UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re:	**§**	**Chapter 11**
	§	
HII TECHNOLOGIES, INC., *et al.*[1]	**§**	**15-60070 (DRJ)**
Debtors	**§**	**(Jointly Administered)**

DEBTORS' MOTION TO APPROVE COMPROMISE

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 YOUR 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.

A HEARING WILL BE HELD April 15, 2016 AT 2:00 P.M. AT 515 RUSK, COURTROOM 400, HOUSTON, TEXAS.

HII Technologies, Inc. ("HII") and its subsidiaries, as debtors and debtors-in-possession in these chapter 11 cases (collectively, the "Debtors"), files this motion (the "9019 Motion") to approve a compromise and settlement among (i) the Debtors; (ii) the Ad Hoc Committee of Unsecured Creditors of Debtor Apache Energy Services (the "Ad Hoc Group"); (iii) Brent Mulliniks; (iv) Billy Cox, Jr.; (v) Heartland Bank and McLarty Capital Partners SBIC, L.P. (the

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

"DIP Lenders"); and (vi) the Official Committee of Unsecured Creditors of HII Technologies, Inc. (the "Committee"). In support of the 9019 Motion, the Debtors respectfully state as follows:

Summary

1. For the past two months, the disputes between Mulliniks, Cox, and the Ad Hoc Group, on one side, and the Debtors, Committee, DIP Lenders, and the Office of the United States Trustee, on the other side, have been the last significant obstacle to plan confirmation and a massive expenditure of these Debtors' estates' resources. After informal attempts to compromise the parties' disputes failed, the parties jointly requested mediation before Judge Isgur. The mediation was successfully conducted, and the parties have reached a global settlement of their disputes as memorialized under the Mediated Settlement Agreement, which is attached hereto as **Exhibit A**.

2. Counsel for the Debtors have discussed the settlement with counsel for the United States Trustee, and the United States Trustee is not opposed to the settlement.

3. The Debtors request a hearing on approval of the 9019 Motion to be set for the same date as the plan confirmation, currently scheduled for April 15, 2016.

Jurisdiction and Venue

4. This Court has jurisdiction over this 9019 Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Debtors' chapter 11 cases (the "Chapter 11 Cases") in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

5. The statutory predicate for the relief sought is Rule 9019 of the Federal Rules of Bankruptcy Procedure.

Background

6. On September 18, 2015 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, with the United States Bankruptcy Court for the Southern District of Texas, Victoria Division (the "Bankruptcy Court").

7. This Court approved the Debtors' motion requesting joint administration of these chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") on September 21, 2015 [Dkt. No. 18].

8. On September 29, 2015, the United States Trustee for the Southern District of Texas filed the Notice of the Appointment of Committee of Unsecured Creditors (the "Committee") in these bankruptcy cases [Dkt. No. 69].

9. The Debtors continue to administer their assets as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

Summary of the Dispute

10. Mulliniks, Cox, and the Ad Hoc Group (of which Mulliniks and Cox are members) have vigorously opposed the Debtors' efforts in these cases. The Ad Hoc Group filed numerous documents seeking or opposing relief, including, as an example, at least the following outstanding motions: (i) *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* (Dkt. No. 201); (ii) *Expedited Amended Motion of the Ad Hoc Committee of Unsecured Creditors of Apache Energy Services, Inc., to Appoint Trustee* (Dkt No. 222); (iii) *Expedited Motion of the Ad Hoc Committee of Unsecured Creditors of Apache Energy Services, LLC, to Terminate Exclusivity Period for Filing Plan of Reorganization* (Dkt. No. 223); (iv) *Expedited Motion to Extend 90 Day Challenge Deadline*

(Dkt. No. 280); (v) *Expedited Motion to Appoint Official Creditors' Committee for Debtor Apache Energy Services Pursuant to 11 U.S.C. § 1102(b)(2)* (Dkt. No. 287).

11. Much of the relief sought by the Ad Hoc Group in these motions would have constituted a default under the *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* (Dkt. No. 149) (the "Final DIP Order").

12. The DIP Lenders are the proposed sponsors of the only chapter 11 plan that the Debtors believe to be currently viable. After the Ad Hoc Group began pursuing a modified Final DIP Order and made a request to sue the DIP Lenders, the plan supporters (unsurprisingly) decided not to support a plan until they know whether they will be sued and whether the DIP Order remains unchanged. The DIP Lenders have openly conceded that, absent a compromise, the expenditure of estate funds in combating the Ad Hoc Group makes reorganization uneconomic, leaving them with a foreclosure and liquidation. The disputes with the Ad Hoc Group required immediate resolution or the entire plan process would have been jeopardized.

13. The Ad Hoc Group's pending motions were set for hearing on January 7, 2016, but were not resolved on that day. Subsequent to the January 7, 2016 hearing, all parties involved desired an economically viable settlement by mediation. The Debtors filed an *Unopposed Emergency Motion for Mediation Order Under 28 U.S.C. § 652, et seq. AND DLR 16.4* (Dkt. No. 330). The Court ordered the parties to mediation and, though initially in doubt, the mediation was ultimately successful, resulting in the Mediated Settlement Agreement discussed in further detail below.

Terms of the Compromise

14. The Debtors, the DIP Lenders, the Committee, Mulliniks, Cox, and the Ad Hoc Group have reached an agreement, subject to this Court's approval, to resolve their disputes. A true and correct copy of the Mediated Settlement Agreement is attached hereto as **Exhibit A** and incorporated herein by reference.

15. The terms of the compromise are as follows:[2]

a. Not later than 10 business days after the entry of a final and non-appealable order approving the motion to compromise, the Estates[3] will pay $100,000.00 to Brent Mulliniks and Billy Cox Jr., jointly and severally, c/o their attorney Leonard Simon. The $100,000 will come from 1) $50,000 released from the sales proceeds previously escrowed for the name "Apache" and the order approving the Motion to Compromise will constitute a permanent adjudication of all rights to the name as collateral, and 2) $50,000 funded from the Chapter 11 Estates as an administrative expense which, if sufficient funds are not available from the Chapter 11 Estates at the time the Motion to Compromise is approved, the DIP Lenders will fund as an additional advance on the DIP Loan.

b. Each party to the Mediated Settlement Agreement agrees that it will only support confirmation of a chapter 11 plan for the Chapter 11 Estates that includes the following provisions:

i. As part of the Chapter 11 plan, Brent Mulliniks and Billy Cox, Jr. shall be allowed priority Claims (as defined in the Bankruptcy Code) against the Chapter 11 Estates totaling, collectively, $150,000, with such Claim of Brent Mulliniks totaling $75,000.00, individually, and such Claim of Billy Cox, Jr. totaling $75,000.00, individually (the "Priority Claims"). The Priority Claims shall be placed in a separate class under the Chapter 11 plan and shall only be enforceable against the Chapter 11 Estates through a confirmed Chapter 11 plan and shall entitle the holders of the Priority Claims to a beneficial interest in the litigation trust. Provided, however, no distribution shall be made on account of the Priority Claims until all of the Chapter 11 Estates' claims against Brent Mulliniks and Billy Cox, Jr. have been fully resolved, through judgment,

[2] To the extent the terms of the Motion and the Mediated Settlement Agreement are inconsistent, the terms of the Mediated Settlement Agreement control.

[3] All capitalized terms not defined in this Motion shall have the meaning set forth in the Mediated Settlement Agreement.

settlement, or otherwise. The trustee of the litigation trust will reserve the first $150,000 received by the litigation trust after payment of all Postpetition Obligations and advances to the litigation trust (but in no event to cumulatively exceed $500,000.00). Immediately after the final resolution (whether by way of settlement or entry of a final and non-appealable judgment) of all of the claims of the Chapter 11 Estates asserted against Billy Cox, Jr. and Brent Mulliniks by the litigation trust, the litigation trustee will distribute the $150,000 reserved for distribution on account of the Priority Claims to Billy Cox, Jr. and Brent Mulliniks in accordance with their respective Priority Claims, minus the amount of any final and non-appealable judgment obtained by the litigation trust against Billy Cox, Jr. and/or Brent Mulliniks, respectively, for which there are inadequate or no insurance proceeds available to pay such a judgment. Billy Cox Jr.'s and Brent Mulliniks' right to a distribution on account of their Priority Claims is senior to the right of any other holder (but subject to an amount of up to $500,000.00 as described earlier in this subparagraph) of a beneficial interest in the litigation trust to receive distributions from the trust and is subject only to the offset for judgment(s) obtained against Billy Cox Jr. and Brent Mulliniks and settlement payments as described in this paragraph. The litigation trust will be vested with, and pending distribution of the $150,000.00 (subject to the offset above) will not divest itself of (but, of course, may retain contingency fee counsel on standard terms), all litigation rights of the Chapter 11 Estates, including without limitation all matters disclosed in the draft disclosure statement attached as Exhibit "A". Accordingly, collections from fraudulent conveyances, preferences, breach of fiduciary duty suits and all other matters will be placed into the litigation trust for distribution as set forth in this paragraph 4(a), and this obligation may offset, but not otherwise release or discharge, any causes of action of the litigation trust.

ii. In addition to the parties to the Mediated Settlement Agreement, the plan will provide that reorganized debtor and the litigation trust will be bound by the terms of this Agreement.

c. If a plan providing for these terms is not confirmed, then the parties may file successive plans, each of which implement the Mediated Settlement Agreement. Pending confirmation of a plan, the priority claims awarded to Billy Cox Jr. and Brent Mulliniks may not be enforced against the chapter 11 Estate.

d. If the bankruptcy case is converted to a case under Chapter 7 of the Bankruptcy Code prior to confirmation, the Mediated Settlement

Agreement will be ineffective for all purposes. If this case is converted to a case under Chapter 7 of the Bankruptcy Code after confirmation, Billy Cox, Jr. and Brent Mulliniks will have a priority claim entitled to a priority distribution from the chapter 7 estate with the same economic terms as set forth in the Mediated Settlement Agreement. The Chapter 7 Trustee will be bound by all of the other terms of the Mediated Settlement Agreement, including without limitation the Limited Execution Agreement.

e. Upon approval of the compromise and the receipt of the $100,000.00 provided in paragraph 3 of this Mediated Settlement Agreement, the following events will occur without further action by any person:

i. The Ad Hoc Committee of Unsecured Creditors of Debtor Apache Energy Services, Brent Mulliniks, Billy Cox Jr., and each of the Releasing Parties (as defined elsewhere in the Agreement) fully, completely, and irrevocably will have released (i) the Chapter 11 Estates; (ii) the DIP Lenders (including their employees, directors, officers, and affiliates); (iii) the Committee and its individual members; and (iv) each of their attorneys, advisors, and agents from all Claims (as that term is defined in the Bankruptcy Code, and including all matters known and unknown, including all sanctions motions) arising from the beginning of time. Provided, this Release is not a release of the $150,000.00 Priority Claim set forth in the Agreement, which claim will survive in the manner and under the conditions set forth in this Mediated Settlement Agreement. Notwithstanding anything to the contrary, this paragraph does not require any member of the Ad Hoc Committee other than Brent Mulliniks and Billy Cox Jr. to release their claims against the Chapter 11 Estates, nor are such persons released and their claims remain subject to appropriate objections, if any.

ii. The Chapter 11 Estates, the DIP Lender, Heartland Bank, McLarty Capital Partners SBIC, LP, and the Committee will be irrevocably bound by the Limited Execution agreement set forth [below], as to all Claims (as that term is defined in the Bankruptcy Code, and including all matters known and unknown) arising from the beginning of time.

iii. The Chapter 11 Estates, the DIP Lender, Heartland Bank, McLarty Capital Partners SBIC, LP, and the Committee fully, completely, and irrevocably will have released all Claims (as that term is defined in the Bankruptcy Code, and including all matters known and unknown, and including any sanctions motions) arising from the beginning of time against Kirk Kennedy, Leonard Simon, and their law firms.

iv. Upon approval of the motion to compromise, the Chapter 11 Estates agree and stipulate that Brent Mulliniks and Billy Cox Jr. will have no future or further duty of non-competition or nonsolicitation (if any presently exists); provided that Brent Mulliniks and Billy Cox Jr. shall not compete with Enservco or HeatWaves Water Management LLC based on the HydroFlow distribution agreement conveyed by the Chapter 11 Estates.

v. The Ad Hoc Committee, Brent Mulliniks, and Billy Cox Jr., withdraw all pending motions filed by them, with prejudice and do not oppose further actions by the Chapter 11 Estates (including without limitation seeking approval of a disclosure statement describing a plan, and confirmation of a plan, that incorporates the provisions of this Mediated Settlement Agreement, except to the extent (and only to the extent) that the relief sought by the Chapter 11 Estates is contrary to this Agreement.

f. The Releasing Parties are Hydrotech Solutions, Inc. and The Phoenix Group, LLC.

g. The following events will be effective immediately, and without the requirement of Court approval:

i. The Debtors will promptly file a plan and disclosure statement implementing the terms of this Mediated Settlement Agreement.

ii. The Debtors will seek conditional approval of the disclosure statement and a confirmation hearing date to be concluded prior to April 30, 2016.

iii. The parties will be bound to jointly request a hearing on the motion to compromise, with a hearing date to be not later than April 30, 2016.

iv. The parties, and each of their agents, officers, attorneys and persons acting in concert with them will be obligated to use their good faith efforts to obtain approval of the agreements reflected in this Mediated Settlement Agreement.

h. The Limited Execution Agreement is defined as set forth in this paragraph. The collection of any final judgment or Claim against The Ad Hoc Committee of Unsecured Creditors of Debtor Apache Energy Services, Brent Mulliniks, Billy Cox Jr., and each of the Releasing Parties may be made solely from (i) proceeds of available insurance; and (ii) if there are inadequate or no insurance proceeds available to pay a final judgment, an offset against any distributions that may arise under paragraph 4(a) of this Agreement. In no event may any collection be made from (or an offset

asserted against) the payments due under paragraph 3 or from any other assets of Brent Mulliniks, Billy Cox Jr., or any of the Releasing Parties.

i. Brent Mulliniks, Billy Cox Jr. and the Releasing Parties reserve the right fully to defend against any Claim that is asserted against them, and waive no rights to assert a full and complete defense, including, without limitation, the right to seek sanctions of claims arising under Rule 11 of the Federal Rules of Civil Procedure, Rule 9011 of the Federal Rules of Bankruptcy Procedure, or equivalent sanctions under applicable state law, but only as to actions taken after approval of the motion to compromise. Provided, Brent Mulliniks, Billy Cox Jr. and the Releasing Parties may not assert counterclaims or offsets for matters that are released by this Agreement.

j. The Debtor, the Committee or the DIP Lenders may withdraw from this Agreement at any time prior to March 14, 2016 at 5:00 pm. If they do withdraw from this Agreement, then the Challenge Deadline will expire on March 31, 2016 and all abated matters will be automatically revived. If no withdrawal occurs by that date and time, then Brent Mulliniks will immediately resign from all Boards of Directors of the Debtors and their affiliates and will not serve as an officer of the Debtors or affiliates.

k. If any member of the Ad Hoc Committee, acting individually or with a newly formed entity, opposes the approval or implementation of the Mediated Settlement Agreement in any pleading filed with the Bankruptcy Court, the Agreement may be terminated without notice 'by the DIP Lenders, the Debtor or the Committee.

l. If any other person or entity opposes the approval of implementation of this Mediated Settlement Agreement, then all parties to the Mediated Settlement Agreement, their officers, agents and attorneys, will cooperate to defeat any such opposition; provided, if the motion to compromise is approved, then no termination of this Mediated Settlement Agreement may occur.

Basis for Relief

16. Bankruptcy Rule 9019(a) permits a bankruptcy court to approve a compromise or settlement. The standard for the approval of a compromise under Bankruptcy Rule 9019(a) is well settled – the compromise must be "fair and equitable and in the best interest of the estate." *In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 355 (5th Cir. 1997).

17. The United States Supreme Court has established the following factors for courts to weigh in determining the reasonableness of any compromise or settlement:

a. the probabilities of ultimate success should the dispute be litigated;

b. an educated estimate of (i) the complexity, expense, and likely duration of the litigation, (ii) possible difficulties of collecting on any judgment that might be obtained, and (iii) all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise; and

c. the comparison of the terms of the settlement with the likely rewards of litigation.

Protective Comm. For the Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968).

18. While the Debtors are convinced they could, after expenditure of significant funds, defeat every motion brought by the Ad Hoc Group, that victory would be a Pyrrhic one. Litigating the disputes with Mulliniks, Cox, and the Ad Hoc Group would be expensive and time consuming. Mulliniks, Cox, and the Ad Hoc Group have given every indication that they would continue to fight as long as possible (including through successive appeals). The Debtors' estates have dwindling resources, and fully litigating these disputes would jeopardize (indeed, almost certainly prevent) plan confirmation and would cost more than $300,000, including the Committee's, Debtors' and DIP Lenders' counsel legal fees and costs.

19. The complexity, expense, and likely duration of the litigation would spill over into mid-June with an expense of $150,000 per month (or more) as depositions, motion practice, and litigation ensnared all parties. There is no money judgment to be obtained against the Ad Hoc Group from the continued procedural litigation on the Plan and Disclosure Statement. Other factors relevant to a full and fair assessment of the wisdom of the proposed compromise include the need to obtain a quick approval of the plan, the need to clearly define the rights of parties without appeal, the need to devote estate time and resources to non-litigation avenues, and the waning support of the DIP Lenders.

20. Additionally, the rewards of continuing litigation are very small. The Estates win no money or assets by defeating the Ad Hoc Group's motions. Additional litigation will be needed to recover assets, and that is contemplated, by this compromise. As a result, the compromise set out in this Motion is in the best interests of the Debtors and the Debtors' estates.

21. The adjudication of $50,000 as value of the name ("Apache") is only made as an accommodation to buy peace, and is expressly not a valuation of the actual worth of the name. The amount paid in compromise is paid solely to avoid a much greater expense to the estate and the concomitant delay. The Debtors acknowledge no liability to the other settling parties.

22. Mr. Cox and Mr. Mulliniks are not being released. The only releases granted by the Debtors are of counsel for the Ad Hoc Group. Those releases are justified because the Debtors are not clients of those lawyers and thus would have limited claims against the counsel. At this time the Debtors do not believe that pursuit of claims against lawyers for the Ad Hoc Group could generate a positive recovery.

23. Finally, the Debtors believe (and are confirming) that, absent insurance proceeds, there is a low likelihood of significant non-exempt assets of Cox and Mulliniks being made available for creditors to satisfy a multi-million dollar judgment. Thus, the limitation of collection to available insurance policies and setoff rights against their claims are reasonable restrictions on future litigation that do not unduly prejudice the creditors of the Estates. If significant assets are found during the investigation period, the Debtors may abandon the compromise according to its terms.

NOTICE

24. The Debtors will provide notice of this Motion to all parties on the Debtors' Master Service List. The Debtors submit that no further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request that the Court enter an order, (a) approving the Mediated Settlement Agreement and the transactions contemplated thereby, (b) ordering the release of $50,000 escrowed for the value of the Apache name as half payment to Mr. Cox and Mulliniks, (c) authorizing the Debtors to pay Mr. Mulliniks and Mr. Cox the other half of $50,000.00 (as set forth in the Mediated Settlement Agreement) including the additional borrowing under the DIP Loan; (c) approving the limited execution of debts against Mr. Cox and Mr. Mulliniks, and authorizing the released granted to the Debtors, DIP Lenders, Committee and others set forth in this Motion, and (d) granting such further relief as may be just and necessary under the circumstances.

Respectfully submitted this 7th day of March, 2016.

MCKOOL SMITH, P.C.

By: */s/ Benjamin W. Hugon*

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Counsel for the Debtors-in-Possession

CERTIFICATE OF SERVICE

The undersigned certifies that on March 7, 2016, a true and correct copy of this document was served via the ECF system to the parties on the ECF service list, including the United States Trustee, and the pleading is being delivered to the Noticing Agent for service upon the parties on the Master Service List.

/s/ Benjamin W. Hugon
Benjamin W. Hugon

MEDIATED SETTLEMENT AGREEMENT

This is a Mediated Settlement Agreement between (i) the Chapter 11 Bankruptcy Estates of HII Technologies, Inc., Apache Energy Services L.L.C., Aqua Handling of Texas, L.L.C., Hamilton Investment Group, Inc. and Sage Power Solutions, Inc. (collectively, the "Chapter 11 Estates") in the jointly administered bankruptcy cases styled *In re HII Technologies, Inc.*, Case No. 15-60070 (jointly administered) pending in the United States Bankruptcy Court for the Southern District of Texas (Houston Division), (ii) the Ad Hoc Committee of Unsecured Creditors of Debtor Apache Energy Services, (iii) Brent Mulliniks, (iv) Billy Cox Jr., (v) the DIP Lenders[1]; and (vi) the Official Committee of Unsecured Creditors of HII Technologies, Inc., et al. (the "Committee").

1. This Agreement is subject to the approval of the United States Bankruptcy Court for the Southern District of Texas. If this Agreement is not approved, this Agreement will have no force and effect except as explicitly set forth below.

2. This Agreement will be presented to the Bankruptcy Court in the form of a motion to compromise under Fed. R. Bankr. P. 9019 to be filed by the Debtors not later than March 7, 2016. The Debtors will request that the motion to compromise be considered along with plan confirmation; provided, if the final hearing on plan confirmation is scheduled for later than April 30, 2016, then the parties will jointly request standalone consideration at a final hearing prior to April 30, 2016. All parties must cooperate in good faith to obtain approval of the Motion to Compromise, a plan and disclosure statement incorporating the Motion to Compromise (as further explained below), and the actions proposed herein. The Ad Hoc Committee (including Cox and Mulliniks) will (a) request that the Court abate all pending motions immediately upon execution of this Agreement, (b) not prosecute further objections to the Debtors' plan, the disclosure Statement, any professional fees, or other actions in the Bankruptcy Cases once the settlement funds in paragraph 3 are funded, (c) vote in favor of the Debtors' plan and not take any actions inconsistent with supporting the plan, and (d) not sell, transfer or encumber their claims against the Debtors (unless the other party agrees in writing to abide by this Agreement). The parties will request emergency consideration prior to March 15, 2016 for an extension of the challenge deadline, which extension will terminate upon the earlier of (i) the receipt by Brent Mulliniks and Billy Cox Jr. of the $100,000.00 provided in paragraph 3; and (ii) May 14, 2016.

3. Not later than 10 business days after the entry of a final and non-appealable order approving the motion to compromise, the Estates will pay $100,000.00 to Brent Mulliniks and Billy Cox Jr., jointly and severally, c/o their attorney Leonard Simon. The $100,000 will come from 1) $50,000 released from the sales proceeds previously escrowed for the name "Apache"

[1] Heartland Bank and McLarty Capital Partners SBIC, L.P., as defined in the Final DIP Order.

Ex. A

and the order approving the Motion to Compromise will constitute a permanent adjudication of all rights to the name as collateral, and 2) $50,000 funded from the Chapter 11 Estates as an administrative expense which, if sufficient funds are not available from the Chapter 11 Estates at the time the Motion to Compromise is approved, the DIP Lenders will fund as an additional advance on the DIP Loan.

4. Each party to this Mediated Settlement Agreement agrees that it will only support confirmation of a chapter 11 plan for the Chapter 11 Estates that includes the following provisions:

a. As part of the Chapter 11 plan, Brent Mulliniks and Billy Cox, Jr. shall be allowed priority Claims (as defined in the Bankruptcy Code) against the Chapter 11 Estates totaling, collectively, $150,000, with such Claim of Brent Mullinks totaling $75,000.00, individually, and such Claim of Billy Cox, Jr. totaling $75,000.00, individually (the "Priority Claims"). The Priority Claims shall be placed in a separate class under the Chapter 11 plan and shall only be enforceable against the Chapter 11 Estates through a confirmed Chapter 11 plan and shall entitle the holders of the Priority Claims to a beneficial interest in the litigation trust. Provided, however, no distribution shall be made on account of the Priority Claims until all of the Chapter 11 Estates' claims against Brent Mulliniks and Billy Cox, Jr. have been fully resolved, through judgment, settlement, or otherwise. The trustee of the litigation trust will reserve the first $150,000 received by the litigation trust after payment of all Postpetition Obligations and advances to the litigation trust (but in no event to cumulatively exceed $500,000.00). Immediately after the final resolution (whether by way of settlement or entry of a final and non-appealable judgment) of all of the claims of the Chapter 11 Estates asserted against Billy Cox, Jr. and Brent Mulliniks by the litigation trust, the litigation trustee will distribute the $150,000 reserved for distribution on account of the Priority Claims to Billy Cox, Jr. and Brent Mulliniks in accordance with their respective Priority Claims, minus the amount of any final and non-appealable judgment obtained by the litigation trust against Billy Cox, Jr. and/or Brent Mulliniks, respectively, for which there are inadequate or no insurance proceeds available to pay such a judgment. Billy Cox Jr.'s and Brent Mulliniks' right to a distribution on account of their Priority Claims is senior to the right of any other holder (but subject to an amount of up to $500,000.00 as described earlier in this subparagraph) of a beneficial interest in the litigation trust to receive distributions from the trust and is subject only to the offset for judgment(s) obtained against Billy Cox Jr. and Brent Mulliniks and settlement payments as described in this paragraph. The litigation trust will be

vested with, and pending distribution of the $150,000.00 (subject to the offset above) will not divest itself of (but, of course, may retain contingency fee counsel on standard terms), all litigation rights of the Chapter 11 Estates, including without limitation all matters disclosed in the draft disclosure statement attached as Exhibit "A". Accordingly, collections from fraudulent conveyances, preferences, breach of fiduciary duty suits and all other matters will be placed into the litigation trust for distribution as set forth in this paragraph 4(a), and this obligation may offset, but not otherwise release or discharge, any causes of action of the litigation trust.

b. In addition to the parties to this Agreement, the plan will provide that reorganized debtor and the litigation trust will be bound by the terms of this Agreement.

5. If a plan providing for these terms is not confirmed, then the parties may file successive plans, each of which implement this Mediated Settlement Agreement. Pending confirmation of a plan, the priority claims awarded to Billy Cox Jr. and Brent Mulliniks may not be enforced against the chapter 11 Estate.

6. If this case is converted to a case under Chapter 7 of the Bankruptcy Code prior to confirmation, this Mediated Settlement Agreement will be ineffective for all purposes. If this case is converted to a case under Chapter 7 of the Bankruptcy Code after confirmation, Billy Cox, Jr. and Brent Mulliniks will have a priority claim entitled to a priority distribution from the chapter 7 estate with the same economic terms as set forth in this Mediated Settlement Agreement. The Chapter 7 Trustee will be bound by all of the other terms of this Mediated Settlement Agreement, including without limitation the Limited Execution Agreement.

7. Upon approval of the compromise and the receipt of the $100,000.00 provided in paragraph 3 of this Mediated Settlement Agreement, the following events will occur without further action by any person:

a. The Ad Hoc Committee of Unsecured Creditors of Debtor Apache Energy Services, Brent Mulliniks, Billy Cox Jr., and each of the Releasing Parties (as defined in paragraph 6 of this Agreement) fully, completely, and irrevocably will have released (i) the Chapter 11 Estates; (ii) the DIP Lenders (including their employees, directors, officers and affiliates); (iii) the Committee and its individual members; and (iv) each of their attorneys, advisors, and agents from all Claims (as that term is defined in the Bankruptcy Code, and including all matters known and unknown, including all sanctions motions) arising from the beginning of time. Provided, this Release is not a release of the

$150,000.00 Priority Claim set forth in paragraph 4(a), which claim will survive in the manner and under the conditions set forth in this Mediated Settlement Agreement. Notwithstanding anything to the contrary, this paragraph does not require any member of the Ad Hoc Committee other than Brent Mulliniks and Billy Cox Jr. to release their claims against the Chapter 11 Estates, nor are such persons released and their claims remain subject to appropriate objections, if any.

b. The Chapter 11 Estates, the DIP Lender, Heartland Bank, McLarty Capital Partners SBIC, LP, and the Committee will be irrevocably bound by the Limited Execution agreement set forth in paragraph 10 of this Agreement, as to all Claims (as that term is defined in the Bankruptcy Code, and including all matters known and unknown) arising from the beginning of time.

c. The Chapter 11 Estates, the DIP Lender, Heartland Bank, McLarty Capital Partners SBIC, LP, and the Committee fully, completely, and irrevocably will have released all Claims (as that term is defined in the Bankruptcy Code, and including all matters known and unknown, and including any sanctions motions) arising from the beginning of time against Kirk Kennedy, Leonard Simon, and their law firms.

d. Upon approval of the motion to compromise, the Chapter 11 Estates agree and stipulate that Brent Mulliniks and Billy Cox Jr. will have no future or further duty of non-competition or nonsoliciation (if any presently exists); provided that Brent Mulliniks and Billy Cox Jr. shall not compete with Enservco or HeatWaves Water Management LLC based on the HydroFlow distribution agreement conveyed by the Chapter 11 Estates.

e. The Ad Hoc Committee, Brent Mulliniks, and Billy Cox Jr., withdraw all pending motions filed by them, with prejudice and do not oppose further actions by the Chapter 11 Estates (including without limitation seeking approval of a disclosure statement describing a plan, and confirmation of a plan, that incorporates the provisions of this Mediated Settlement Agreement, except to the extent (and only to the extent) that the relief sought by the Chapter 11 Estates is contrary to this Agreement.

8. The Releasing Parties are Hydrotech Solutions, Inc. and The Phoenix Group, LLC.

9. The following events will be effective immediately, and without the requirement of Court approval:

a. The Debtors will promptly file a plan and disclosure statement implementing the terms of this Mediated Settlement Agreement.

b. The Debtors will seek conditional approval of the disclosure statement and a confirmation hearing date to be concluded prior to April 30, 2016.

c. The parties will be bound to jointly request a hearing on the motion to compromise, with a hearing date to be not later than April 30, 2016.

d. The parties, and each of their agents, officers, attorneys and persons acting in concert with them will be obligated to use their good faith efforts to obtain approval of the agreements reflected in this Mediated Settlement Agreement.

10. The Limited Execution Agreement is defined as set forth in this paragraph. The collection of any final judgment or Claim against The Ad Hoc Committee of Unsecured Creditors of Debtor Apache Energy Services, Brent Mulliniks, Billy Cox Jr., and each of the Releasing Parties may be made solely from (i) proceeds of available insurance; and (ii) if there are inadequate or no insurance proceeds available to pay a final judgment, an offset against any distributions that may arise under paragraph 4(a) of this Agreement. In no event may any collection be made from (or an offset asserted against) the payments due under paragraph 3 or from any other assets of Brent Mulliniks, Billy Cox Jr., or any of the Releasing Parties.

11. Brent Mulliniks, Billy Cox Jr. and the Releasing Parties reserve the right fully to defend against any Claim that is asserted against them, and waive no rights to assert a full and complete defense, including without limitation the right to seek sanctions of claims arising under Rule 11 of the Federal Rules of Civil Procedure, Rule 9011 of the Federal Rules of Bankruptcy Procedure, or equivalent sanctions under applicable state law, but only as to actions taken after approval of the motion to compromise. Provided, Brent Mulliniks, Billy Cox Jr. and the Releasing Parties may not assert counterclaims or offsets for matters that are released by this Agreement.

12. The Debtor, the Committee or the DIP Lenders may withdraw from this Agreement at any time prior to March 14, 2016 at 5:00 p.m. If they do withdraw from this Agreement, then the Challenge Deadline will expire on March 31, 2016 and all abated matters will be automatically revived. If no withdrawal occurs by that date and time, then Brent Mulliniks will immediately resign from all Boards of Directors of the Debtors and their affiliates and will not serve as an officer of the Debtors or affiliates.

13. If any member of the Ad Hoc Committee, acting individually or with a newly formed entity, opposes the approval or implementation of this Mediated Settlement Agreement in any pleading filed with the Bankruptcy Court, this Agreement may be terminated without notice by the DIP Lenders, the Debtor or the Committee.

14. If any other person or entity opposes the approval of implementation of this Mediated Settlement Agreement, then all parties to this Mediated Settlement Agreement, their officers, agents and attorneys, will cooperate to defeat any such opposition; provided, if the motion to compromise is approved, then no termination of this Mediated Settlement Agreement may occur.

15. This Agreement will be interpreted under Texas law and the Bankruptcy laws of the United States of America.

16. Enforcement of this Agreement is vested exclusively in the United States Bankruptcy Court for the Southern District of Texas to the maximum extent of its subject matter jurisdiction. If subject matter jurisdiction is lacking, this Agreement may be enforced in any Court of competent jurisdiction. Notwithstanding the foregoing, the release provisions and the Limited Execution Agreement may be asserted and enforced by any Court in which a claim is asserted.

February 29, 2016

Billy Cox

Brent Mullinix, Brent Mullinix
Individually, and Ad Hoc Committee

Phil Thomas, Phil Thomas
EVP/CLO Heartland Bank

Austin Trawick
Chairman, Official Committee of Unsecured Creditors of HII Technologies

HII CRO
on behalf of the Debtors

Tedmond Wong
Vice President, McLarty Capital Partners SBIC, L.P.

Exhibit "A"

or failure of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

Section 21.09 Governing Law.

Except to the extent the Bankruptcy Code or other U.S. federal law is applicable, or to the extent an Exhibit to the Plan or an Exhibit or schedule in the Plan Supplement provides otherwise, the rights, duties, and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to the principles of conflicts of law thereof.

Section 21.10 Severability of Plan Provisions

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

Section 21.11 Successors and Assigns

All the rights, benefits, and obligations of any person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors, and/or assigns of such person.

Section 21.12 Preservation of Rights of Action; Settlement

Except to the extent such rights, claims, causes of action, defenses, and counterclaims are otherwise dealt with in the Plan, the Confirmation Order or are expressly and specifically released in connection with the Plan, the Confirmation Order or in any settlement agreement approved during the Chapter 11 Case, or otherwise provided in the Confirmation Order or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance with Bankruptcy Code section 1123(b): (a) any and all rights, claims, causes of action (including Avoidance Actions), defenses, and counterclaims of or accruing to the Debtors or their estates shall become assets of and vest in the Litigation Trust, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such rights, claims, causes of action, defenses and counterclaims have been listed or referred to in the Plan, the Schedules, or any other document filed with the Bankruptcy Court, and (b) the Litigation Trustee does not waive, relinquish, or abandon (nor shall it be estopped or otherwise precluded from asserting) any right, claim, cause of action, defense, or counterclaim that constitutes

Accordingly, the Hamiltons may be liable for fraud, breach of contract, breach of fiduciary duty, constructively fraudulent transfers, preferences, and other claims relating to their work with HIG.

(ii) Claims against S&M Assets LLC

The Debtors allege that HIIT overpaid rent and other payments to S&M Assets LLC, an entity owned by Mark and Sharon Hamilton, for hose, office space, and other assets. The Debtors may seek to recover that overpayment as a construtively fraudulent transfer if made while the Debtors were undercapitalized or insolvent.

The Debtors may have claims against S&M Assets LLC for other actions relaing to its role as lessor, fiduciary, or bailor. Specifically, The Hamiltons and S&M Assets obtained a restraining order that prohibited the Debtors from accessing their assets. To obtain that order, the Hamiltons and S&M Assets filed a document under penalty of perjury stating which assets were in their possession. The Hamiltons and S&M Assets were in sole control and fiduciary costody of the assets after entry of the restraining order. Upon lifting of the restrianing order, the Debtors discovered that the assets were no longer present and the Hamiltons (and S&M Assets) have notbeen able to satisfactorily explain the loss or make the Debtors whole for the loss.

(iii) Claims against Craig Hamilton:

The Debtor believes that Mr. Hamilton continued to use HIIT-owned and leased equipment for frac water transfer jobs with former Hamilton customers, after the Hamilton Investment Group was shut down as part of the Debtors' "shrink to the core" strategy in 2015 and during the period that a temporary restraining order was in effect. Craig Hamilton was a consultant to HIG and the Debtors in a special relationship with them and owing fiduciary duties to them. While in that relatioship, he used HIG-owned and leased equipment for personal frac water transfer jobs with Debtor/HIG customers.

When confronted with the loss of assets described in the claims against S&M assets, above, approximately 5 miles of HIIT's layflat hose was thereafter disclosed as being in use at a job site for a non-Debtor. The Debtors believe there is missing equipment of approximately $1.4 Million. Craig Hamiliton has admitted he took a equipment to a "hidely hole", which he subsequently disclosed. The Debtor believes it has causes of action againsr Craig Hamilton for converson, breach of fiduciary duty, bailment, fraudulent transfer, quantum meruit, and other claims based on these facts.

(b) *Claims against Calen Baucom, Brent Mulliniks, and Billy Cox*

Mr. Mulliniks is a current board member who has also acted as a member of the Ad Hoc Committee of AES and passed board information to the Ad Hoc Committee and actively opposed actions of the Debtors, including the sale to Enservco. He was in possession of property of the Debtors that required judicial intervention to obtain, including two delicate HydroFLOW units. Mr. Baucom likewise was in possession of property of the Debtors and provided some of

the property back under compulsion. Some property may have been lost, stolen, or retained. For all missing property, the Debtors have a right to seek compensation.

The Debtors believe that Mulliniks, Baucom and Cox worked together with others to divert resources from the Debtors while working with or for the Debtors. The Debtors believe that the Debtors' assets, specifically including (but not limited to) vehicles, trailers, generators, goodwill, contract rights and equipment (among other things) were used by Cox, Baucom and Mulliniks for other employers jobs and/or for personal use.

It appears that one or more of Mulliniks,, Baucom and/or Cox conspired with others to establish a competing company for the purpose of diverting business. Also, one or more of them have used names very similar to AES in a manner that confuses customers. In any case, the Debtors have been harmed by the disclosure of information, transfer or loss of use of assets, diversion of corporate assets and opportunities, and willful, gross, misconduct.

Brent Mulliniks, cashed a check (or created a cashiers check) for approximately $110,000 that HIIT moved to AES' Chase checking account for the purpose of payroll. It appears that the check was embezzled and that payroll was not made. The Debtors sought confirmation the check was actually used for payroll, but have not received any evidence the check was actually used for the intended purpose.

Mr. Mulliniks attempted to have the debtor engage a factoring company Momentum Capitals when the insider of that company had formed a company with former AES employees to compete against AES.

Brent Mulliniks apparently brokered the sale of HydroFlow units to Kinder Morgan (misusing the AES distribution agreement with HydroFlow) without the knowledge or consent of the board, CEO or CRO. This sale diluted the ability of AES to provide the sole source of hydroflow flowback treatment and appears to have breach fiduciary duties of loyalty and care. Indeed, it appears Mr. Mulliniks made a secret profit, or tried to, by using the Debtors' distribution agreement for himself.

Brent Mulliniks sent confidential internal financial information to an Investment Banker, Brandon Neff, who was no longer engaged by HIIT, and Carlos Buchannan (a competitor) without the knowledge of the other board members, without a non-disclosure agreement, and in a manner that damaged the goodwill of HIIT. The Debtors have claims for the losses incurred by the disclosure of the financial information and loss of marketshare, among other direct losses.

Calen Baucom used AES equipment to perform flow back services for AES customers with AES paying for the labor, costs and overhead while revenues went to another company. He breached his fiduciary duty by setting up another flow-back company while representing that he was exclusive to AES and in a special relationship with it. The Debtors have been damaged by the breaches of fiduciary duty and tortious interference with business relationships, as well as the loss of labor, equipment and other assets misused.

Mr. Baucom apparently fabricated invoices from a major customer for August 2015, which he sent to the CRO in the amount of approximately $200,000.00. The CRO and others funded money based on the anticipated receipt from the invoices, only to learn they were

fictional. The Debtors were defrauded in breach of their fiduciary duties in an amount in excess of the $200,000 because they lost the opportunity to reorganize with a recapitalization partner.

Mr. Baucom is believed to have taken the Debtors' equipment and not returned all of it. Calen Baucom started a company called "Prodigy Flowback Services" with Elizabeth Cox Bowden in early July 2015, while both of them were still employees of AES. He used these companies to siphon customers and assets of AES away during the period he was in a special relationship with AES as the sole provider of labor and services in the area.

All of these actions cause the Debtors to conclude that numerous causes of action exist against Baucom, Cox, and Mulliniks, those in active concert with them, and the entities they control. The Debtors have a right to assert claims numerous claims against Mulliniks, Baucom and Cox which include, but are not limited to, claims for the diversion of corporate opportunities, breach of employment agreements, breach of fiduciary duties of loyalty, diligence and care, civil theft, conspiracy, loss of use of assets and trespass to chattel, quantum meruit, and violations of securities laws. Any causes of action against these persons and those in active concert with them (including, but not limited to, Carlos Buchanan and Water Transfer, LLC) , and/or the entities they control, are expressly preserved and transferred to the Litigation Trust.

(c) ***Claims against Acie Palmer***

The Debtors' former Chief Financial Officer, Acie Palmer, was terminated 'for cause' for agreeing to go to work for a competitor and using his inside knowledge to acquire the position. By secretly making this agreement, he was able to frustrate the contractual expectancy of HIIT, who was under contract to acquire the entity. HIIT and the Debtors appear to have claims for breach of fiduciary duty against Mr. Palmer for his actions taken while an officer of HIIT.

(d) ***Claims against Peter Baldwin***

Peter Baldwin continued to contact customers after he was laid off. He represented to thosew customers that he was still employed with AES. Pete Baldwin, with the knowledge and consent of Brent Mulliniks, continued to use AES email account to divert and solicit business from customers that was diverted elsewhere (and without the knowledge of the CRO or CEO). After September 2015, Peter Baldwin was signing nondisclosure agreements purportedly on behalf of AES and was in possession of a "landshark" that belonged to Nations Equipment Finance but was leased to the Debtors. He and Brent Mulliniks were bidding on jobs on behalf of AES using AES Master Services Agreement after being terminated by AES. The Debtors are entitled to the lost profits, loss of use of assets and other direct and indirect damages resulting from the misuse of the Debtors' name, equipment, and contractual relationships.

(e) ***Claims against Carlos Buchanan and his entities***

The Debtors believe that Carlos Buchanan conspired with Mr. Mulliniks, Mr. Baucom, and Mr. Cox (and potentially others) to establish a competing company to divert business away from AES.

The Debtors believe that the Debtors' assets, specifically including (but not limited to) vehicles, trailers, generators, goodwill, contract rights and equipment (among other things) were used by Cox, Baucom and Mulliniks for (among other things) jobs that benefitted Carlos Buchanan and Gulf & Western Oilfield Services, LLC (a company wholly owned by Carlos Buchanan either directly or indirectly). The Debtors believe that Carlos Buchanan and Gulf & Western Oilfield Services, LLC were aware that Cox, Baucom, and Mulliniks were using the Debtors' assets for these jobs.

The Debtors believe that numerous causes of action exist against Carlos Buchanan and Gulf & Western Oilfield Services, LLC, including but not limited to, aiding and abetting breaches of fiduciary duty, conversion, civil theft, conspiracy, loss of use of assets and trespass to chattel, and tortious interference with business relationships. Any causes of action against these persons and those in active concert with them and/or the entities they control, are expressly preserved and transferred to the Litigation Trust.

Section 21.13 Notices

12.1. To be effective, all notices, requests, and demands to or upon the Debtors, the Committee, or the Litigation Trustee shall be in writing (including by facsimile or electronic transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtors

Hugh M. Ray, III
McKool Smith, P.C.
600 Travis, Suite 7000
Houston, Texas 77002
USA

If to the Reorganized Debtors:

Mark Joachim
Arent Fox LLP
1717 K Street NW
Washington, DC 20006
USA

AND

Hugh M. Ray, III
McKool Smith, P.C.
600 Travis, Suite 7000
Houston, Texas 77002
USA

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

In re:	**§**	**Chapter 11**
	§	
HII TECHNOLOGIES, INC., *et al.*[1]	**§**	**15-60070 (DRJ)**
Debtors	**§**	**(Jointly Administered)**

ORDER GRANTING THE DEBTORS' MOTION TO APPROVE COMPROMISE
(Refers to Docket No. ____)

The Debtors' Motion to Approve Compromise (Dkt. No. ____) is GRANTED.

The Debtors are authorized to enter into the Mediated Settlement Agreement (Dkt. No. ____). The Debtors are authorized to disburse funds as set forth in the Mediated Settlement Agreement, and take any other actions as needed to consummate the Mediated Settlement Agreement.

SIGNED: _____, 2016.

_____
UNITED STATES BANKRUPTCY JUDGE

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).