder or pursuant to section 1145 of the Bankruptcy Code;

(vi) subject to the provisions of sections 1125 and 1126 of the Bankruptcy Code and, to the extent applicable, approval by the Bankruptcy Court, this Agreement is a legally valid and binding obligation of each Debtor and is enforceable against each Debtor in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to or limiting creditors' rights generally, or by equitable principles relating to enforceability; and

(vii) it has sufficient knowledge and experience to evaluate properly the terms and conditions of the Plan and this Agreement, and has been afforded the opportunity to consult with its legal and financial advisors with respect to its decision to execute this Agreement, and it has made its own analysis and decision to enter into this Agreement and otherwise investigated this matter to its full satisfaction.

19. Creditors' Committee. Each Restructuring Support Party agrees not to request that the United States Trustee appoint an official committee of creditors in the Chapter 11 Cases. Notwithstanding anything herein to the contrary, if any Restructuring Support Party is appointed to and serves on an official committee of creditors in the Chapter 11 Cases, the terms of this Agreement shall not be construed so as to limit such Restructuring Support Party's exercise of its fiduciary duties to any person arising from its service on such committee, and any such exercise of such fiduciary duties shall not be deemed to constitute a breach of the terms of this Agreement; provided, that nothing in this Agreement shall be construed as requiring any Restructuring Support Party to serve on any official committee in any such chapter 11 case.

20. Survival of Agreement. Each of the Parties acknowledges and agrees that this Agreement is being executed in connection with negotiations concerning a possible financial restructuring of the Debtors and in contemplation of possible chapter 11 filings by the Debtors and the rights granted in this Agreement are enforceable by each signatory hereto without approval of any court, including the Bankruptcy Court.

21. Right to Participate in Proposed Contribution. In the event that the Requisite Consenting Creditors and the Requisite Supermajority Consenting Creditors, as applicable, agree to support a Proposed Contribution, each Consenting OpCo Noteholder shall be provided the opportunity to participate in the funding of any backstop related to such Proposed Contribution on a *pro rata* basis (in an amount commensurate with such Consenting OpCo Noteholder's aggregate principal outstanding OpCo Note Claims held at the time of funding such backstop). Any fees that are provided for in connection with such Proposed Contribution shall only be payable to any such participating Consenting OpCo Noteholder on a *pro rata* basis commensurate with the amount of the backstop actually funded on the date earned.

22. Waiver. If the transactions contemplated herein are not consummated, or following the occurrence of a Termination Date, if applicable, nothing herein shall be construed as a waiver by any Party of any or all of such Party's rights, other than as provided in Section 17 , and the Parties expressly reserve any and all of their respective rights. The Parties acknowledge that this Agreement, the Plan, and all negotiations relating hereto are part of a proposed settlement of matters that could otherwise be the subject of litigation. Pursuant to Rule 408 of the Federal Rules of Evidence, any applicable state rules of evidence, and any other applicable law, foreign or domestic, the Plan Term Sheet, this Agreement, the Plan, any related documents, and all negotiations relating thereto shall not be admissible into evidence in any proceeding, or used by any party for any reason whatsoever, including in any proceeding, other than a proceeding to enforce its terms.

23. Relationship Among Parties. Notwithstanding anything herein to the contrary, the duties and obligations of the Restructuring Support Parties under this Agreement shall be several, not joint. No Party shall have any responsibility by virtue of this Agreement for any trading by any other entity. No prior history, pattern, or practice of sharing confidences among or between the Parties shall in any way affect or negate this Agreement.

24. Specific Performance. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy of any such breach of this Agreement, including, without limitation, an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

25. Governing Law & Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to such state's choice of law provisions which would require the application of the law of any other jurisdiction. By its execution and delivery of this Agreement, each Party irrevocably and unconditionally agrees for itself that any legal action, suit, or proceeding against it with respect to any matter arising under or arising out of or in connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit, or proceeding, may be brought in the United States District Court for the Southern District of New York, and by executing and delivering this Agreement, each of the Parties irrevocably accepts and submits itself to the exclusive jurisdiction of such court, generally and unconditionally, with respect to any such action, suit, or proceeding. Notwithstanding the foregoing consent to New York jurisdiction, if the Chapter 11 Cases are commenced, each Party agrees that the Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of or in connection with this Agreement. By executing and delivering this Agreement, and upon commencement of the Chapter 11 Cases, each of the Parties irrevocably and unconditionally submits to the personal jurisdiction of the Bankruptcy Court solely for purposes of any action, suit, proceeding, or other contested matter arising out of or relating to this Agreement, or for recognition or enforcement of any judgment rendered or order entered in any such action, suit, proceeding, or other contested matter.

26. Waiver of Right to Trial by Jury. Each of the Parties waives any right to have a jury participate in resolving any dispute, whether sounding in contract, tort, or otherwise, between any of the Parties arising out of, connected with, relating to, or incidental to the relationship established between any of them in connection with this Agreement. Instead, any disputes resolved in court shall be resolved in a bench trial without a jury.

27. Successors and Assigns. Except as otherwise provided in this Agreement, this Agreement is intended to bind and inure to the benefit of each of the Parties and each of their respective permitted successors, assigns, heirs, executors, administrators, and representatives.

28. No Third-Party Beneficiaries. Unless expressly stated herein, this Agreement shall be solely for the benefit of the Parties and no other person or entity shall be a third-party beneficiary of this Agreement.

29. Notices. All notices (including, without limitation, any notice of termination or breach) and other communications from any Party hereunder shall be in writing and shall be deemed to have been duly given if personally delivered by courier service, messenger, email, or facsimile to the other Parties at the applicable addresses below, or such other addresses as may be furnished hereafter by notice in writing. Any notice of termination or breach shall be delivered to all other Parties.

(a) If to any Debtor:

Seventy Seven Energy Inc.
Attn: David Treadwell
777 N.W. 63rd Street
Oklahoma City, OK 73116
Tel: (405) 608-7704
Email: dtreadwell@77nrg.com

With a copy to:

Baker Botts L.L.P.
Attn: Shalla Prichard
Attn: Emanuel Grillo

Tel: (713) 229-1283
Tel: (212) 408-2519
Fax: (212) 259-2519
Email: shalla.prichard@bakerbotts.com
emanuel.grillo@bakerbotts.com

(b) Consenting Incremental Term Loan Lenders

Latham & Watkins LLP
Attn: Mark A. Broude
885 Third Avenue
New York, NY 10022-4834
Tel: (212) 906-1384
Email: mark.broude@lw.com

(c) Consenting OpCo Noteholders:

Weil, Gotshal & Manges LLP
Attn: Matthew S. Barr
Attn: David N. Griffiths

767 Fifth Avenue
New York, NY 10153-0119
Tel: (212) 310-8767
Tel: (212) 310-8729
Fax: (212) 310-8007
Email: matt.barr@weil.com
david.griffiths@weil.com

30. Entire Agreement. This Agreement (including the Exhibits and Schedules) constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings, whether written or oral, among the Parties with respect to the subject matter of this Agreement.

31. Amendments. Except as otherwise provided herein, this Agreement may not be modified, amended, or supplemented except in a writing executed and delivered by the Debtors and the Requisite Consenting Creditors; provided , that , subject to Section 5 , Sections 4 , 7 , 9 , 20 , this Section 31 , and any provision (or, as applicable, sub-provision) of this Agreement (including any Exhibits and Schedules hereto) requiring the consent of the Requisite Supermajority Consenting Creditors shall not be modified, amended, waived, or supplemented without the prior written consent of the Debtors and the Requisite Supermajority Consenting Creditors.

32. Reservation of Rights.

(a) Except as expressly provided in this Agreement or the Plan Term Sheet, including Section 7(a) of this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict the ability of any Party to protect and preserve its rights, remedies and interests, including without limitation, its claims against any of the other Parties.

(b) Without limiting Sub-Clause (a) of this Section 32 in any way, if the Plan is not consummated in the manner set forth, and on the timeline set forth, in this Agreement and Plan Term Sheet, or if this Agreement is terminated for any reason, nothing shall be construed herein as a waiver by any Party of any or all of such Party's rights, remedies, claims, and defenses and the Parties expressly reserve any and all of their respective rights, remedies, claims and defenses, subject to Section 24 of this Agreement. The Plan Term Sheet, this Agreement, the Plan, and any related document shall in no event be construed as or be deemed to be evidence of an admission or concession on the part of any Party of any claim or fault or liability or damages whatsoever. Each of the Parties denies any and all wrongdoing or liability of any kind and does not concede any infirmity in the claims or defenses which it has asserted or could assert.

33. Counterparts. This Agreement may be executed in one or more counterparts, each of which, when so executed, shall constitute the same instrument, and the counterparts may be delivered by facsimile transmission or by electronic mail in portable document format (.pdf).

34. Public Disclosure. This Agreement, as well as its terms, its existence, and the existence of the negotiation of its terms are expressly subject to any existing confidentiality agreements executed by and among any of the Parties as of the date hereof; provided , however , that, (a) on or after the Effective Date, the Debtors may make any public disclosure or filing with respect to the subject matter of this Agreement, including, without limitation, the existence of, or the terms of, this Agreement or any other material term of the transaction contemplated herein, that, based upon the advice of counsel, is required to be made (i) by applicable law or regulation or (ii) pursuant to any rules or regulations of the New York Stock Exchange, without the express written consent of the other Parties and (b) after the Petition Date, the Parties may (i) disclose the existence of, or the terms of, this Agreement or any other material term of the transaction contemplated herein without the express written consent of the other Parties and (ii) file a copy of this Agreement with the Bankruptcy Court; provided , however , that, in all instances, the Parties may not disclose, and shall redact the holdings information of every Party to this Agreement as of the date hereof and at any time hereafter. In addition, each Party to this Agreement shall have the right, at any time, to know the identities and holdings information of every other Party to this Agreement, but must keep such information confidential and may not disclose such information to any person except as may be compelled by a court of competent jurisdiction. The Debtors take no position with regard to whether such information may be material non-public information, but may not disclose such information other than on a confidential basis or as may be ordered by the Bankruptcy Court.

35. Headings. The section headings of this Agreement are for convenience of reference only and shall not, for any purpose, be deemed a part of this Agreement.

36. Interpretation. This Agreement is the product of negotiations among the Parties, and the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement or any portion hereof, shall not be effective in regard to the interpretation hereof.

[*Signatures and exhibits follow*.]

IN WITNESS WHEREOF, this RSA has been duly executed as of the date first above written.

SEVENTY SEVEN ENERGY INC.

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

SEVENTY SEVEN FINANCE INC.

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

SEVENTY SEVEN OPERATING LLC

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

SEVENTY SEVEN LAND COMPANY LLC

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

KEYSTONE ROCK & EXCAVATION, L.L.C.

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

PERFORMANCE TECHNOLOGIES, L.L.C.

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

PTL PROP SOLUTIONS, L.L.C.

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

WESTERN WISCONSIN SAND COMPANY, LLC

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

NOMAC DRILLING, L.L.C.

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

SSE LEASING, LLC

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

GREAT PLAINS OILFIELD RENTAL, L.L.C.

By: /s/ Cary Baetz
Name: Cary Baetz
Title: Chief Financial Officer

AGREED TO AND ACCEPTED

this 13th day of April, 2016

BLUEMOUNTAIN CAPITAL MANAGEMENT, LLC , on behalf of itself and the funds it manages

By: /s/ David M. O'Mara
Its: Authorized Signatory

Taxpayer I.D. #

AGREED TO AND ACCEPTED

this 13th day of April, 2016

MUDRICK CAPITAL MANAGEMENT, LLC, on behalf of itself and the funds it manages

By: /s/ Jason Mudrick
Its: Authorized Signatory

Taxpayer I.D. # 27-0367034

AGREED TO AND ACCEPTED

this 13th day of April, 2016

AXAR CAPITAL MANAGEMENT, LLC, on behalf of itself and the funds it manages

By: /s/ Andrew Axelrod
Its: Authorized Signatory

Taxpayer I.D. # 47-3227176

Exhibit A to the Restructuring Support Agreement

Plan Term Sheet

Execution Version
April 15, 2016

SEVENTY SEVEN ENERGY, INC., ETAL.

PLAN TERM SHEET

APRIL 15, 2016

This term sheet (the "**Term Sheet**") sets forth the principal terms of a proposed financial restructuring (the "**Restructuring**") of the existing debt and other obligations of Seventy Seven Energy, Inc. ("**HoldCo**") and the subsidiaries set forth below (collectively, the "**Company**"), including Seventy Seven Operating LLC ("**OpCo**"), pursuant to a joint chapter 11 plan of reorganization under the United States Bankruptcy Code (as defined below) (a "**Plan**"). Capitalized terms herein not otherwise defined shall have the meanings given them in that certain Restructuring Support Agreement dated as of April 15, 2016, to which this Term Sheet is an exhibit (the "**Restructuring Support Agreement**"). As reflected in the Restructuring Support Agreement, the Restructuring is supported by the Consenting Incremental Term Loan Lenders and the Consenting OpCo Noteholders (collectively, the "**Restructuring Support Parties**").

THIS TERM SHEET DOES NOT CONSTITUTE (NOR SHALL IT BE CONSTRUED AS) A SOLICITATION OF ACCEPTANCES OR REJECTIONS AS TO ANY PLAN OF REORGANIZATION OR AS AN OFFER TO BUY, SELL OR EXCHANGE ANY OF THE SECURITIES OR INSTRUMENTS DESCRIBED HEREIN, IT BEING UNDERSTOOD THAT SUCH A SOLICITATION, IF ANY, ONLY WILL BE MADE IN COMPLIANCE WITH APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE AND/OR OTHER APPLICABLE LAWS. THIS TERM SHEET DOES NOT ADDRESS ALL TERMS THAT WOULD BE REQUIRED IN CONNECTION WITH ANY POTENTIAL RESTRUCTURING AND ENTRY INTO OR THE CREATION OF ANY BINDING AGREEMENT IS SUBJECT TO THE NEGOTIATION AND EXECUTION OF DEFINITIVE DOCUMENTATION IN FORM AND SUBSTANCE CONSISTENT WITH THIS TERM SHEET AND SATISFACTORY TO THE COMPANY AND THE REQUISITE CONSENTING CREDITORS. THIS TERM SHEET HAS BEEN PRODUCED FOR DISCUSSION AND SETTLEMENT PURPOSES ONLY AND IS SUBJECT TO THE PROVISIONS OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER SIMILAR APPLICABLE STATE AND FEDERAL RULES. THIS TERM SHEET AND THE INFORMATION CONTAINED HEREIN IS STRICTLY CONFIDENTIAL AND SHALL NOT BE SHARED WITH ANY OTHER PARTY ABSENT THE PRIOR WRITTEN CONSENT OF THE COMPANY AND THE REQUISITE CONSENTING CREDITORS.

SUMMARY OF PRINCIPAL TERMS AND CONDITIONS

Transaction Overview

Debtors:	HoldCo; OpCo; Seventy Seven Land Company LLC ("**LandCo**"); Seventy Seven Finance Inc. ("**SSF**"); Performance Technologies, L.L.C. ("**PTL**"); PTL Prop Solutions, L.L.C. ("**PTL Prop**"); Western Wisconsin Sand Company, LLC; Nomac Drilling, L.L.C. ("**Nomac**"); SSE Leasing LLC ("**SSE Leasing**"); Keystone Rock & Excavation, L.L.C.; and Great Plains Oilfield Rental, L.L.C. ("**Great Plains**") (collectively, the "**Debtors**").
Reorganized Debtors:	Each of the Debtors as reorganized under the Plan (the "**Reorganized Debtors**").
Chapter 11 Cases:	The jointly-administered voluntary cases to be commenced by the Debtors under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

Claims and Interests to be Restructured:

Undrawn letters of credit in an aggregate face amount equal to approximately $14.7 million, plus all other amounts outstanding (the "**ABL Claims**"), under that certain Credit Agreement, dated as of June 25, 2014, by and among Nomac, PTL and Great Plains, as borrowers, HoldCo, OpCo, LandCo, SSE Leasing and PTL Prop, as guarantors, Wells Fargo Bank, National Association ("**Wells Fargo**"), as administrative agent (the "**ABL Agent**"), the lenders party thereto (the "**ABL Lenders**"), and certain other parties thereto (as amended, modified or otherwise supplemented from time to time prior to the date hereof, the "**ABL Facility**");

$393 million in unpaid principal, plus all other amounts outstanding against OpCo (the "**Term Loan Claims**") under that certain Term Loan Credit Agreement, dated as of June 25, 2014, by and among HoldCo, as parent, OpCo, as borrower, HoldCo, Great Plains, Nomac, PTL, PTL Prop, SSE Leasing and LandCo, as guarantors, Wilmington Trust, N.A. ("**Wilmington Trust**"), as successor administrative agent (the "**Term Loan Agent**"), and the lenders party thereto (the "**Term Loan Lenders**") (as amended, modified or otherwise supplemented from time to time prior to the date hereof, the "**Term Loan**") and all amounts outstanding against HoldCo, Great Plains, Nomac, PTL, PTL Prop, SSE Leasing and LandCo ("**Term Loan Guaranty Claims**") under that certain Guaranty, dated as of June 25, 2014, between HoldCo, Great Plains, Nomac, PTL, PTL Prop, SSE Leasing and LandCo, as guarantors, and the Term Loan Agent, (the "**Term Loan Guaranty**");

$99 million in unpaid principal, plus all other amounts outstanding against OpCo (the "**Incremental Term Loan Claims**") under that certain Incremental Term Supplement (Tranche A), dated as of May 13, 2015, by and among HoldCo, as parent, OpCo, as borrower, HoldCo, Great Plains, Nomac, PTL, PTL Prop, SSE Leasing and LandCo, as guarantors, Wilmington Trust, as successor administrative agent (the "**Incremental Term Loan Agent**"), and the lenders party thereto (the "**Incremental Term Loan Lenders**") (as amended, modified or otherwise supplemented from time to time prior to the date hereof, the "**Incremental Term Loan**") and all amounts outstanding against HoldCo, Great Plains, Nomac, PTL, PTL Prop, SSE Leasing and LandCo ("**Incremental Term Loan Guaranty Claims**") under that certain Guaranty, dated as of June 25, 2014, between HoldCo, Great Plains, Nomac, PTL, PTL Prop, SSE Leasing and LandCo, as guarantors, and the Incremental Term Loan Agent (the "**Incremental Term Loan Guaranty**");

$650 million in unpaid principal, plus all other amounts outstanding against OpCo and SSF (the "**OpCo Note Claims**") under the 6.625% Senior Notes Due 2019 (the "**OpCo Notes**" and, the beneficial holders of such OpCo Notes, the "**OpCo Noteholders**") pursuant to that certain Indenture, dated as of October 28, 2011, by and among OpCo, as issuer, SSF, as co-issuer, Nomac, PTL, Great Plains, PTL Prop, LandCo, HoldCo and SSE Leasing, as guarantors, and The Bank of New York Mellon Trust Company, N.A., as trustee (as amended, modified or otherwise supplemented from time to time prior to the date hereof, the "**OpCo Notes Indenture**") and all amounts outstanding against Nomac, PTL, Great Plains, PTL Prop, LandCo, HoldCo and SSE Leasing (the "**OpCo Note Guaranty Claims**") under the OpCo Notes Indenture;

$450 million in unpaid principal, plus all other amounts outstanding against HoldCo (the "**HoldCo Note Claims**") under the 6.50% Senior Notes Due 2022 (the "**HoldCo Notes**" and, the beneficial holders of such HoldCo Notes, the "**HoldCo Noteholders**") pursuant to that certain Indenture, dated as of June 26, 2014, by and between HoldCo, as issuer, and Wells Fargo, as trustee (as amended, modified or otherwise supplemented from time to time prior to the date hereof, the "**HoldCo Notes Indenture**");

Any Claims against the Company (other than the OpCo Note Claims, the OpCo Note Guaranty Claims, the HoldCo Note Claims or any Intercompany Claims) that are neither secured nor entitled to priority under the Bankruptcy Code or any order of the Bankruptcy Court (the "**General Unsecured Claims**");

Any Claims against a Debtor held by another Debtor (the "**Intercompany Claims**");

Interests in shares of common stock of OpCo, 100% of which are owned by HoldCo

(the "**Existing OpCo Equity Interests**");

Interests of shares of common stock of HoldCo, of which 58,928,042 shares were outstanding as of April 13, 2016 (the "**Existing HoldCo Equity Interests**");

Any Interests in a Debtor held by another Debtor (other than the Existing OpCo Equity Interests and the Existing HoldCo Equity Interests) (the "**Intercompany Interests**").

DIP Financing and Use of Cash Collateral:

The Debtors shall obtain a commitment for revolving debtor-in-possession financing facility in the aggregate principal amount of $100,000,000 (the "**New DIP ABL Credit Facility**"). The terms and conditions of the commitment and any New DIP ABL

Credit Facility shall be in form and substance reasonably acceptable to the Requisite Consenting Creditors; *provided*, *however*, that the commitment amount, the interest rate, the maturity date, and all financial covenants in the New DIP ABL Credit Facility shall be reasonably acceptable to the Requisite Supermajority Consenting Creditors.

Promptly upon commencement of the Chapter 11 Cases, the Company will seek authority to enter into the New DIP ABL Credit Facility and use cash collateral to repay the obligations outstanding under the ABL Facility and to fund the administration of the Chapter 11 Cases. In connection with the Company's entry into the New DIP ABL Credit Facility and use of cash collateral, the Company shall provide "adequate protection" (as such term is defined in sections 361 and 363 of the Bankruptcy Code) to the ABL Lenders on terms acceptable to the Requisite Consenting Creditors.

Any order approving entry into the New DIP ABL Credit Facility and the use of cash collateral shall be acceptable to the Requisite Consenting Creditors.

Exit Facility:

On the effective date of the Plan (the "**Effective Date**"), the Company will enter into a revolving credit facility in the aggregate principal amount of approximately $100,000,000 (the "**Exit Facility**"). The Exit Facility may be (a) an amendment and restatement of the New DIP ABL Credit Facility or (b) a new facility, and the terms and conditions of the Exit Facility shall be in form and substance reasonably acceptable to the Requisite Consenting Creditors; *provided*, *however*, that the commitment amount, the interest rate, the maturity date, and all financial covenants in the Exit Facility shall be reasonably acceptable to the Requisite Supermajority Consenting Creditors. The proceeds from the Exit Facility, plus cash on hand, will be used to (i) provide additional liquidity for working capital and general corporate purposes, (ii) pay all reasonable and documented fees and expenses incurred by the Company and the Restructuring Support Parties, and expenses of their legal and financial advisors (but no more than one legal counsel, one local counsel and one financial advisor for each of the Company, the Consenting Incremental Term Loan Lenders and the Consenting OpCo Noteholders) (iii) fund Plan distributions and (iv) fund the closing of the administration of the Chapter 11 Cases.

Reorganized HoldCo/Reorganized OpCo Structure:

On the Effective Date the Existing HoldCo Equity Interests shall be cancelled. The Existing OpCo Equity Interests held by HoldCo shall remain outstanding and reorganized HoldCo ("**Reorganized HoldCo**") shall issue newly authorized common shares of Reorganized HoldCo in an amount to be agreed upon by the Company and the Requisite Supermajority Consenting Creditors (the "**New HoldCo**

	Common Shares ") and (a) distribute 96.75%, on a fully diluted basis, of the New HoldCo Common Shares to reorganized OpCo (" **Reorganized OpCo** ") for distribution to the OpCo Noteholders in satisfaction of their OpCo Note Claims against OpCo and their OpCo Note Guaranty Claims against Nomac, PTL, Great Plains, PTL Prop, LandCo and SSE Leasing pursuant to the terms and conditions described below, and (b) as consideration negotiated by HoldCo in connection with the Restructuring, distribute 3.25% of the New HoldCo Common Shares (the " **HoldCo Creditor New Common Share Pool** ") to holders of the HoldCo Notes Claims and the OpCo Notes Guaranty Claims in their capacities as creditors of HoldCo. Distributions from the HoldCo Creditor New Common Share Pool will depend upon whether the class of HoldCo Notes Claims votes to accept or reject the Plan as more fully set forth in " *Summary of Distribution of New HoldCo Common Shares* " and elsewhere below.
Treatment of Claims and Interests	
Administrative Expense (including 503(b)(9) Claims), Priority Tax, and Other Priority Claims:	Each holder of an Allowed administrative expense claim shall (a) be paid in full in cash (i) on the date such amounts become due and owing in the ordinary course of business or (ii) on or as soon as practicable after the Effective Date or (b) be entitled to such other treatment as agreed to by such holder, the Debtors and the Requisite Consenting Creditors. For purposes of this Term Sheet, "Allowed" shall have the same meaning set forth in section 502 of the Bankruptcy Code and as further defined in the Plan. Each holder of an Allowed priority tax claim shall (a) be paid in full in deferred cash payments over a period not longer than five (5) years after the Petition Date or (b) be entitled to such other treatment as agreed to by such holder, the Debtors and the Requisite Consenting Creditors. Each holder of any other Allowed priority claim shall (a) be paid in full in cash on or as soon as practicable after the Effective Date or (b) be entitled to such other treatment as agreed to by such holder, the Debtors and the Requisite Consenting Creditors.
Other Secured Claims:	On or as soon as practicable after the Effective Date, to the extent any Allowed prepetition secured claims exist other than the ABL Claims, the Term Loan Claims or the Incremental Term Loan Claims (the " **Other Secured Claims** "), such Other Secured Claims shall be satisfied by either (a) payment in full in cash, (b) reinstatement pursuant to section 1124 of the Bankruptcy Code, (c) such other recovery necessary to satisfy section 1129 of the Bankruptcy Code or (d) such other treatment as agreed to by such holder, the Debtors and the Requisite Consenting Creditors.
	Unimpaired - Deemed to Accept
Term Loan Claims:	The legal, equitable and contractual rights of the holders of Allowed Term Loan Claims are unaltered by the Plan. On or as soon as practicable after the Effective Date, the Allowed Term Loan Claims shall be reinstated pursuant to section 1124 of the Bankruptcy Code on the terms set forth in the Term Loan. Allowed in the aggregate principal amount of at least $393 million plus accrued interest, fees and expenses. Unimpaired - Deemed to Accept

Incremental Term Loan Claims	On or as soon as practicable after the Effective Date, each holder of Allowed Incremental Term Loan Claims shall receive its pro rata share of (i) a consent fee in an amount equal to 2.0% of the aggregate amount of the Allowed Incremental Term Loan Claims and (ii) $15 million, in full and final satisfaction of $15 million of the Allowed Incremental Term Loan Claims; provided , that the Incremental Term Loan Lenders shall waive the right to any prepayment premium that may be payable under the Incremental Term Loan in connection with such payment. The remaining $84 million of Allowed Incremental Term Loan Claims shall be paid in accordance with the terms and conditions of the Incremental Term Loan; *provided , however* , that the Incremental Term Loan shall be amended, with the consent of the Incremental Term Loan Lenders, to remove the requirement of any future prepayment premium under the Incremental Term Loan for a period of 18 months after the Effective Date. Allowed in the aggregate principal amount of at least $99 million plus accrued interest, fees and expenses. Impaired - Entitled to Vote
OpCo Note Claims:	On the Effective Date, all of the OpCo Notes shall be cancelled and, in full and final satisfaction of the Allowed OpCo Note Claims, each OpCo Noteholder shall receive its pro rata share of (i) 96.75%, on a fully diluted basis, of the New HoldCo Common Shares, which shares shall be subject to dilution for the Management Incentive Plan (defined below) and the New Warrants (defined below) and (ii) the OpCo Litigation Proceeds (defined below). Allowed in the aggregate principal amount of at least $650 million plus accrued interest, fees and expenses. Impaired - Entitled to Vote
General Unsecured Claims:	Each holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction of such Allowed General Unsecured Claim, payment in full in cash in the ordinary course of business, as and when due and payable, or such other treatment as may be required to allow such Allowed General Unsecured Claim to "ride through" the Chapter 11 Cases. Unimpaired - Deemed to Accept
Existing OpCo Equity Interests:	On the Effective Date, the Existing OpCo Equity Interests held by HoldCo shall remain outstanding and shall be held by Reorganized HoldCo.
Term Loan Guaranty Claims:	The legal, equitable and contractual rights of the holders of Allowed Term Loan Guaranty Claims are unaltered by the Plan. On or as soon as practicable after the Effective Date, the Allowed Term Loan Guaranty Claims shall be reinstated pursuant to section 1124 of the Bankruptcy Code on the terms set forth in the Term Loan. Allowed in the aggregate principal amount of at least $393 million plus accrued interest, fees and expenses. Unimpaired - Deemed to Accept

Incremental Term Loan Guaranty Claims:	Each holder of an Allowed Incremental Term Loan Guaranty Claim shall be entitled to receive on account of its Allowed Incremental Term Loan Guaranty Claim against HoldCo, its pro rata share, on a fully diluted basis, of the HoldCo Creditor New Common Share Pool, which shares shall be subject to dilution for the Management Incentive Plan (defined below) and the New Warrants (defined below); *provided* , *however* that the Incremental Term Loan Lenders have agreed to waive the right to receive such distribution (the " **Incremental Term Loan Guaranty Waiver** "), but, for the avoidance of doubt, such waiver shall not affect the status and validity of the guaranties (by HoldCo and the other Debtors) arising under or related to the Incremental Term Loan Guaranty or any liens arising under or related to the Incremental Term Loan, which guaranties and liens shall remain in place in accordance with their original terms and conditions. Holders of Incremental Term Loan Guaranty Claims shall on account of their Allowed Incremental Term Loan Guaranty Claims against Great Plains, Nomac, PTL, PTL Prop, SSE Leasing and LandCo receive the treatment set forth for Allowed Incremental Term Loan Claims. Allowed in the aggregate principal amount of at least $99 million plus accrued interest, fees and expenses. Impaired - Entitled to Vote
OpCo Note Guaranty Claims:	Each holder of OpCo Note Guaranty Claims shall be entitled receive on account of its Allowed OpCo Note Guaranty Claims against HoldCo its pro rata share of (i) on a fully diluted based after giving effect to the Incremental Term Loan Guaranty Waiver, the HoldCo Creditor New Common Share Pool (which shares shall be subject to dilution for the Management Incentive Plan (defined below) and the New Warrants (defined below)); *provided* , *however* , that if holders of at least two-thirds in amount and one-half in number of the Allowed HoldCo Note Claims that timely vote on the Plan vote in favor of the Plan, the OpCo Noteholders agree to waive the right to receive such distribution (the " **OpCo Note Guaranty Waiver** "); and (ii) the HoldCo Litigation Proceeds (defined below). Holders of OpCo Note Guaranty Claims shall on account of their Allowed OpCo Note Guaranty Claims against Nomac, PTL, Great Plains, PTL Prop, LandCo and SSE Leasing receive the treatment set forth for Allowed OpCo Note Claims. Allowed in the aggregate principal amount of at least $650 million plus accrued interest, fees and expenses. Impaired - Entitled to Vote
Intercompany Claims and Intercompany Interests:	All Intercompany Claims and Intercompany Interests shall be reinstated. Unimpaired - Deemed to Accept

Existing HoldCo Equity Interests:	All Existing HoldCo Equity Interests shall be extinguished as of the Effective Date. Only if holders of at least two-thirds in amount and one-half in number of each of the Allowed Incremental Term Loan Claims, the Allowed OpCo Note Claims, the Allowed Incremental Term Loan Guaranty Claims, the Allowed OpCo Note Guaranty Claims and the Allowed HoldCo Note Claims that vote on the Plan vote in favor of the Plan, each holder of Existing HoldCo Equity Interests shall receive its pro rata share of (i) warrants to purchase 10% of the New Common Shares with a strike price at a total equity value of $1.788 billion, which warrants shall be exercisable at any time from the Effective Date until the five (5) year anniversary thereof (the "**New B Warrants**") and (ii) warrants to purchase 10% of the New Common Shares with a strike price at a total equity value of $2.5 billion, which warrants shall be exercisable at any time from the Effective Date until the seven (7) year anniversary thereof (the "**New C Warrants**" and, together with the New A Warrants and the New B Warrants, the "**New Warrants**"); otherwise, holders of Existing HoldCo Equity Interests shall receive no distribution under the Plan on account of such interests. Impaired - Deemed to Reject
Summary of Distribution of New HoldCo Common Shares:	Subject to dilution for the Management Incentive Plan (defined below) and the New Warrants, pursuant to the terms and conditions described above, the New HoldCo Common Shares shall be distributed as follows:

If the class of HoldCo Noteholders accepts the Plan:

OpCo Note Claims:	96.75%
OpCo Note Guaranty Claims:	0.00%
HoldCo Note Claims:	3.25%
	100.00%

If the class of HoldCo Noteholders does not accept the Plan:

OpCo Note Claims:	96.75%
OpCo Note Guaranty Claims:	1.92%
HoldCo Note Claims:	1.33%
	100.00%

Corporate Governance

Corporate Organizational Documents:	TBD, but to be acceptable to the Requisite Supermajority Consenting Creditors, in consultation with the Debtors.
Board of Directors of Reorganized HoldCo:	TBD, but to be acceptable to the Requisite Supermajority Consenting Creditors, in consultation with the Debtors.

General Provisions

Vesting:	Upon consummation of the Restructuring, all of the assets of the Debtors shall be owned by the reorganized Debtors.
Management Incentive Plan:	A management incentive plan (the "**Management Incentive Plan**") to be implemented after the Effective Date by the board of directors of Reorganized HoldCo will provide some combination of cash, options, and/or other equity-based compensation to the management of Reorganized HoldCo in an amount to be set forth in the Plan, which amount shall not exceed 10% of the New Common Shares, and which shall dilute all of the equity otherwise contemplated to be issued by this Term Sheet including, for the avoidance of doubt, the New Warrants.
Tax Issues:	The Debtors shall seek to implement the Restructuring in a tax efficient manner. Reorganized HoldCo shall have the authority to control any federal or state tax returns filed by the Debtors.
Reincorporation:	Reorganized HoldCo shall be reincorporated in Delaware.

Release and Related Provisions

Exculpations:

The Plan shall include standard and customary exculpation provisions that provide for the Debtors, the Restructuring Support Parties, and each of their respective current officers and directors, professionals, advisors, accountants, attorneys, investment bankers, consultants, employees, agents and other representatives (each solely in its capacity as such), shall be exculpated from liability for their actions in connection with or arising out of the Chapter 11 Cases or the Plan, with customary carve-outs for gross negligence and willful misconduct, in each of the foregoing cases, to the extent permitted by law.

Releases:

The Plan shall include standard and customary mutual releases and third party releases, including without limitation, releases of current officers and directors, from holders of claims or interests to the extent permitted by law.

Litigation Trust:

The Plan shall provide for the establishment of a litigation trust (the "**Litigation Trust**") to pursue certain claims and causes of action to be assigned and transferred to the Litigation Trust by the Debtors on the Effective Date for the benefit of the Litigation Trust Beneficiaries (defined below).

The holders of the OpCo Note Guaranty Claims and the holders of the HoldCo Note Claims shall be deemed the sole beneficiaries (the "**HoldCo Litigation Trust Beneficiaries**") of any claims or causes of action assigned and transferred to the Litigation Trust by HoldCo. Subject to the terms and conditions of the Litigation Trust Agreement (defined below), the HoldCo Litigation Trust Beneficiaries shall be entitled to receive their pro rata share of any proceeds of any claims or causes of action assigned and transferred to the Litigation Trust by HoldCo (the "**HoldCo Litigation Proceeds**").

The holders of the OpCo Note Claims shall be deemed the sole beneficiaries (the "**OpCo Litigation Trust Beneficiaries**" and, together with the HoldCo Litigation Trust Beneficiaries, the "**Litigation Trust Beneficiaries**") of any claims or causes of action assigned and transferred to the Litigation Trust by any Debtor other than HoldCo. Subject to the terms and conditions of the Litigation Trust Agreement (defined below), the OpCo Litigation Trust Beneficiaries shall be entitled to receive their pro rata share of any proceeds of any claims or causes of action assigned and transferred to the Litigation Trust by any Debtor other than HoldCo (the "**OpCo Litigation Proceeds**").

The Litigation Trust shall be governed by an agreement (the "**Litigation Trust Agreement**"), which will govern the management and administration of the Litigation Trust and the respective rights, powers and obligations of the Litigation Trust Beneficiaries. The Litigation Trust Agreement will be binding on all Litigation Trust Beneficiaries who shall be deemed to have executed the Litigation Trust Agreement as of the Effective Date. The Litigation Trust Agreement shall be in form and substance reasonably acceptable to the Requisite Consenting Creditors.

Current Director and Officer Indemnification:

Any obligations of the Debtors pursuant to their organizational documents to indemnify current officers, directors, agents, and/or employees (i) shall not be discharged or impaired by confirmation of the Plan and (ii) shall be deemed and treated as executory contracts to be assumed by the Debtors under the Plan.

Director and officer insurance will continue in place for the current directors and officers of all of the Debtors during the Chapter 11 Cases on existing terms. After the Effective Date, the Reorganized Debtors shall not terminate or otherwise reduce the coverage under any director and officer insurance policies (including any "tail policy") then in effect. To the extent permitted under applicable law, current directors and officers are to receive first access to available insurance. Current directors and officers shall be indemnified by the Reorganized Debtors to the extent of such insurance.

Discharge:	A full and complete discharge shall be provided in the Plan.
Injunctions:	Ordinary and customary injunction provisions shall be included in the Plan.
Conditions to Confirmation and Effectiveness:	The Plan shall be subject to usual and customary conditions to confirmation and effectiveness (as applicable), as well as such other conditions that are reasonably satisfactory to the Company and the Requisite Consenting Creditors or Requisite Consenting Supermajority Consenting Creditors, as applicable, including the following: • The Bankruptcy Court shall have entered an order in form and substance reasonably acceptable to the Requisite Consenting Creditors and the Debtors approving the Disclosure Statement as containing "adequate information" within the meaning of section 1125 of the Bankruptcy Code; • The Plan and all documents contained in any Plan supplement, including any exhibits, schedules, amendments, modifications or supplements thereto, and all other Definitive Documentation shall have been negotiated, executed, delivered and filed with the Bankruptcy Court in substantially final form and in form and substance reasonably acceptable to the Requisite Consenting Creditors or Requisite Consenting Supermajority Consenting Creditors, as applicable, and the Debtors and otherwise consistent with the terms and conditions described in this Term Sheet or the Restructuring Support Agreement, as applicable; • The Restructuring Support Agreement shall have been approved pursuant to an order of the Bankruptcy Court and shall not have been terminated, and shall be in full force and effect; • The Bankruptcy Court shall have entered a Confirmation Order in form and substance reasonably acceptable to the Requisite Consenting Creditors and the Debtors and the Confirmation Order shall be a final order; and • On or simultaneously with the occurrence of the Effective Date, the Debtors shall have closed on the Exit Facility, which Exit Facility shall be in form and substance reasonably acceptable to the Debtors and the Requisite Consenting Creditors; *provided* , *however* , that the commitment amount, the interest rate, the maturity date, and all financial covenants in the Exit Facility shall be reasonably acceptable to the Requisite Supermajority Consenting Creditors.

Other Provisions

Other Provisions:	The Plan shall contain such other terms and conditions as agreed to by the Debtors and the Requisite Consenting Creditors or Requisite Consenting Supermajority Consenting Creditors, as applicable.
Issuance of New Common Shares; Execution of the Plan Documents:	On the Effective Date, the Reorganized Debtors shall issue and execute all securities, notes, instruments, certificates, and other documents required to be issued and executed in accordance with the Plan.
Executory Contracts and Unexpired Leases:	All executory contracts and unexpired leases not expressly rejected shall be deemed assumed pursuant to the Plan. In consultation with the Requisite Consenting Creditors, the Debtors may reject executory contracts and unexpired leases, *provided* , *however* , that the existing employment arrangements for the Debtors' management team will be replaced by new employment agreements on terms consistent with their current employment arrangements; provided that such new employment agreements are reasonably acceptable to the Debtors and the Requisite Consenting Creditors. For the avoidance of doubt, any awards granted under the Management Incentive Plan will be governed by such program and will not be subject to any provisions of the employment agreements.
Consenting OpCo Noteholders' Fees and Expenses:	The Company shall pay all costs, fees and expenses of Latham & Watkins LLP, advisors to the Consenting Incremental Term Loan Lenders, and Weil, Gotshal & Manges LLP and Moelis & Company, advisors to the Consenting OpCo Noteholders, under their respective engagement letters or other contractual arrangements.

No Registration Under the Securities Act:	The offer, issuance and distribution of the New HoldCo Common Shares pursuant to the Plan will be exempt from registration under the Securities Act pursuant to section 1145 of the Bankruptcy Code.
No Admission:	Nothing in this Term Sheet is or shall be deemed to be an admission of any kind as to the extent, validity, or priority of any claims held by any Parties hereto.

Exhibit B to the Restructuring Support Agreement

Form of Transferee Joinder

This joinder (this "Joinder") to the Restructuring Support Agreement (the "Agreement"), dated as of [DATE], by and among: (i) HoldCo; SSF; OpCo; Great Plains; Seventy Seven Land Company; Nomac; PTL; PTL Prop Solutions, L.L.C.; SSE Leasing, LLC; Keystone Rock & Excavation, L.L.C.; and Western Wisconsin Sand Company, LLC, (ii) the Consenting Incremental Term Loan Lenders, and (iii) the Consenting OpCo Noteholders, is executed and delivered by [ ] (the "Joining Party") as of [ ]. Each capitalized term used herein but not otherwise defined shall have the meaning ascribed to it in the Agreement.

1. Agreement to be Bound. The Joining Party hereby agrees to be bound by all of the terms of the Agreement, a copy of which is attached to this Joinder as Annex 1 (as the same has been or may be hereafter amended, restated, or otherwise modified from time to time in accordance with the provisions thereof). The Joining Party shall hereafter be deemed to be a Party for all purposes under the Agreement and one or more of the entities comprising the Restructuring Support Parties.

2. Representations and Warranties. The Joining Party hereby represents and warrants to each other Party to the Agreement that, as of the date hereof, such Joining Party (a) is the legal or beneficial holder of, and has all necessary authority (including authority to bind any other legal or beneficial holder) with respect to, the ABL Claims, Term Loan Claims, Incremental Term Loan Claims, Incremental Term Loan Guaranty Claims, OpCo Note Claims, and/or HoldCo Note Claims identified below its name on the signature page hereof, and (b) makes, as of the date hereof, the representations and warranties set forth in Section 18 of the Agreement to each other Party.

3. Governing Law. This Joinder shall be governed by and construed in accordance with the internal laws of the State of New York, without regard to any conflicts of law provisions which would require the application of the law of any other jurisdiction.

4. Notice. All notices and other communications given or made pursuant to the Agreement shall be sent to:

To the Joining Party at:

[JOINING PARTY]
[ADDRESS]
Attn:
Facsimile: [FAX]
EMAIL:

IN WITNESS WHEREOF, the Joining Party has caused this Joinder to be executed as of the date first written above.

[JOINING PARTY]

Holdings: $_____ of Debt
Under the ABL Facility

Holdings: $_____ of Debt
Under the Term Loan

Holdings: $_____ of Debt
Under the Incremental Term Loan

Holdings: $_____ of Debt
Under the Incremental Term Loan Guaranty

Holdings: $_____ of Debt
Under the OpCo Notes Indenture

Holdings: $_____ of Debt
Under the HoldCo Notes Indenture

Annex 1 to the Form of Transferee Joinder

Exhibit 99.1

FOR IMMEDIATE RELEASE

Seventy Seven Energy Inc. Enters into Restructuring Support Agreement

- $1.1 Billion of Existing Debt to be Converted into New Common Equity
- Trade Creditors, Suppliers and Contractors to be Paid in Full in the Ordinary Course
- Customer Contracts to Continue Uninterrupted

Oklahoma City, OK – April 19, 2016 – Seventy Seven Energy Inc. (the "Company"), today announced that it has entered into a Restructuring Support Agreement (the "Agreement") with certain lenders (the "Incremental Term Loan Lenders") representing 92.0% of the outstanding principal amount under the Company's Incremental Term Supplement (Tranche A) loan and certain noteholders (the "Consenting 2019 Noteholders") collectively owning or controlling in excess of 57.7% of the aggregate outstanding principal amount of the Company's 6.625% senior notes due 2019 (the "2019 Notes"). The terms of the Agreement provide for a substantial deleveraging of the Company's balance sheet by converting approximately $1.1 billion of the Company's bond debt into new common equity without interrupting the Company's daily operations. The Agreement outlines an expected restructuring through a prepackaged plan of reorganization (the "Plan").

"Today's announcement is a clear endorsement by the stakeholders of Seventy Seven Energy in the future of this company," Chief Executive Officer Jerry Winchester said. "The exchange of debt for equity will provide us with a significantly deleveraged balance sheet, and we will emerge from this process as a stronger company. After a thorough evaluation of our options, we are confident this is the correct path that will enable us to take advantage of our operational strengths and strong asset base to proactively grow our business as market conditions improve."

A key component of the Plan is that all trade creditors, suppliers and contractors will be paid in the ordinary course of business. All of the Company's commercial and operational contracts will remain in effect in accordance with their terms preserving the rights of all parties, and customer relationships will continue uninterrupted. Employees can expect that operations will continue as usual and they will be paid in the ordinary course. The Company intends to commence a prepackaged Chapter 11 proceeding on or before May 26, in order to implement the Plan. The pre-packaged Chapter 11 filing will follow a solicitation process that is expected to commence on April 22.

The Company's 8-K filing today outlines certain terms of the Plan. Significant elements of the Plan include:

- payment in full in the ordinary course of all trade creditors and other general unsecured creditors;
- the exchange of the full $650.0 million of the 2019 Notes into either 96.75%, if the holders of the 2022 Notes vote as a class to accept the Plan, or 98.67%, if the holders of the 2022 Notes vote as a class to not accept the Plan, of the Company's new common stock to be issued in the reorganization ("New Common Stock");

Seventy Seven Energy
777 N.W. 63rd Street | Oklahoma City, OK 73116
405-608-7777

- the exchange of the full $450.0 million of the 2022 Notes for (i) 3.25% of the New Common Stock as well as warrants exercisable for 15% of the New Common Stock at predetermined equity values (the "2022 Warrants"), if the holders of the 2022 Notes vote as a class to accept the Plan, or (ii) 1.33% of the New Common Stock, if the holders of the 2022 Notes vote as a class to not accept the Plan;
- the issuance by the Company, if all classes of claims entitled to vote accept the Plan, to existing common stockholders of the Company of two series of warrants exercisable for an aggregate of 20% of the New Common Stock at predetermined equity values;
- the reinstatement of the Company's existing $400 million secured term loan on identical terms; and
- the payment of a consent fee equal to 2% of the Incremental Term Loan plus $15 million of the outstanding Incremental Term Loan balance, together with the reinstatement of the remaining $84 million balance of the Incremental Term Loan on identical terms other than the suspension of any prepayment premium for a period of 18 months.

The Company has set up a toll-free information line to answer questions about this announcement. The information line can be accessed by calling (844)224-1136 (internationally +1 (917) 962-8386). The Company has also posted FAQ's on its website at **77NRG.com/Restructuring/** .

Baker Botts LLP is serving as legal counsel and Lazard Freres & Co. LLC has been engaged as financial advisor to Seventy Seven Energy. Alvarez & Marsal is restructuring advisor to the Company.

This press release is not intended to be, and should not in any way be construed as, a solicitation of votes of noteholders or other investors regarding the plan of reorganization.

About Seventy Seven Energy Inc.

Headquartered in Oklahoma City, SSE provides a wide range of wellsite services and equipment to U.S. land-based exploration and production customers. SSE's services include drilling, hydraulic fracturing and oilfield rentals and its operations are geographically diversified across many of the most active oil and natural gas plays in the onshore U.S., including the Anadarko and Permian basins and the Eagle Ford, Haynesville, Marcellus, Niobrara and Utica shales. For additional information about SSE, please visit our website at **www.77nrg.com** , where we routinely post announcements, updates, events, investor information and presentations and recent news releases.

This news release contains certain statements and information that may constitute "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements, other than statements of historical facts that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements. The words "believe," "ensure", "will" and similar expressions, and the negative thereof, are intended to identify forward-looking statements. Without limiting the generality of the foregoing, forward-looking statements contained in this press release specifically include statements, estimates and projections regarding our business outlook and plans, including with respect to our capital structure, corporate valuation, future financial position and capital resources, operations, performance and growth. Forward-looking statements are not assurances of future performance. These forward-looking statements are based on management's current expectations and beliefs, forecasts for our existing operations, experience, and perception of historical trends, current conditions, anticipated future developments and their effect on us, and other factors believed to be appropriate. Although management believes that the expectations and assumptions reflected in these forward-looking statements are reasonable as and when made, no assurance can be given that these assumptions are accurate or that any of these expectations will be achieved (in full or at all). Moreover, our forward-looking statements are subject to significant risks and uncertainties, many of which are beyond our control, which may cause actual results to differ materially from our historical experience and our present expectations or projections which are implied or expressed by the forward-looking statements. Important factors that could cause actual results to differ materially from those in the forward-looking statements include, but are not limited to, risks relating to economic conditions; volatility of crude oil and natural gas commodity prices; delays in or failure of delivery of current or future orders of specialized equipment; the loss of or interruption in operations of one or more key suppliers or customers; oil and gas market conditions; the effects of government regulation, permitting and other legal requirements, including new legislation or regulation of hydraulic fracturing; operating risks; the adequacy of our capital resources and liquidity; weather; litigation; competition in the oil and natural gas industry; and costs and availability of resources.

For additional information regarding known material factors that could cause our actual results to differ from our present expectations and projected results, please see our filings with the U.S. Securities and Exchange Commission ("SEC"), including our Current Reports on Form 8-K that we file from time to time, Quarterly Reports on Form 10-Q, and our Annual Reports on Form 10-K.

Readers are cautioned not to place undue reliance on any forward-looking statement which speaks only as of the date on which such statement is made. We undertake no obligation to correct, revise or update any forward-looking statement after the date such statement is made, whether as a result of new information, future events or otherwise, except as required by applicable law.

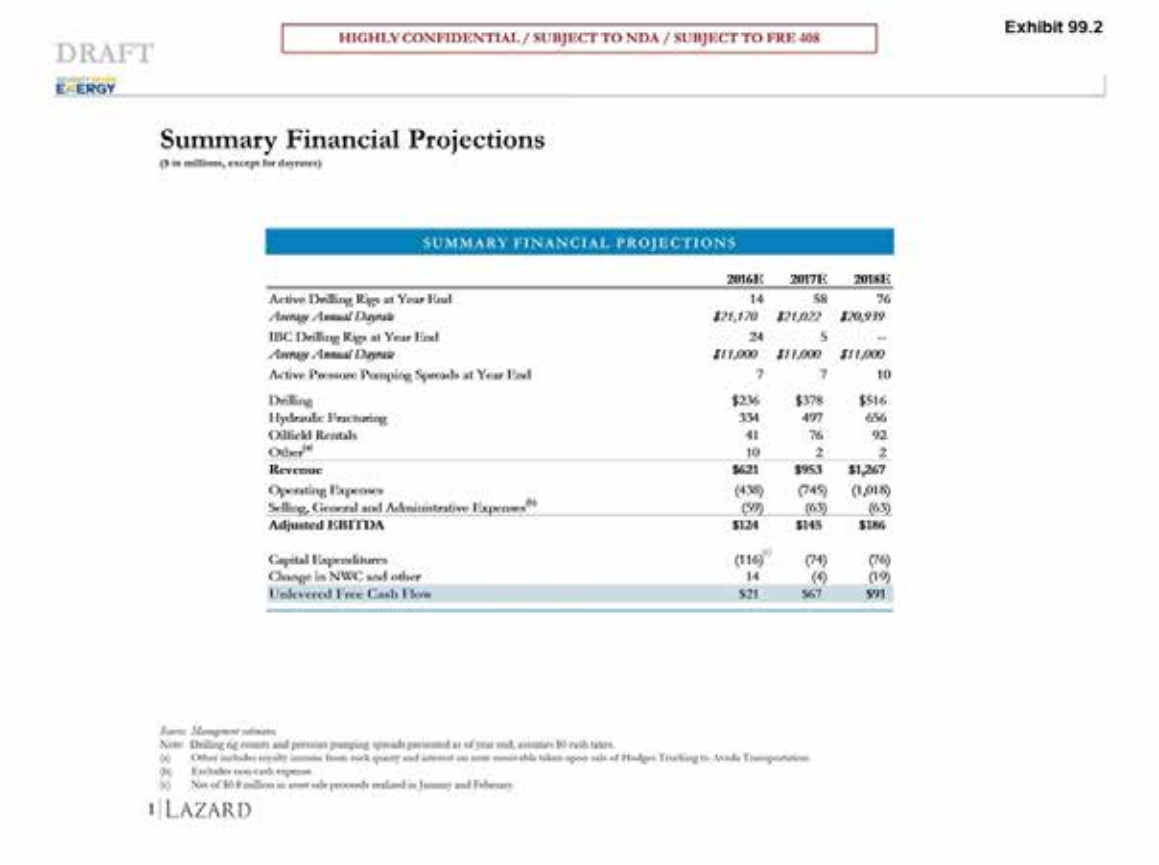

Exhibit 99.2

HIGHLY CONFIDENTIAL / SUBJECT TO NDA / SUBJECT TO FRE 408

DRAFT

E-ERGY

Summary Financial Projections

($ in millions, except for dayrates)

SUMMARY FINANCIAL PROJECTIONS

	2016E	2017E	2018E
Active Drilling Rigs at Year End	14	58	76
Average Annual Dayrate	*$25,170*	*$21,022*	*$20,939*
IBC Drilling Rigs at Year End	24	5	--
Average Annual Dayrate	*$11,000*	*$11,000*	*$11,000*
Active Pressure Pumping Spreads at Year End	7	7	10
Drilling	$236	$378	$516
Hydraulic Fracturing	334	497	656
Oilfield Rentals	41	76	92
Other[a]	10	2	2
Revenue	**$621**	**$953**	**$1,267**
Operating Expenses	(430)	(745)	(1,018)
Selling, General and Administrative Expenses[b]	(59)	(63)	(63)
Adjusted EBITDA	**$124**	**$145**	**$186**
Capital Expenditures	(116)[c]	(74)	(76)
Change in NWC and other	14	(4)	(19)
Unlevered Free Cash Flow	$21	$67	$91

Source: Management estimates

Note: Drilling rig counts and pressure pumping spreads presented as of year end, assumes $0 cash taxes.

(a) Other includes royalty income from rock quarry and interest on note receivable taken upon sale of Hodges Trucking to Arvada Transportation.

(b) Excludes non-cash expense.

(c) Net of $0.8 million in asset sale proceeds realized in January and February.

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