

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

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

**DEBTORS' OBJECTION TO HII CLAIM NO. 16 FILED BY
WILLIAM MARK HAMILTON AND SHARON K. HAMILTON**

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED WITHOUT A HEARING.

A HEARING HAS BEEN SET ON THIS MATTER ON MAY 17, 2016 AT 10:00 AM IN COURTROOM 400, 4TH FLOOR, 515 RUSK, HOUSTON, TEXAS 77002.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

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

HII Technologies, Inc. ("HII") and its subsidiaries request an order disallowing HII Claim No. 16 filed by William Mark Hamilton and Sharon K. Hamilton. In support of this objection,² the Debtors respectfully state as follows:

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).

Jurisdiction and Venue

1. 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).

2. The statutory predicates for the relief sought are sections 502(b)(1) and 502(d) the Bankruptcy Code. The Court has authority to enter final orders granting this relief.

Relief Requested

3. The Debtors request that this Court enter an order disallowing HII Claim No. 16 in its entirety.

Background

4. On or about August 11, 2014, HII purchased Hamilton Investment Group, Inc. ("HIG"), a frac water transfer company in Guthrie, Oklahoma, from William Mark Hamilton and his wife Sharon K. Hamilton via a Stock Purchase Agreement ("SPA"). William Mark Hamilton and Sharon K. Hamilton were represented to be the sole owners of HIG.

5. After the sale of HIG to HII, HIG and William Mark Hamilton executed an employment agreement. William Mark was HIG's President, and he oversaw HIG's day-to-day operations.

6. William Craig Hamilton, son of William Mark Hamilton, was an HIG employee until the sale to HII in August 2014. After the sale, William Craig Hamilton entered into a consulting agreement with HIG where he maintained a special and confidential fiduciary relationship with both HII and HIG. Each of Mark Hamilton, Craig Hamilton and Sharon

² The Debtors' facts and legal bases supporting the objections to the Hamilton claims (HII Claim Nos. 15-21, 28, and 49) are interrelated. The objections to the other claims are incorporated herein by reference.

Hamilton occupied a special relationship of confidential trust with HII and were entrusted with assets and information of the Debtors as their fiduciaries.

7. After the sale of HIG to HII, HIG entered into various leases of both real and personal property from William Mark Hamilton, Sharon K. Hamilton, William Craig Hamilton, S&M Assets, LLC (owned by William Mark Hamilton and his wife Sharon K. Hamilton) and H2 Services, LLC (owned by William Craig Hamilton). The board of directors of both HII and HIG did not approve these self-interested transactions. No third-party fairness opinion concluded that these transactions were objectively fair. These transactions were not fair to either HIG or HII and, upon information and belief, charged rates that were above market and/or contained provisions that were not fair to HII and HIG.

8. HIG terminated William Craig Hamilton, William Mark Hamilton, and Sharon K. Hamilton on June 4, 2015.

9. William Mark Hamilton, Sharon K. Hamilton, and S&M Assets filed suit against HII and HIG on June 26, 2015, seeking monies owed under three (3) of the self-interested lease agreements and an undocumented “loan” allegedly for \$2.4 million.³ In connection with their lawsuit, William Mark Hamilton, Sharon K. Hamilton, and S&M Assets moved for and obtained a temporary restraining order against HII and HIG.

10. On September 18, 2015 (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

³ An accounts payable was kept on the books for the working capital adjustment but no separate “loan” obligation exists. The HII board did not approve of an undocumented “loan”. Numerous legal restrictions applicable to HII prevent it from incurring a \$2.4 Million loan obligation without a board-authorized note, a fact of which the Hamiltons were keenly aware. To the extent that the Hamiltons’ claim relates to the SPA working capital adjustment, no demand was timely made under the SPA, and no proof of claim was timely filed to assert liability for breach of the SPA’s working capital adjustment. Finally, the SPA (as discussed below) was induced by fraud and cannot be the basis for a claim against HII, if such a claim had been timely made and a proof of claim timely filed.

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

Basis for Relief

12. Section 502(b)(1) provides for disallowance of a claim to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unliquidated.” 11 U.S.C. § 502(b)(1). William Mark Hamilton and Sharon K. Hamilton’s HII Claim No. 16 is unenforceable against the Debtors under applicable law, as set forth in further detail below.

13. Section 502(d) provides for disallowance of “any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title . . .” 11 U.S.C. § 502(d). William Mark Hamilton and Sharon K. Hamilton are entities⁴ from which property is recoverable under these sections as well as transferees of avoidable transfers, as set forth in further detail below.

Objections to HII Claim No. 16

14. William Mark Hamilton and Sharon K. Hamilton filed an unsecured claim against HII in the amount of \$2,519,371.54. There is insufficient documentation attached to the proof of claim. From what was attached, it appears that the Hamiltons claim HII owed William Mark Hamilton and Sharon K. Hamilton a Working Capital Adjustment that was satisfied by an undocumented “loan” for which no promissory note or written memorialization has been provided. The only operative contract is the SPA, of which the Hamiltons have not timely asserted a breach. The Debtors will address the hypothetical liability under the SPA below.

⁴ The Bankruptcy Code defines the term “entity” to include persons. *See* 11 U.S.C. § 101(15).

Section 502(b)(1) Objections

15. The Debtors object under section 502(b)(1) because Texas law provides that fraud is a defense to liability under a contract.⁵ The Debtors further object under 502(b)(1) because such claim is unenforceable as a result of William Mark Hamilton's and Sharon K. Hamilton's breaches of fiduciary duty, breaches of bailment, conversion, breaches of contract, and conspiracy. As a result, William Mark Hamilton and Sharon K. Hamilton's HII Claim No. 16 should be disallowed in its entirety pursuant to section 502(b)(1).

Fraud as a Defense to Contractual Liability

16. Texas law provides that fraud is a defense to liability under a contract. *See Tex. Farmers Ins. Co. v. Murphy*, 996 S.W.2d 873, 879 (Tex. 1999). William Mark Hamilton and Sharon K. Hamilton committed fraud in connection with inducing HII to enter into the SPA.

17. William Mark Hamilton and Sharon K. Hamilton misrepresented to HII that “[t]he books of account and other financial records of [HIG] (i) are accurate and complete in all material respects and have been maintained on a basis consistent with prior years; and, (ii) are stated in reasonable detail and accurately and fairly reflect the material transactions and material dispositions of the respective and properties of [HIG].” This representation was false for at least the following reasons: (i) the goodwill was overstated; (ii) the reserves for bad debt were understated; (iii) the asset values (including values of current accounts) were inflated; and (iv) the method of accounting did not accurately present the financial condition of the company. William Mark Hamilton and Sharon K. Hamilton knew the representation was false at the time it was made.

⁵ Texas law governs the SPA.

18. Further, William Mark Hamilton and Sharon K. Hamilton knowingly submitted to HII an accounts-receivable aging schedule containing material misrepresentations.

19. Further, William Mark Hamilton and Sharon K. Hamilton misrepresented to HII that “[a]ll of the Accounts Receivable arose in the Ordinary Course of Business and are collectible . . . and represent or will represent valid obligations arising from sales actually made or services actually performed in the ordinary course of business.” This representation was false because many of the accounts receivable did not arise from sales in the ordinary course of business, but instead constituted extraordinary and non-routine events. William Mark Hamilton and Sharon K. Hamilton knew the representation was false at the time it was made.

20. Further, William Mark Hamilton and Sharon K. Hamilton misrepresented that “Schedule 3.20(c) sets forth a complete and correct list of all clients of [HIG] and its Affiliates and any Business Contracts such client is party to, including without limitation any representation agreements, and marketing agreements.” This representation was false because Schedule 3.20(c) listed entities which were not bona fide clients of HIG. William Mark Hamilton and Sharon K. Hamilton knew the representation was false at the time it was made.

21. William Mark Hamilton and Sharon K. Hamilton committed many instances of fraud in connection with inducing HII to enter into the SPA as discussed in detail above, any of which remove any liability of HII for an alleged breach of the “loan” or the SPA.

Breach of Bailment/Conversion

22. William Mark Hamilton and Sharon K. Hamilton obtained a temporary restraining order (“TRO”) and were in custody of the Debtors’ property, but while the property was in their exclusive possession, the property went missing. William Mark Hamilton, Sharon K. Hamilton, and S&M Assets filed suit against HII and HIG on June 26, 2015. To obtain that

order, William Mark Hamilton, Sharon K. Hamilton, and S&M Assets filed a document under penalty of perjury stating which assets were in their possession. After the TRO was lifted, the Debtors sought to recover possession of the property but William Mark Hamilton, Sharon K. Hamilton, and S&M Assets did not return the Debtors' property. The Hamiltons were under a duty to maintain the property safely entrusted to their custody and, having breached that duty, are liable for damages.

23. Without the Debtors' consent, William Mark Hamilton and Sharon K. Hamilton intentionally exercised dominion or control over property of which the Debtors had the right to immediate possession. The Debtors suffered injury as a result of William Mark Hamilton and Sharon K. Hamilton's conversion which, in equity, also excuses any failure to perform on the undocumented loan.

Breach of Fiduciary Duties

24. William Mark Hamilton breached fiduciary duties owed to HIG. After the sale of HIG to HII, William Mark Hamilton entered into an employment agreement with HIG. William Mark Hamilton served as President of HIG (an Oklahoma corporation) and as such owed fiduciary duties to HIG. *See Badger Oil & Gas Co. v. Preston*, 152 P. 383, 385 (Okla. 1915). William Mark Hamilton breached his fiduciary duties by, among other things: (i) using HIG's assets for his personal benefit; (ii) helping his son William Craig Hamilton perform work for HIG's competitors; and, (iii) entering into self-interested agreements with HIG. The Debtors were injured as a result of William Mark Hamilton's breaches of fiduciary duty, to wit, they lost the value of the assets and the benefits of a fair contract.

25. One who holds the property of another in trust is their fiduciary. Here, as a result of the TRO, both William Mark Hamilton and Sharon K. Hamilton owed a fiduciary duty to HII

and HIG to return the property safely in their custody. They either deliberately dispossessed HII and HIG of those assets or they failed to act prudently with utmost diligence to preserve them. Accordingly, HII and HIG are entitled to recover for the loss of those assets and any such recovery offsets the alleged “loan” or contractual claim of the Hamiltons.

Breach of Contract

26. William Mark Hamilton and Sharon K. Hamilton are liable to the Debtors for breach of contract. William Mark Hamilton and Sharon K. Hamilton breached various representations and warranties of the SPA as set forth above. The Debtors were injured as a result of William Mark Hamilton and Sharon K. Hamilton’s breaches of contract.

Conspiracy

27. Under Oklahoma law, “a civil conspiracy consists of a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means.” *See Schovanec v. Archdiocese of Okla. City*, 188 P.3d 158, 175 (Okla. 2008). The elements are: (i) two or more persons; (ii) an object to be accomplished; (iii) a meeting of minds on the object or course of action; (iv) one or more unlawful, overt acts; and, (v) damages as the proximate result. *See id.* William Craig Hamilton, along with his parents William Mark Hamilton and Sharon K. Hamilton, conspired to prevent the Debtors from retrieving property the Debtors were rightfully entitled to possess, in the hopes that this would cause the Debtors to pay amounts allegedly owed. The conspirators engaged in unlawful acts such as conversion to accomplish their goals. The Debtors suffered damages as a proximate result of the conspirators’ actions.

Section 502(d) Objections

28. The Debtors object under section 502(d) because William Mark Hamilton and Sharon K. Hamilton are transferees of transfers avoidable under sections 544 and 548, and are

also entities from which property is recoverable under 542 and 550. As a result, William Mark Hamilton and Sharon K. Hamilton's Claim No. 16 should be disallowed under section 502(d).

Transferee of a Transfer Avoidable under section 548

29. William Mark Hamilton and Sharon K. Hamilton are transferees of a transfer that is avoidable under section 548 (who have not paid the amount, or returned the property, for which they are liable). On or around August 11, 2014, HII purchased HIG from William Mark Hamilton and Sharon K. Hamilton (who were HIG's sole shareholders prior to the sale). HII paid or incurred obligations totaling approximately \$13.7MM for HIG and received less than reasonably equivalent value in exchange.

30. HII did not receive reasonably equivalent value in exchange for the reasons set forth above, including: (i) HIG's books and financial records (on which the purchase price was based) contained material misrepresentations; (ii) the accounts-receivable aging schedule (which also factored into the pricing determination) contained material misrepresentations; (iii) many of the accounts receivable on HIG's books (and which factored into the purchase price) did not arise in the ordinary course of business; and, (iv) HIG's alleged client base listed entities which were not bona fide clients of HIG.

31. HII made this transfer at a time when HII was undercapitalized and/or insolvent. As a result, the SPA is avoidable as a constructively fraudulent transfer under section 548(a)(1)(B) and William Mark Hamilton and Sharon K. Hamilton are transferees of a transfer avoidable under section 548.

Transferee of a Transfer Avoidable under section 544

32. William Mark Hamilton and Sharon K. Hamilton are also the transferees of transfers avoidable under sections 544. The SPA is also avoidable under section 544 (which imports state fraudulent-transfer law).⁶

33. Section 544(b) allows the avoidance of “any transfer of an interest of the debtor in property . . . that is voidable under applicable law by a creditor holding an unsecured claim . . .” 11 U.S.C. § 544(b). In other words, section 544(b) is a conduit to assert state-law-based fraudulent-transfer claims in bankruptcy. *See De La Pena v. Smith (In re IFS Fin. Corp.)*, 669 F.3d 255, 261 (5th Cir. 2012) (quoting *Asarco LLC v. Americas Mining Corp.*, 404 B.R. 150, 156 (S.D. Tex. 2009)). Under either Oklahoma or Texas law, the SPA is avoidable as a fraudulent transfer.

34. The Texas Uniform Fraudulent Transfer Act (“TUFTA”)⁷ provides for the avoidance of transfers in which an undercapitalized debtor received less than reasonably equivalent value in exchange. *See* TEX. BUS. & COMMERCE CODE §§ 24.005(a)(2)(A), 24.008(a)(1). TUFTA further provides for the avoidance of transfers in which an insolvent debtor received less than reasonably equivalent value in exchange. *See* TEX. BUS. & COMMERCE CODE §§ 24.006(a), 24.008(a)(1). As explained above, HII received less than reasonably equivalent value under the SPA. HII made these transfers while undercapitalized and/or insolvent. As a result, these transfers are avoidable under TUFTA.

⁶ Texas law governs the SPA and HII was headquartered in Houston. HIG is an Oklahoma corporation and William Mark Hamilton and Sharon K. Hamilton are domiciled in Oklahoma. The SPA is avoidable under either Oklahoma or Texas law.

⁷ TEX. BUS. & COMMERCE CODE §§ 24.001-.013.

35. The Oklahoma Uniform Fraudulent Transfer Act (“OUFTA”)⁸ provides for the avoidance of transfers in which an undercapitalized debtor received less than reasonably equivalent value in exchange. *See* OKLA. STAT. tit. 24, §§ 116(A)(2)(a), 119(A)(1). OUFTA further provides for the avoidance of transfers in which an insolvent debtor received less than reasonably equivalent value in exchange. *See* OKLA. STAT. tit. 24, §§ 117(A), 119(A)(1). As explained above, HII received less than reasonably equivalent value under the SPA. HII made these transfers while undercapitalized and/or insolvent. As a result, these transfers are avoidable under OUFTA.

36. As these transfers are avoidable under relevant state law (i.e., either TUFTA or OUFTA), the transfers are avoidable under section 544. As a result, William Mark Hamilton and Sharon K. Hamilton are the transferees of transfers avoidable under section 544.

Entities from which Property is Recoverable under Section 550

37. To the extent transfers are avoidable under sections 544 or 548, section 550 provides for recovery from initial, immediate, and mediate transferees of such avoidable transfers. 11 U.S.C. § 550. William Mark Hamilton and Sharon K. Hamilton are initial, immediate, and/or mediate transferees under the SPA (which, as discussed above, is avoidable under either section 544 or section 548). As a result, William Mark Hamilton and Sharon K. Hamilton are entities from which property is recoverable under section 550.

Entities from which Property is Recoverable under Section 542

38. William Mark Hamilton and Sharon K. Hamilton are entities from which property is recoverable under section 542 of the Bankruptcy Code (providing for turnover of estate property). Specifically, William Mark Hamilton, Sharon K. Hamilton, and S&M Assets,

⁸ OKLA. STAT. tit. 24, §§ 112-123.

obtained a temporary restraining order (“TRO”) that prohibited the Debtors from accessing their assets. To obtain the TRO, William Mark Hamilton, Sharon K. Hamilton, and S&M Assets filed a document under penalty of perjury stating which assets were in their possession. William Mark Hamilton, Sharon K. Hamilton, and S&M Assets were in sole control and fiduciary custody of the assets after entry of the TRO. Upon lifting of the TRO, the Debtors discovered that the assets were no longer present and William Mark Hamilton, Sharon K. Hamilton, and S&M Assets have not explained the loss of the assets.

Conclusion

The Debtors respectfully request that the Court enter an order disallowing HII Claim No. 16 in its entirety.

Dated: March 28, 2016.

McKool Smith, P.C.

By: /s/ Hugh M. Ray, III
Hugh M. Ray, III
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State Bar No. 24012913
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Tel: 713-485-7300
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Counsel for the Debtors-in-Possession

CERTIFICATE OF SERVICE

The undersigned certifies that on March 28, 2016, a true and correct copy of this document was served via the ECF system to the parties on the ECF service list, and a copy was served upon the claimant (at the address on the proof of claim), claimant's counsel, and United States Trustee by First Class Mail.

/s/ Hugh M. Ray, III

Hugh M. Ray III

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 §
§

AFFIDAVIT OF LORETTA R. CROSS IN SUPPORT OF THE DEBTORS'
OBJECTIONS TO HII CLAIM NOS. 15-16, 18-21, 28, 49

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

Before the undersigned notary public appeared Loretta R. Cross who, after being sworn, testified as follows:

1. My name is Loretta Cross. I am over the age of twenty-one (21), am competent to make this Affidavit, and have never been convicted of a crime. I have personal knowledge of the facts as stated in this Affidavit. I am authorized to execute this Affidavit.

2. I currently serve as the Chief Restructuring Officer (the "CRO") of HII Technologies, Inc.; Apache Energy Services LLC, dba AES Water Solutions, and its division AES Safety Services; Sage Power Solutions, Inc.; Aqua Handling of Texas LLC, dba AquaTex; and Hamilton Investment Group, Inc. (collectively, "the Debtors"). HII Technologies (herein "HIIT", "we" or the "Company") is a publicly-traded company traded on the OTC marketplace under the symbol HIIT.

3. In my capacity as the CRO, I am familiar with the daily operations and financial conditions of HII Technologies, Inc. and its affiliates. I hereby submit this affidavit in support of the Debtors' objections to HII Claim Nos. 15-16, 18-21, 28 and 49. Except as otherwise

indicated, all facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents, or my opinion based upon my experience, knowledge and information concerning the Debtors' operations, financial condition, and the industry as a whole. If called to testify, I would testify competently to the facts set forth herein. I am authorized by the Debtors to submit this Affidavit.

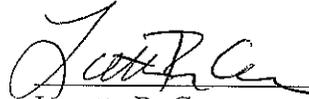
4. The Debtors have no record of board authorization for a loan of approximately \$2.4 million from William Mark Hamilton and Sharon K. Hamilton to HIIT, for which William Mark Hamilton and Sharon K. Hamilton filed HII Claim No. 16.

5. The Debtors have no evidence that Sharon K. Hamilton was a guarantor, co-obligor, or in any way obligated to pay the amounts set forth in Sharon K. Hamilton's HII Claim No. 21. The Debtors also have no evidence that the expenses set forth in Sharon K. Hamilton's HII Claim No. 21 were for the benefit of the Debtors.

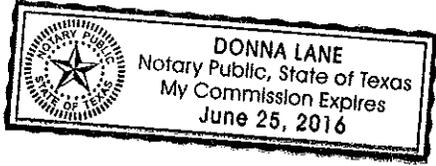
6. The payments to various vendors allegedly made by William Mark Hamilton and that form the basis of his HII Claim No. 28 were payments voluntarily made by William Mark Hamilton. The Debtors have no records indicating that William Mark Hamilton was a guarantor, co-obligor, or in any way liable for the amounts owed to these vendors.

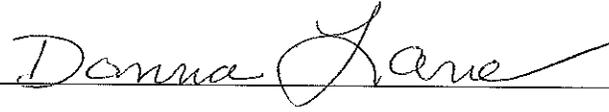
7. In order to obtain the temporary restraining order ("TRO"), William Mark Hamilton, Sharon K. Hamilton, and S&M Assets filed a document under penalty of perjury stating which assets were in their possession. *See Ex. _____*, Okla. TRO. After the TRO was lifted, the Debtor hired a professional equipment asset specialist, TMG Services Company, to inventory the Debtors' equipment held by William Mark Hamilton, Sharon K. Hamilton, and S&M Assets. TMS Services Company was not able to locate all of the Debtors' property of which William Mark Hamilton, Sharon K. Hamilton, and S&M Assets swore they had possession.

Further, affiant saith naught."


Loretta R. Cross

SUBSCRIBED AND SWORN TO BEFORE ME, on March 28, 2016.




NOTARY PUBLIC, STATE OF TEXAS

**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
	§	
Debtors	§	Jointly Administered
	§	
	§	

**DECLARATION UNDER 28 U.S.C. § 1746 OF MATTHEW FLEMMING IN SUPPORT
OF THE DEBTORS' OBJECTIONS TO HII CLAIM NOS. 15-16, 18-21, 28, 49**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

1. My name is Matthew Flemming. I currently serve as the Chief Executive Officer (“CEO”) of HII Technologies, Inc. (“HII”) and I have served in that capacity at all times relevant to this declaration and the claims referenced herein. HII is a publicly-traded company that reports to the Securities and Exchange Commission.

2. In my capacity as HII’s CEO, I am generally familiar with the operations and financial conditions of HII and its subsidiaries Apache Energy Services LLC, dba AES Water Solutions, and its division AES Safety Services; Sage Power Solutions, Inc.; Aqua Handling of Texas LLC, dba AquaTex; and Hamilton Investment Group, Inc. (collectively, “the Debtors”). I submit this declaration in support of the Debtors’ objections to HII Claim Nos. 15-16, 18-21, 28 and 49. Except as otherwise indicated, all facts set forth in this declaration are based upon my personal knowledge, my review of relevant documents, or my opinion based upon my experience, knowledge and information concerning the Debtors’ operations, financial condition, and the industry as a whole. I am authorized by the Debtors to submit this document and I am doing so in my capacity as the CEO.

3. On or about August 11, 2014, HII purchased Hamilton Investment Group, Inc. (“HIG”), a frac water transfer company in Guthrie, Oklahoma, from William Mark Hamilton and his wife Sharon K. Hamilton via a Stock Purchase Agreement (“SPA”).

4. William Mark Hamilton and Sharon K. Hamilton (and/or entities they control) sold the stock of HIG to HII. The Hamiltons represented themselves as knowledgeable about the books of HIG, its customer base, its financials, the general business of HIG, and of HIG’s assets and operations. HII relied on their representations described herein. As a result of this reliance upon the Hamiltons’ representations described below, all of the Debtors were injured and HII overpaid for the HIG stock, assets acquired in connection with the SPA, and transactions associated with the SPA, and the self-interested transactions described herein.

5. In connection with the SPA, William Mark Hamilton and Sharon K. Hamilton made representations to HII that “[t]he books of account and other financial records of [HIG] (i) are accurate and complete in all material respects and have been maintained on a basis consistent with prior years; and, (ii) are stated in reasonable detail and accurately and fairly reflect the material transactions and material dispositions of the respective and properties of [HIG].” Based on HII’s experience after the sale, I have concluded that the books and records did not accurately present HIG’s financial condition. As a result the Debtors were injured and HII overpaid for the stock.

6. In connection with the SPA, William Mark Hamilton and Sharon K. Hamilton represented that “Schedule 3.20(c) sets forth a complete and correct list of all clients of [HIG] and its Affiliates and any Business Contracts such client is party to, including without limitation any representation agreements, and marketing agreements.” After the sale, I concluded that this representation was false because Schedule 3.20(c) appears to list entities that were not bona fide

clients of HIG, and after HIG's sale to HII, HIG never did any further business with most of these customers and their MSAs.

7. After the closing of the SPA Mark Hamilton was HIG's President overseeing HIG's day-to-day operations and acting in a close relationship of trust with HII. After the SPA closing, William Craig Hamilton entered into a consulting agreement with HIG where he maintained a special and confidential fiduciary relationship with both HII and HIG. Each of Mark Hamilton, Craig Hamilton and Sharon Hamilton occupied a special relationship of confidential trust with HII and were entrusted with assets and information of the Debtors as their fiduciaries.

8. Based on my experience after he ceased to be president of HIG, it appears that while President of HIG and in a relationship of trust with HII, William Mark Hamilton: (i) used HIG's assets personally; and, (ii) helped his son William Craig Hamilton perform work for son's benefit (and/or failed to report that fact to HII). No independent third party opined on the objective fairness of the self-interested Hamilton transactions. The self-interested transactions do not appear to be fair to HII, HIG or the Debtors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: March 28, 2016



Matthew Flemming