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

In re:	§	**Chapter 11**
	§	
HII TECHNOLOGIES, INC., *et al.*,	§	**Case No. 15-60070**
	§	**(Jointly Administered)**
Debtors.	§	

EXPEDITED MOTION TO
APPOINT OFFICIAL CREDITORS' COMMITTEE
FOR DEBTOR APACHE ENERGY SERVICES
PURSUANT TO 11 U.S.C. § 1102(b)(2)

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE OUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY

TO THE HONORABLE DAVID R. JONES, CHIEF UNITED STATES BANKRUPTCY JUDGE:

COMES NOW the Ad Hoc Committee of Creditors of Apache Energy Services, Inc. (the "Ad Hoc Committee"), consisting of One Flow Energy Services, LLC, Black Gold Energy LLC, Fields Water services, LLC, Brent Mulliniks and Billy Cox, and file this Expedited Motion to Appoint Official Creditors' Committee for Debtor Apache Energy Services LLC Pursuant to 11 U.S.C. § 1102(b)(2), and for cause would respectfully show.

INTRODUCTION AND RELIEF REQUESTED

1. The Ad-Hoc Committee for debtor Apache Energy Services LLC ("AES") hereby requests that the Court appoint an official committee solely for AES. This relief is requested to protect the creditors of AES, whose interests are distinct and different from the interests of creditors of the other administratively consolidated debtors. Attached hereto as **Exhibit "4"** is a corporate chart of the parent, HII Technologies, Inc. ("HII"), and its various subsidiaries.

2. The Ad-Hoc Committee members have unsecured claims against Apache Energy Services, Inc. exceeding $650,000.

3. At present, the Official Committee of Unsecured Creditors ("UCC") controls the exclusive right to bring causes of action against the secured lender, Heartland Bank, on behalf of all debtors, including debtor AES.

4. Counsel for Ad Hoc Committee and one of its members met with

counsel for the UCC in Houston to attempt to explain how debtor AES has viable fraudulent conveyance claims to avoid a $12 million term loan in favor of the secured lender, Heartland Bank. That $12 million loan encumbers the assets available to the unsecured creditors of debtor AES for use in a reorganization plan. UCC counsel refused to speak with counsel for the Ad Hoc Committee regarding causes of action held by debtor AES.

5. On December 10, 2015, undersigned counsel sent a letter to counsel for the UCC describing the causes of action owned by AES, and why they are valuable causes of action that should be pursued. A true and correct copy of such letter is attached hereto as **Exhibit "1"**. The undersigned counsel has offered to pursue such claims on a contingent fee basis on behalf of the UCC for the benefit of the AES Creditors, or on behalf of an unsecured creditors' committee for AES, if one is appointed by the UST. By letter dated December 9, 2015, the Ad Hoc Committee also requested that the UST appoint an official committee of unsecured creditors for AES. The UST is considering such request. A true and correct copy of such letter is attached hereto as **Exhibit "2"**.

6. On October 26, 2015, the Ad Hoc Committee forwarded a letter of intent to acquire certain limited assets of AES, the name and certain master services agreements, or, in the alternative, to acquire the parent, HII, and subsidiary AES, through a plan of reorganization. A true and correct copy of such

letter is attached hereto as **Exhibit "3"**. Such letter of intent followed a meeting with counsel for the Debtor in which the Ad Hoc Committee was encouraged to make an offer for the public shell (parent), along with AES, the subsidiary, because creditors of AES are a suitable candidate to take advantage of the $20,000,000 net loss carry forward of the parent, HII. The offer was very rough and preliminary, and it was hoped that it would spawn negotiations leading towards a plan of reorganization. For weeks there was no response. When prompted to respond, the Debtor's response was confusing and non-productive. The LOI was then forwarded to the UCC with an indication that the Ad Hoc Committee was very frustrated with the progress of the chapter 11 proceeding. Again, there was no forward movement regarding a chapter 11 plan for debtor AES.

7. Through the "tea leaves", the Ad Hoc Committee believes that the Debtor is attempting to flange up "Wall-Street" deal through Matt Fleming, the CEO and chairman of Debtor HII Technologies, whose leadership has resulted in two failed roll-ups using the HII public vehicle. However, absolutely no information has been provided to the Ad Hoc committee about a reorganization plan. Neither has the Ad Hoc Committee received one scintilla of information from the Debtor or the UCC as to why the UCC is content to let the Challenge Deadline expire without asserting any claims against Heartland Bank. The relationship is adversarial, and this is not the making of the Ad Hoc Committee.

8. The Ad Hoc Committee has repeatedly advised the UCC and the Debtor orally that the former owners of AES, Brent Mulliniks and Billy Cox, are interested in attempting to resurrect AES into a viable service company and propose a plan of reorganization that would provide a far greater distribution to AES unsecured creditors than a joint plan of reorganization proposed by the Debtor might provide. However, such entreaties have gained little, if no, traction for reasons that are not entirely clear to the Ad Hoc Committee.

9. Additionally, the Debtors have filed a Motion to seek court approval of multiple transactions including: (a) a sale of assets of owned by various debtors to Enservco, (b) assumption of the Distribution Agreement with HydroFlow Holdings USA, (c) lease of estate property to Enservco, and (d) amendment of the DIP Financing Order to make additional cash available under the DIP budget and extend certain deadlines under the DIP Financing Order (the "Sale Motion"). ECF Doc 242. As set forth in the Ad-Hoc Committee's Response, the Debtors have not provided sufficient information about these transactions to creditors, the court, or other purchasers who may wish to bid on certain of the assets; that is, there has been no allocation of the purchase price to the trade name "Apache Energy Services", as to which certain Ad-Hoc Committee members would like to submit a bid. ECF Doc 278. The Sale Motion had a notation that Debtor intended to seek a hearing on the Motion to Sell on December 14, 2015. However no hearing was

ever sought, to the knowledge of the Ad-Hoc Committee, until the week of the 7th of December, and no notice of such hearing has ever been given to the Ad Hoc Committee until Thursday, the 10th of December, approximately two hours before the deadline for filing an exhibit and witness list.

10. Allocation is of particular importance for AES and its unsecured creditors. The trade name "Apache Energy Services" was excluded from the DIP Financing Order. Other parties may be interested in bidding on the trade name, "Apache Energy Services". Proceeds from sale of the AES trade name are potentially available to junior creditors.

11. The Ad Hoc Committee believes that the Court should seek to protect the interests of the creditors of AES by compelling the United States Trustee ("UST") to appoint a separate committee. It does not appear to the Ad Hoc Committee that the UCC is interested in protecting the interests of the creditors of AES.

JURISDICTION

12. This Court has jurisdiction under 28 U.S.C. § 1334(b), 28 U.S.C. §157(b)(1) and 28 U.S.C. §157(b)(2)(A), (M) & (O). This Court also has jurisdiction pursuant to 11 U.S.C. § 105(a).

13.

BACKGROUND

14. On September 18, 2015 (the "Petition Date"), the Debtors each filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 under the management of Loretta Cross as chief restructuring officer (the "CRO"), whose retention was approved by the Court. The chapter 11 cases for the parent and subsidiaries have been administratively consolidated. No substantive consolidation has been sought or granted as of this time.

15. There is no separate management for AES. Ms. Cross serves as the manager ("CRO") for all of the consolidated Debtors.

16. There is no separate and independent legal counsel for debtor AES. There is only one law firm representing all of the consolidated Debtors, and that is McKool Smith P.C.

17. There is no separate committee appointed for debtor AES. The UST appointed a single committee of unsecured creditors (the "UCC") to represent the interests of creditors for all of the administratively consolidated Debtors. The current official committee includes creditors of other debtor subsidiaries and the parent debtor. Thus, there is a tension between the creditors of the other subsidiaries and the parent, HII, on the one hand, and the unsecured creditors of AES, on the other hand. The interests of the creditors of the other debtor

subsidiaries and parent debtor, HII, are in conflict with the interests of the creditors of AES. Whereas AES has going-concern viability and former owners who are willing to formulate a plan for the benefit of AES' creditors, that is not the case for the other subsidiaries of HII, which are dormant and in bankruptcy, with no prospects for reorganization.

18. AES has separate fraudulent conveyance, equitable subordination claims, and preference claims under Chapter 5 of the Bankruptcy Code against Heartland that the parent company, HII, and the other debtor subsidiaries do not have. AES also has separate litigation claims against former officers of HII that may be covered by the company's D&O insurance coverage that the other debtor subsidiaries do not enjoy. Finally, AES has separate lender liability claims against Heartland that the other subsidiaries do not have. The Ad Hoc Committee has articulated some of these claims in a letter to the UCC's attorneys. *See* **Exhibit "1"**.

19. On October 15, 2015, the Court entered the following order: Final Order Approving the Debtors' Emergency Motion for Entry of Interim and Final Orders (A) Authorizing Postpetition Financing; (B) Authorizing Use of Cash Collateral; and (C) Granting Adequate Protection to the DIP Lenders (the "Order Authorizing Post-Petition Financing") (ECF Doc 149).

20. In the Order Authorizing Post-Petition Financing, the DIP Lenders

have taken over control of the Debtors. One example of this is paragraph (d) on page 30, which provides:

> "(d) Plan. Unless the DIP Lenders consent thereto, no order shall be entered confirming a plan in any of these Cases unless such order provides for payment in full in cash of all of the DIP Facility on the effective date thereof, **together with releases**, waivers, and indemnification acceptable to the DIP Lenders, in their sole discretion." [Emphasis added].

21. Additionally, the Order Authorizing Post-Petition Financing provides limited carve-outs for the UCC's professionals, as follows:

> 7. Limitation on the Use of the DIP Loan and Cash Collateral. Without the DIP Agent's prior written consent, acting at the direction of the DIP Lenders, the proceeds of the DIP Loan and Cash Collateral shall be used by the Debtors strictly in accordance with the Budget and subject to the Budget Covenant (including Permitted Variances); provided that in no event shall the DIP Loan, Cash Collateral, Collateral, or Carve-Out be used for any of the following purposes: (i) object to or contest the validity or enforceability of the DIP Order, the Cash Collateral Order, or any obligations outstanding under the DIP Documentation, the Prepetition Credit Agreement, or Prepetition A/R Agreement; provided, the Committee may expend up to $20,000 for the fees and expenses incurred in connection with the investigation of (but not litigation, objection, or any challenge to) any prepetition secured claims and liens under the Prepetition Credit Agreement or Prepetition A/R Agreement.

22. In paragraph 7, page 15, the Order Authorizing Post-Petition Financing provided that "any proceeding to object to or challenge any claims, security interests, or liens of the Prepetition Lenders or Prepetition Agent shall be commenced no later than ninety (90) days after the Petition Date (the "Challenge

Deadline")." The Challenge Deadline expires on December 17, 2015.

23. In accordance with paragraph D beginning on page 3 of the Order Authorizing Post-Petition Financing, the Debtor has essentially released any claims it has against the secured creditor, Heartland Bank.

24. The Debtors are administratively insolvent but for the carve-outs provided by the secured creditor, Heartland.

25. This case is nothing more than a chapter 7 liquidation in the guise of a chapter 11, the benefits of which only accrue to the professionals and Heartland Bank. Heartland gets far more than it would in a Chapter 7: (a) releases of all liability and (b) control over any plan. Heartland Bank might as well call itself the debtor in this case, because that is exactly the effect of what has occurred thus far in these cases. The unsecured creditors of AES (and all other debtors) are being severely damaged in this process.

26. A Motion Pursuant to Bankruptcy Rules 9023 and 7052(b) to Alter or Amend Judgment or to Amend Findings of Fact and Conclusions of Law in Connection With Final Order Authorizing Post-Petition Financing (ECF Doc. 201) was timely filed by the Ad Hoc Committee, and said motion is still pending and awaiting hearing.

27. At present the UCC controls the exclusive right to bring causes of action against Heartland Bank, on behalf of all debtors, including debtor AES.

28. On Wednesday, December 2, 2015, counsel for Ad-Hoc Committee and one of its members, Brent Mulliniks, met with counsel for the UCC in Houston. The Ad-Hoc Committee counsel and Mr. Mulliniks explained how debtor AES has viable claims to avoid a $12 million term loan in favor of the secured lender that encumbers the unsecured creditors of debtor AES. The UCC stated it did not intend to pursue this cause of action to avoid the $12 million term loan, which if successful would result in a substantial benefit to the unsecured creditors of AES. Counsel for the UCC refused to discuss the reasoning behind the UCC's decision to not pursue such causes of action.

29. By letter dated December 10, 2015, the undersigned counsel described the causes of action owned by AES, and why they were valuable causes of action that should be pursued. *See* **Exhibit "1"**. The undersigned counsel has offered to pursue such claims on a contingent fee basis on behalf of the UCC for the benefit of the AES Creditors, or on behalf of an unsecured creditors' committee appointed for AES by the UST. On December 10, 2015, the Ad-Hoc Committee requested in writing that the US Trustee appoint an official committee of unsecured creditors for AES. *See* **Exhibit "2"**.

30. The Ad Hoc Committee has filed an Expedited Motion to Extend the 90-day Challenge Deadline requesting an additional thirty days until January 17, 2015.

31. The Ad-Hoc Committee has also filed a Motion to Terminate Exclusivity Period for Filing Plan of Reorganization. ECF Doc 223.

32. Counsel for the UCC is being compensated by a carve-out from Heartland. The same is true for counsel for the Debtors. The fact that Heartland Bank is funding all professional fees makes it less likely, if not impossible, for those professionals to aggressively pursue claims against Heartland or even propose a reorganization strategy that is contrary to what the Bank wants.

33. For example, the Ad Hoc Committee has requested that the exclusivity period be terminated as to debtor AES only so that AES can propose its own plan. The UCC opposes termination of exclusivity. Not coincidentally, the Bank and Debtors also oppose the unsecured creditors of AES filing their own plan.

34. Likewise, the Ad Hoc Committee has filed an Expedited Motion to Appoint Trustee for AES. ECF Doc 222. The Debtors, UCC and Bank oppose appointment of an independent chapter 11 for debtor AES.

35. The Ad Hoc Committee's intention is to (a) file a plan of reorganization for AES to pay the creditors of AES through the reorganization and potentially re-start operations of AES, (b) pursue lawsuits against the Bank under Chapter 5 of the Bankruptcy Code for fraudulent conveyances and preferences, and (c) pursue lender liability claims against the Bank. The Ad Hoc Committee

believes that if the unsecured creditors were properly represented by an official committee appointed exclusively for AES, and if the exclusivity period was terminated to permit such committee to file and prosecute such a chapter 11 plan and pursue such claims, that these goals could be achieved.

36. The Ad-Hoc Committee has filed a Notice of Filing Proffer of Brent Mulliniks which supports the factual allegations made in this Motion. ECF Doc 202. Said proffer is incorporated herein as though fully set forth in support of this motion.

ARGUMENTS AND AUTHORITIES

37. 11 U.S.C. § 1102(b)(2) provides:

> "On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee."

38. The UST's decision on whether to appoint an additional committee is subject to *de novo* review by this Court under 11 U.S.C. § 1102(b)(2). *In re Enron Corp*., 279 B.R. 671, 684 (Bank. S.D.N.Y. 2002). Factors to consider include (1) the ability of the committee to function, (2) the nature of the case, and (3) the standing and desires of the various constituencies. *Id.* 279 B.R. at 685. However, the court in *Enron* further articulated that:

Nevertheless, while the composition of the Creditors' Committee is an

> important factor, the analysis does not end here. "The problem is that a committee may function just fine, reaching consensus on all issues, and still not adequately represent a particular group of creditors. This can occur, for instance, if the committee is so dominated by one group of creditors that a separate group has virtually no say in the decision-making process. Consequently, courts look to see whether conflicts of interest on the committee effectively disenfranchise particular groups of creditors." *Dow Corning,* 194 B.R. at 142 (citing *Sharon Steel,* 100 B.R. at 779; *In re Saxon Indus.,* 39 B.R. 945, 947 (Bankr.S.D.N.Y.1984)).

39. The *Enron* analysis is applicable here. The creditors of debtor AES are not being represented. No viable plan has been revealed by the Debtors' counsel or the UCC's counsel. Nor have said counsel articulated a reason why the litigation identified by the Ad Hoc Committee should not be pursued. By appointing an official committee for the debtor AES, unsecured creditors will have a far better chance of securing a distribution in excess of the distribution the creditors of the other debtors might ever obtain.

40. The Ad Hoc Committee believes that this Debtor is headed for a chapter 7 liquidation or, at most, a meager distribution for creditors that cannot possibly compare with the plan the creditors of debtor AES could propose.

41. The Ad Hoc Committee doubts that the litigation claims against the DIP Lender have been fully or even partially vetted.

42. The Ad Hoc Committee is unaware of any trial counsel with whom HII's management, Chapter 11 counsel, or UCC counsel, have met with to assist in analyzing the claims.

43. These claims should be independently investigated and pursued by viable trial counsel. The Ad Hoc Committee's counsel has offered to pursue such claims on a contingent fee basis, but the UCC has remained silent on such offer.

44. The Ad-Hoc Committee has suggested to the Debtor and the UCC that an independent plan for the debtor, AES, is something the creditors of AES are willing to pursue. Oral discussions have been attempted to no avail. A written letter of intent has been submitted, again to no avail. The Ad-Hoc Committee has been stonewalled in its efforts to move this case forward.

WHEREFORE, the Ad-Hoc Committee requests that the Court appoint a separate committee for AES, and requests such other and further relief as is just.

Respectfully submitted this 14th day of December 2015,

/s/ /s/Leonard H. Simon
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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the above and foregoing was served on the 14th day of December 2015, by the electronic case filing system.

/s/ Leonard H. Simon

EXHIBIT "1"

PENDERGRAFT SIMON LLP

ATTORNEYS AT LAW

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Leonard H. Simon
Board Certified in Business Bankruptcy Law
Texas Board of Legal Specialization

December 9, 2015

VIA ELECTRONIC MAIL

Elizabeth Guffy
eguffy@lockelord.com
Steven Bryant
sbryant@lockelord.com
Locke Lorde LLP
600 Travis Street
Suite 2800
Houston, Texas 77002

Re: Request that Official Committee of Unsecured Creditors of *Apache Energy Services, Inc*., Case No. 15-60069 (Bank. S.D. Tex.) Bring or Preserve Claims Against Heartland Bank

Dear Ms. Guffy and Mr. Bryant:

As you know, I represent a group of creditors who hold unsecured claims in the Apache Energy Services, Inc. chapter 11 bankruptcy case (hereinafter "AES"). The total unsecured claims held by the creditors in our group exceeds $650,000. The purpose of this letter is to formally request that the Official Committee of Unsecured Creditors ("UCC") of debtor Apache Energy Services LLC and its court appointed counsel, Locke Lorde LLP, assert claims against Heartland Bank for the benefit of AES' unsecured creditors before the expiration of the deadline set forth in the Final Order Approving DIP Financing which is December 17, 2015. The nature and factual bases of the legal claims against Heartland Bank are set forth below.

I. Avoidance of $12 million Term Loan as to Debtor AES Pursuant to 11 U.S.C. § 548(a)(1)

On August 12, 2014, debtor HII Technologies borrowed $12 million from Heartland Bank to acquire the stock of Hamilton Investment Group, Inc. (the "Term Loan"). The Term Loan and its associated liens are senior in priority to the debts of unsecured creditors of debtor

AES. If the Term Loan is avoided, however, unsecured creditors of debtor AES will have a realistic opportunity to receive a distribution in this bankruptcy case. A basic application of the elements of Section 548(a) of the Bankruptcy Code demonstrates that the $12 million the Term Loan may be avoided as to debtor AES.

A. No reasonably equivalent value to debtor AES from Term Loan to parent debtor HII Technologies

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The Term Loan did not provide reasonably equivalent value to subsidiary debtor, AES. The Debtors' chief restructuring officer, Loretta Cross, confirmed under oath on October 14, 2015 that debtor AES did not receive any proceeds of the Term Loan. The former president and vice president of debtor AES, Brent Mulliniks and Billy Cox, also confirm that debtor AES did not receive any proceeds of the Term Loan. Loan documents submitted at the final hearing on cash collateral confirm that the purpose of the Term Loan was to pay the acquisition price for the purchase of HIG stock. [Debtor Exhibit 3 at p. 3, p. 11].

B. Transfer within 2 Years of Petition Date

The Term Loan obligation to Heartland Bank falls squarely within the 2-year look back period under 11 U.S.C. § 548. The Term Loan was originated on August 14, 2014. Debtor AES filed for chapter 11 bankruptcy on September 18, 2015.

C. $12 Million Debt Owed by AES = Insolvency or Lack of Adequate Capital

The Term Loan made debtor AES insolvent. When the $12 million obligation to Heartland Bank is added to debtor AES' balance sheet on August 14, 2014, the aggregate liabilities of debtor AES exceed its assets at fair market value by a significant margin. Alternatively, after the debtor AES became obligated on the Term Loan, its remaining capital assets were unreasonably small such that AES could not service the Term Loan, continue to grow the business, and pay vendor debt. *See* 11 U.S.C. § 548(a)(1)(B)(ii). These financial metrics are confirmed by the former president of Apache Energy Services Brent Mulliniks and also confirmed by the Debtor's schedules and statements of financial affairs.

D. Reasons Why Avoidance of the Term Loan Benefits Unsecured Creditors

The Term Loan primes the claims of unsecured creditors of debtor AES. If the Term Loan is avoided, unsecured creditors of debtor AES will have a realistic opportunity to receive distributions on their unsecured claims because the remaining debt of Heartland Bank against

AES is small relative to the fair market value of AES assets.

E. Prosecution of Such Claims at No Legal Cost to the Committee.

If your concern is the ability of the UCC to finance the prosecution of such claim, please let us know, as we may be willing to take the case on a contingent fee basis, or find another law firm who would be interested in doing so.

II. Preference Payments to Heartland Bank

Within the 90 days before the Petition Date, at least $2,234,642.02 was transferred to Heartland Bank on account of antecedent debts owed by the debtors. [Doc. No. 97 at p. 18]. The preference payments are corroborated by the fact the Debtors' working capital loan under the Account Repurchase Agreement decreased from $2,428,871 on May 20, 2015 to approximately $890,680.71 as of the Petition Date. The cash sweeps to Heartland Bank constitute avoidable preferences under Section 547 of the Code. A preference action should be filed against Heartland Bank on or before December 17, 2015. The improvement in position test would dictate that Heartland Bank, although a secured creditor, improved its position when comparing the Bank's position on May 20, 2015, and the Bank's position on the date of filing. *See* 11 U.S.C. § 547(c)(5).

Again, if your concern is the ability of the UCC to finance the prosecution of such claim, please let us know, as we may be willing to take the case on a contingent fee basis, or find another law firm who would be interested in doing so.

III. Lender Liability Claims Under Texas Law

Heartland Bank is also liable to the debtor AES and debtor HII Technologies under facts which give rise to claims for fraudulent misrepresentation, duress, and interference with business relations. *See National Bank of El Paso v. Farah Manufacturing Company, Inc.*, 678 S.W.2d 661 (Tex. 1984)(seminal case of lender liability in Texas where borrower awarded $19 million in damages arising from tortuous conduct of lender). In 2015, AES was contemplating the acquisition of a company called Water Transfer LLC. The Bank and its agents, working in concert with HII Technologies CFO, Acie Palmer, interfered with that corporate opportunity of AES and instead developed a secret plan to liquidate AES's water transfer business, acquire Water Transfer LLC for themselves, and then continue the AES business line under the auspices of Water Transfer LLC. The Bank also swept a significant portion of the funds raised by HII Technologies in May 2015 from Series B investors even though such funds were specifically allocated to pay-down vendor debt of AES. The acts and omissions of the Bank caused damages to HII, its shareholders, and AES which damages exceed $10.5 million.

Although, the debtor AES did execute releases of the Bank, we believe these releases are subject to the defense of duress and are not enforceable as to the tort claims described herein. Put another way, the scope of the releases does not include intentional torts committed by the Bank or its agents.

Again, if your concern is the ability of the UCC to finance the prosecution of such claim, please let us know, as we may be willing to take the case on a contingent fee basis, or find another law firm who would be interested in doing so.

The facts relating to these lender liability claims were provided to you on Wednesday, December 2, 2015 by Brent Mulliniks, the former president of AES and a member of the HII board of directors. At that meeting, we explained how debtor AES has viable claims to avoid a $12 million term loan in favor of the secured lender that encumbers the unsecured creditors of debtor AES. As counsel for the UCC, you stated that the UCC did not intend to pursue this cause of action to avoid the $12 million term loan, which if successful would result in a substantial benefit to the unsecured creditors of AES. We asked for an explanation why the claims were not being pursued and instead of giving us an explanation, you and Mr. Bryant abruptly left the conference room.

IV. Claims Against Heartland Bank Must be Filed, Preserved and Prosecuted

Under the cash collateral order, the UCC and its counsel, Locke Lorde LLP, has until December 17, 2015 to file claims against the Bank. In light of the **December 17, 2015 deadline for asserting claims against the secured lender**, I am requesting on behalf of my unsecured creditor clients that the substantial and valuable litigation claims described above be pursued for the benefit of creditors by UCC counsel, Locke Lorde LLP. Alternatively, if Locke Lorde LLP does not intend to file claims by the deadline, Pendergraft & Simon LLP will file the claims on behalf of the UCC so that the claims will be preserved and prosecuted for the benefit of unsecured creditors.

Please contact me this week to confirm that the litigation claims will be filed by Locke Lorde LLP so that the claims are not lost.

Sincerely,

/s/ Leonard H. Simon
Leonard Simon

Cc: Hector Duran, Esq.

EXHIBIT "2"

PENDERGRAFT SIMON LLP

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Leonard H. Simon
Board Certified in Business Bankruptcy Law
Texas Board of Legal Specialization

December 9, 2015

VIA ELECTRONIC MAIL

VIA ELECTRONIC MAIL AND
FACIMSILE (713.718.4670)

Diane Livingstone
Hector Duran
Office of the United States Trustee, Region 7
515 Rusk Street
Suite 3516
Houston, Texas 77002

Re: Request for Appointment of Official Committee of Unsecured Creditors for Debtor Apache Energy Services, Inc., Case No. 15-60069 (Bank. S.D. Tex.)

Dear Ms. Livingstone and Mr. Duran:

I represent a group of creditors who hold unsecured claims in the Apache Energy Services, Inc. chapter 11 bankruptcy case (hereinafter "AES"). The total unsecured claims held by the creditors in our group exceeds $650,000. **The purpose of this letter is to request that the United States Trustee appoint an official committee of creditors for debtor AES.** The reasons an official committee is urgently needed for debtor AES are as follows:

1. AES is a separate chapter 11 debtor with unique and substantial legal claims against: (a) the secured lender, Heartland Bank, (b) the officers of the parent company, HII Technologies, and (c) other debtor subsidiaries and the parent debtor, HII Technologies. The current official committee includes creditors of other debtor subsidiaries. Thus, there is a tension between the creditors of the other subsidiaries and debtor parent (HII Technologies) on the one hand, and the unsecured creditors of AES on the other hand. [A corporate structure chart is attached which shows how the debtors are organized]. The creditors of the other debtor subsidiaries and parent debtor, HII, do not adequately represent the creditors of AES.

2. At present the Official Committee of Unsecured Creditors ("UCC") controls the exclusive right to bring causes of action against the secured lender, Heartland Bank, on behalf of all debtors including debtor AES. On Wednesday, December 2, 2015 our group met with counsel for the UCC in Houston. We explained how debtor AES has viable claims to avoid a $12 million term loan in favor of the secured lender that encumbers the unsecured creditors of debtor AES. The UCC stated it did not intend to pursue this cause of action to avoid the $12 million term loan, which if successful would result in a substantial benefit to the unsecured creditors of AES. **Under the cash collateral order, the UCC has until December 17, 2015 to file claims against the Bank.** A separate committee needs to be appointed for debtor AES so that these valuable claims are not lost. This is another reason why a separate, official committee for debtor AES is warranted.

3. Counsel for the UCC is being compensated by a carve-out from the secured lender. So is counsel for the Debtors. The fact the secured lender is funding all professionals makes it less likely those professionals will aggressively pursue claims against the Bank or even a reorganization strategy that is contrary to what the Bank wants. For example, our unsecured creditor group has requested that the exclusivity period be terminated as to debtor AES only so that AES can propose its own plan. The UCC opposes termination of exclusivity. Not coincidentally, the Bank and Debtors also oppose the unsecured creditors of AES filing their own plan.

I trust this letter explains why a separate official committee is urgently needed for debtor AES. In the absence of a committee, the unsecured creditors of AES will not be able to assert their own rights to recovery.

In light of the **December 17, 2015 deadline for asserting claims against the secured lender**, we would request that the Office of the United States Trustee act this week quickly with respect to this request.

I am available to answer any questions.

Sincerely,

/s/ Leonard H. Simon
Leonard Simon

EXHIBIT "3"

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Leonard H. Simon
Board Certified in Business Bankruptcy Law
Texas Board of Legal Specialization

October 26, 2015

Hugh M. Ray, III, Esq.
MCKOOL SMITH, P.C.
600 Travis, Suite 7000
Houston, Texas 77002

Re: Letter of Intent and Summary of Terms for Purchase of Assets
In re Apache Energy Services, Inc., Case No. 15-60069 (Bank. S.D. Tex.)

Dear Mr. Ray,

We are pleased to submit the following proposal pursuant to which AES Newco, a to be formed corporation, or its assigns (collectively "AES Newco"), will acquire assets of Apache Energy Services, LLC from the bankruptcy estates of Apache Energy Services, LLC and HII Technologies, Inc. (individually and collectively "Debtors").

The intent of this letter is to describe certain principal terms of a proposed transaction between AES Newco and the Debtors ("Summary of Terms"). This Summary of Terms is intended solely as a basis for further discussion and is not intended to be and does not constitute a legally binding obligation. A binding agreement shall not occur unless and until all necessary corporate and bankruptcy court approvals have been obtained, the other conditions precedent set forth herein have been satisfied, and the undersigned have negotiated, approved, executed and delivered the Definitive Agreements, as defined below.

1. TRANSACTION STRUCTURE

A1. Purchase:

AES Newco will acquire on a debt-free basis free and clear of all liens, claims and encumbrances the following assets:

1) Name of "Apache Energy Services, LLC";
2) Name of "AES Water Solutions";

3) Name of "AES Safety Services"; and
4) All Master Service Agreements, related marketing agreements, and other contract rights of AES, held, presently or in the past, by Apache Energy Services and AES Water Solutions and AES Safety Services.

Consideration paid by AES Newco to Debtors for the assets noted in A1 above shall be: **Fifty thousand dollars ($50,000.00) paid at closing to Debtors**

A2. Purchase:

AES Newco will agree to purchase free and clear of all liens, claims and encumbrances the following assets: All accounts receivable held, presently or in the past, by Apache Energy Services or in the name of AES Water Solutions and AES Safety Services.

Consideration paid by AES Newco to Debtors for the assets noted in A2 shall be: **Sixty percent (60%) of all accounts receivable collections or recoveries payable to Debtors within ten (10) business days of receipt by AES Newco.**

These sale transactions in A1 and A2 shall be subject to mutually agreed upon definitive documentation and require filing by the Debtors of an expedited motion under section 363 of the bankruptcy code, approving the sale of assets **on or before November 5, 2015**.

The purchase transactions described in Sections A1 and A2 above are separate and distinct from the asset purchase transactions described in Section B1 below and are not dependent on the Debtors acceptance of or court approval of the transactions described in Section B1.

B1 Purchase:

AES Newco will serve as a "stalking horse" and acquire on a debt free basis free and clear of all liens, encumbrances and claims through a confirmed chapter 11 plan of reorganization, the following assets:

1) All interests in the public shell corporation HII Technologies, Inc. ("HIIT") that shall remain in good standing with the exchange for which its shares are traded;
2) All net operating loss carryforward and federal tax benefits ("NOL") of HIIT.

Consideration paid by AES Newco to Debtors for the items noted in B1 above shall be:

a.) Two hundred thousand dollars ($200,000.00) paid at closing to Debtors, and

a.) Up to an additional eight hundred thousand dollars ($800,000.00) in part or in whole payable within thirty (30) days after realized tax benefits by AES Newco or affiliates or assigns from its filed consolidated federal income tax returns through the date of expiration of the NOL.
Example:_ If in tax year 1, AES Newco realizes a tax savings of $100,000 based on non-recognition of income from the NOL, then payment to the Debtors would be $100,000.

As additional consideration in B1 above, AES Newco shall serve as a "stalking horse" to Debtors wherein Debtors may choose to and complete the sale of items detailed in B above to a third party and AES Newco shall not contest or object to any such sale whether through a confirmed plan or otherwise. Consideration to AES Newco shall be a break-up fee of four percent (4%) of the high bid amount, if AES Newco is not the high bidder, payable by Debtors to AES Newco at closing of any third party sale of assets noted in B1 above.

This transaction in Section B1 shall be subject to mutually agreed upon definitive documentation to be executed, and a chapter 11 plan containing the transaction described in B herein filed with the bankruptcy court on or before **November 30, 2015**.

B2. Mutual Releases:

AES Newco and Debtors agree to mutual releases of all claims from all sources by or between the parties to this agreement to include the following individuals and all entities that the parties may have an ownership interest, or affiliation with, or be employed by, including:

Brent Mulliniks
Calen Baucom
LHB Energy Consultants
Apache Energy Services, LLC
McKool Smith, PC
Billy Cox, Jr.
Carlos E. Buchanan II
HII Technologies, Inc.
Stout Risius and Ross

2. CONDITIONS TO CLOSING

The closing of the transaction will be conditioned upon:

1) Completion of business, accounting, tax, and legal due diligence of the assets to be acquired to the satisfaction of AES Newco, in its sole discretion;

2) Negotiation and execution of satisfactory documentation, including, without limitation: a Purchase and Sale Agreement, Closing Exhibits, and other related agreements customary for transactions of the type contemplated herein (the "Definitive Agreements");

3) In the event that a CPA firm or tax opinion is required by AES Newco in connection with the confirming the preservation of NOLs, costs for such tax opinion shall be borne by AES Newco and Debtors jointly and each paying 50% of such reasonable costs that shall not exceed $15,000 each;

4) Approval of the Board of Directors of AES Newco, Apache Energy Services, LLC and HII Technologies, Inc.;

5) Entry of final, non-appealable, confirmation orders, in a form reasonably acceptable to AES Newco, by the bankruptcy court having jurisdiction and administration over bankruptcy cases 15-60069 and 15-60070 regarding Apache Energy Services, LLC and HII Technologies, Inc.; and

6) Such other conditions as are customary for transactions of this type, including any required regulatory filings.

3. FEES AND EXPENSES

Regardless whether the transactions in A1, A2, or B1 and B2 are completed, AES Newco and Debtors would each be responsible for their own fees and expenses. Any investment banking fees payable by one party shall be borne by that party only unless otherwise agreed to in writing.

4. GOVERNING LAW

This Summary of Terms will be governed by the laws of the State of Texas, USA.

5. EXPIRATION OF OFFER

This Summary of Terms will expire without any further action by AES Newco at **5.00 p.m. CDT on October 30, 2015** unless you have accepted it by executing it in the space provided below and delivering such executed letter to counsel for AES Newco, Mr. Leonard Simon at or prior to such time.

If you are in agreement with the foregoing, please sign and return one copy of this letter. This letter may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this letter and all of which, when taken together, shall be deemed to constitute one and the same Summary of Terms.

Respectfully,

Leonard Simon

ACKNOWLDEGED AND AGREED THIS _____ DAY OF October 2015

Hugh M. Ray III
Counsel for Debtors

Loretta Cross
Chief Restructuring Officer of Debtors

EXHIBIT "4"

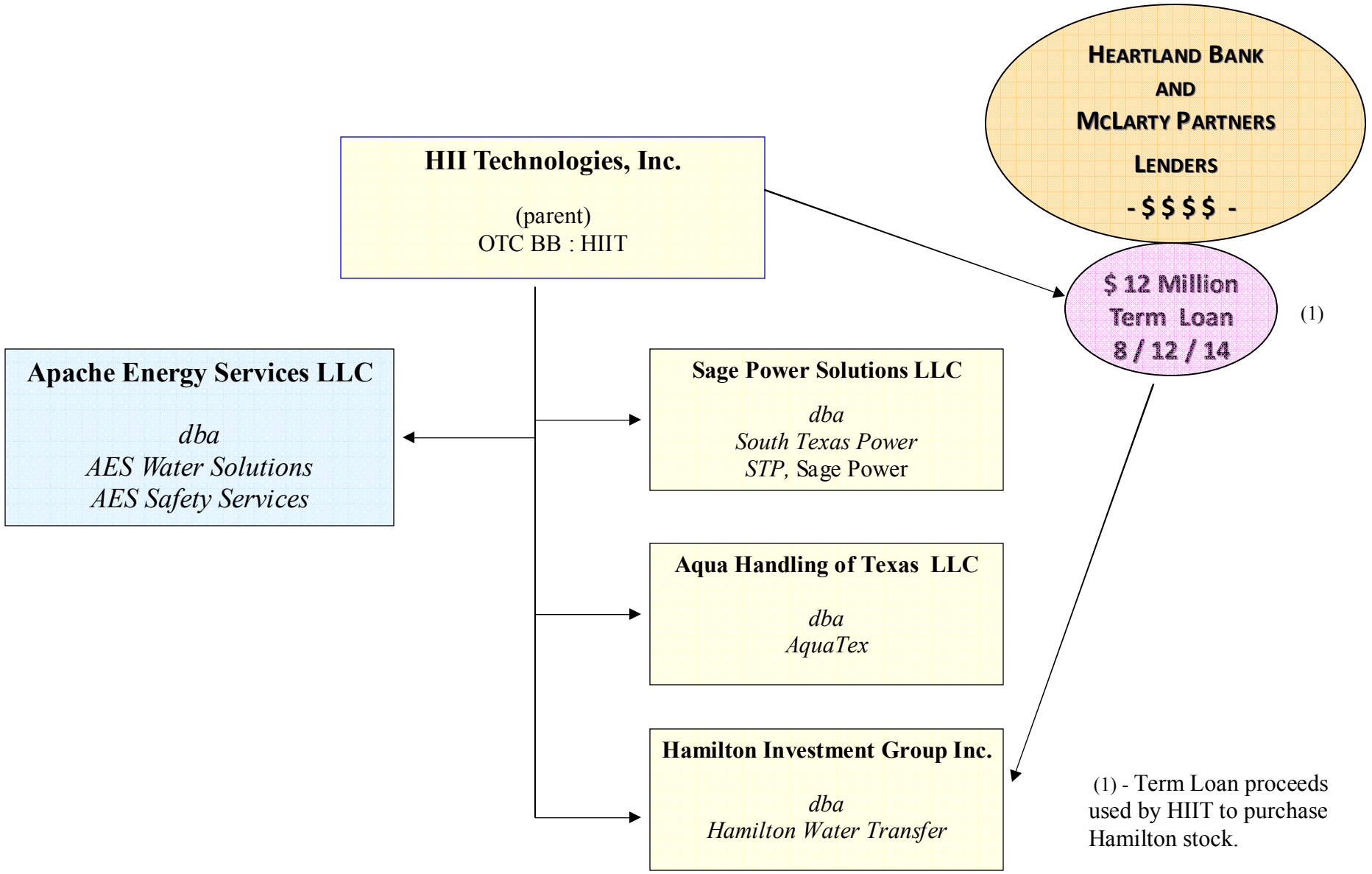
HEARTLAND BANK
AND
MCLARTY PARTNERS
LENDERS
- $ $ $ $ -
$ 12 Million
Term Loan
8 / 12 / 14
(1)
HII Technologies, Inc.
(parent)
OTC BB : HIIT
Apache Energy Services LLC
dba
AES Water Solutions
AES Safety Services
Sage Power Solutions LLC
dba
South Texas Power
STP, Sage Power
Aqua Handling of Texas LLC
dba
AquaTex
Hamilton Investment Group Inc.
dba
Hamilton Water Transfer
(1) - Term Loan proceeds used by HIIT to purchase Hamilton stock.

EXHIBIT A

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

In re:	§	**Chapter 11**
	§	
HII TECHNOLOGIES, INC., *et al.*,	§	**Case No. 15-60070**
	§	**(Jointly Administered)**
Debtors.	§	

ORDER GRANTING EXPEDITED MOTION TO APPOINT OFFICIAL CREDITORS' COMMITTEE FOR DEBTOR APACHE ENERGY SERVICES PURSUANT TO 11 U.S.C. § 1102(b)(2)

The Ad Hoc Committee of Creditors of Apache Energy Services, Inc. (the "Ad Hoc Committee"), consisting of One Flow Energy Services, LLC, Black Gold Energy LLC, Fields Water services, LLC, Brent Mulliniks and Billy Cox, have filed an Expedited Motion to Appoint Official Creditors' Committee for Debtor Apache Energy Services LLC Pursuant to 11 U.S.C. § 1102(b)(2). Finding that the relief requested should be granted, it is

ORDERED that the United States Trustee shall immediately appoint a separate official committee of creditors for Apache Energy Services, Inc. pursuant to 11 U.S.C. §1102(b)(2).

Signed this __ day of December 2015.

HONORABLE DAVID R. JONES,
CHIEF UNITED STATES BANKRUPTCY JUDGE