

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

<b>In re:</b>	<b>§</b>	<b>Chapter 11</b>
	<b>§</b>	
<b>HII TECHNOLOGIES, INC., <i>et al.</i><sup>1</sup></b>	<b>§</b>	<b>15-60070 (DRJ)</b>
<b>Debtors</b>	<b>§</b>	<b>(Jointly Administered)</b>

**DEBTORS' EMERGENCY MOTION TO EXTEND EXCLUSIVITY**

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.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED; YOU SHOULD FILE AN IMMEDIATE RESPONSE.

**\*\*AN EMERGENCY HEARING HAS BEEN SET FOR MARCH 14, 2015 AT 2:30 P.M. YOU MUST RESPOND BEFORE THE HEARING OR APPEAR AT THE HEARING IF YOU OBJECT.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

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

HII Technologies, Inc. and its subsidiaries request an order under 11 U.S.C. §1121(d) extending its exclusive period to file and solicit a plan of reorganization. In support of this Motion, the Debtors respectfully state as follows:

---

<sup>1</sup> 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).

### **Summary and Emergency Basis<sup>2</sup>**

1. The Debtors request a 180-day extension of exclusivity while the compromise and plan currently submitted are considered.<sup>3</sup> Exclusivity would otherwise expire on March 16, 2016. Granting the extension will not unreasonably delay progress of these Chapter 11 cases and the formulation of a plan, as one has already been submitted for approval.

2. A hearing on conditional approval of the Debtors' First Amended Disclosure Statement is currently set for March 10, 2016. The Ad Hoc Group<sup>4</sup>, the Official Unsecured Creditors' Committee, and the DIP Lenders consent (almost entirely)<sup>5</sup> to the Plan. The Court has scheduled the confirmation hearing for April 15, 2016. The extension of exclusivity benefits the estates by permitting the bulk of creditors to permit the Debtors' consensual plan to go forward without other plans frustrating the process.

### **Jurisdiction and Venue**

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of the Debtors' 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).

4. The statutory predicate for the relief sought is Section 1121(d) of the Bankruptcy Code. The Court has authority to enter final orders granting this relief.

### **Relief Requested**

5. The Debtors' 180-day period during which it has the exclusive right to file and

---

<sup>2</sup> The Declaration of counsel supporting these paragraphs is appended hereto.

<sup>3</sup> The Debtors have recently filed the *Debtors' Amended Joint Plan of Reorganization* (Dkt. No. 392), the *Debtors' First Amended Disclosure Statement in Support of Joint Amended Plan of Reorganization* (Dkt. No. 393), and the *Debtors' Motion for Order (1) Conditionally Approving Disclosure Statement; (2) Fixing Record Date for Voting; (3) Approving Plan Solicitation Package and Voting Procedures; (4) Setting Deadlines to Vote on Plan and Object to Plan and Disclosure Statement; and (5) Setting Hearing on Final Approval of Disclosure Statement and Plan Confirmation* (Dkt. No. 394).

<sup>4</sup> Ad Hoc Committee of Unsecured Creditors of Debtor Apache Energy Services (the "Ad Hoc Group").

<sup>5</sup> Ancillary agreements, such as the Liquidating Trust Agreement, and other minor issues, still remain.

solicit a plan of reorganization is set to expire on March 16, 2016. The Debtors respectfully request entry of an order pursuant to Bankruptcy Code section 1121(d) granting a 180-day extension of this period to September 12, 2016, without prejudice to the Debtors' right to seek and obtain further extensions.

6. The Debtors anticipate confirming a plan on April 15, 2016. If, however, they do not and a subsequent solicitation is needed, the Debtors believe that the extension provides time to formulate and execute alternative plans.

7. This proposed extension will be without prejudice to any party-in-interest to move to shorten or terminate exclusivity for cause. As of now, the pending motion to terminate exclusivity is abated pending approval of the compromise with the Ad Hoc Group.

#### **Basis for Relief**

8. Sections 1121(b) and (c) of the Bankruptcy Code grant a debtor the exclusive right to file and solicit acceptances of a plan of reorganization within the first 120 days and 180 days after the date of the order for relief. *See* 11 U.S.C. §§ 1121(b); 1121(c)(3). Pursuant to Section 1121(d), a court may extend these periods "for cause" up to a maximum of 18 and 20 months after the date of the order granting relief. *See* 11 U.S.C. § 1121(d).

9. While the elements that constitute "cause" are not outlined in the Bankruptcy Code, courts generally consider a variety of factors in determining whether to grant an extension of the exclusivity periods, including: "(1) the size and complexity of the case; (2) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (3) the existence of good faith progress toward reorganization; (4) the fact that the debtor is paying its bills as they become due; (5) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (6) whether the debtor has made progress in negotiations with its creditors; (7) the amount of time which has elapsed in the case; (8) whether the debtor is

seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and (9) whether an unresolved contingency exists." *In re New Millenium Mgmt., LLC*, Case No. 13-35719, 2014 Bankr. LEXIS 734 at \*18-19 (Bankr. S.D. Tex. Feb. 25, 2014) (citing *In re GMG Capital Partners III, L.P.*, 503 B.R. 596, 2014 WL 260552 (Bankr. S.D.N.Y. 2014)); *see also* 7 Collier's on Bankruptcy ¶ 1121.06[2] (16th ed.) (listing same nine factors for consideration).

10. Courts have determined that the presence of merely one or several of the above factors may be sufficient for purposes of granting an extension. *See, e.g., In re Texaco, Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987) (holding that "cause" existed to grant the debtor's exclusivity extension request based solely on the size and complexity of the case); *In re United Press Int'l, Inc.*, 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (holding that the debtor showed "cause" to extend the exclusivity periods by satisfying only a few of the above-cited factors). Nevertheless, in this case all of the above factors favor granting the extension.

11. With respect to the first factor (the size and complexity of the case) and the second factor (the necessity for sufficient time to negotiate a plan and prepare adequate information), the Debtors point out that the Debtors' disputes with the Ad Hoc Group demonstrate these factors are met. This case has been exceedingly complex given the nature of the disputes. Plan negotiations (and the overall case) were more complex than average.

12. The third factor (the existence of good-faith progress toward reorganization) favors extension. As set forth more thoroughly in the *Debtors' Motion to Approve Compromise* (Dkt. No. 395), the Debtors, DIP Lenders, the Official Committee of Unsecured Creditors, the Ad Hoc Group, Brent Mulliniks, and Billy Cox, Jr. have reached an agreement to settle ongoing

disputes, removing the final roadblock to a consensual plan.<sup>6</sup> The Debtors recently filed the amended plan and disclosure statement. A hearing on conditional approval of the disclosure statement is set for March 10, 2016. The Court has scheduled confirmation of the plan and final approval of the Disclosure Statement for April 15, 2016.

13. As the Debtors have been paying their bills as they come due, the fourth factor favors extension. *See* Debtors' Monthly Operating Reports (Dkt. Nos. 379-83).

14. The fifth factor (whether the debtor has demonstrated reasonable prospects for filing a viable plan) similarly favors extension. The Debtors' Plan has the support of the DIP Lenders and Committee and (if the settlement is approved) with the Ad Hoc Group. The Plan is viable with the infusion of cash from the DIP Lenders. There are more than reasonable prospects that the Plan will be successfully confirmed.

15. The sixth factor (whether the Debtors have made progress in negotiation with creditors) likewise favors extension of exclusivity. In addition to settling the disputes with the Ad Hoc Group, Brent Mulliniks, and Billy Cox, Jr., the Debtors have successfully negotiated with the DIP Lenders and the Committee to support the plan. The Debtors made substantial progress with key creditor constituencies.

16. The seventh factor (the amount of time that has elapsed in the case) also favors extending exclusivity. Less than six months have passed since the Debtors filed bankruptcy, and the Debtors have not sought an extension before.

17. The eighth factor (whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands) favors extension. The Debtors settled the ongoing disputes with the Ad Hoc Group, and that compromise should

---

<sup>6</sup> The settlement agreement is pending approval by the Bankruptcy Court but expected to be approved. If not approved or if withdrawn or vacated, the Debtors will need exclusivity to extend to finalize alternate options.

be approved soon. The Debtors are unaware of any other party-in-interest that has proposed to file a competing plan. The Debtors are not seeking an extension of exclusivity in order to pressure creditors to submit to the Debtors' reorganization plan, and thus the eighth factor favors extension.

18. Finally, the ninth factor (whether an unresolved contingency exists) favors extension. Courts consider whether any unresolved contingencies in a debtor's case may impact the debtor's ability to formulate a confirmable plan. *See, e.g., In re Swatara Coal Co.*, 49 B.R. 898, 899-900 (Bankr. E.D. Pa. 1985) (finding that cause existed to extend the debtor's exclusivity periods based on the fact that certain ongoing negotiations were "central to the operation of the debtor's business and that, if successful, the negotiations would likely enable the debtor to file a viable reorganization plan and to rehabilitate itself as an ongoing business concern, thereby also benefitting the debtor's creditors"). As noted above, the Debtors' compromise with the Ad Hoc Group, et al. awaits final approval. The contingency will not be fully resolved until confirmation on April 15. The final resolution (or not) of the compromise will impact the Debtors' ability to formulate a confirmable plan.

19. Each of the nine factors favors extension. As a result, the Debtors believe that manifest cause exists to extend the 180-day deadlines provided under Section 1121 of the Bankruptcy Code for an additional 180 days. Therefore, the Debtors respectfully request that the Court grant the relief requested by this Motion.

WHEREFORE, the Debtors respectfully request that the Court enter an order, (a) extending its exclusive period to file and solicit a plan of reorganization for 180 days to September 12, 2016; and (b) granting such further relief as may be just and necessary under the circumstances.

Respectfully submitted this 8th day of March, 2016.

**McKool SMITH, P.C.**

By: /s/ Benjamin W. Hugon

Hugh M. Ray, III  
State Bar No. 24004246  
Christopher D. Johnson  
State Bar No. 24012913  
Benjamin W. Hugon  
State Bar No. 24078702  
600 Travis, Suite 7000  
Houston, Texas 77002  
Tel: 713-485-7300  
Fax: 713-485-7344

*Counsel for the Debtors-in-Possession*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 8, 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

**VERIFICATION FOR BLR 9013**

I certify under penalty of perjury that the facts stated in paragraph 1 and 2 are true and correct and that I believe they constitute an emergency warranting emergency consideration before the expiration of exclusivity on March 16.

Dated: March 7, 2016

/s/ Hugh M. Ray, III

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>HII TECHNOLOGIES, INC., <i>et al.</i><sup>1</sup></b>	§	<b>15-60070 (DRJ)</b>
<b>Debtors</b>	§	<b>(Jointly Administered)</b>

**ORDER EXTENDING THE DEBTORS' EXCLUSIVE PERIOD TO FILE AND SOLICIT  
A PLAN OF REORGANIZATION**

Upon consideration of the Debtors' Emergency Motion to Extend Exclusivity (the "Motion"), and upon consideration of the proceedings before the Court related to the Motion; and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); (iii) venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (iv) the motion is in full compliance with all applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules of the Southern District of Texas, and orders and procedures of this Court; (v) proper and adequate notice of the Motion, the deadline to file any objections to the Motion, and any hearing thereon was given, and no other or further notice is necessary; (vi) the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and (vii) the relief sought in the Motion is in the best interests of the Debtors and their estates; and after due deliberation and sufficient cause appearing therefor; it is hereby

ORDERED that the Debtors' exclusive period to file and solicit acceptances of their plan of reorganization is extended from March 16, 2016 to September 12, 2016, without prejudice to the Debtors' right to seek and obtain further extensions of such periods; and it is further

ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court shall retain jurisdiction to resolve all matters arising out of or related to the Motion or Order.

SIGNED: \_\_\_\_\_, 2016.

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

<sup>1</sup> 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).