

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE 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>

**DEBTORS' OMNIBUS RESPONSE TO PLAN OBJECTIONS**

(Refers to docket ##453, 454, 455)

**The Honorable David R. Jones, Chief United States Bankruptcy Judge:**

HII Technologies, Inc. (“HII”) and its affiliated debtors (collectively, the “Debtors”) file this Response to various objections to the Plan and would respectfully show the Court as follows:

**Summary**

1. No party has filed an objection to the conditionally approved Disclosure Statement, and so the Disclosure Statement should be approved on a final basis.
2. No party objected to the Debtors’ Motion to Approve Compromise with the Ad Hoc Committee [dkt. no. 395], and the deadline to object expired on March 31, 2016, so the proposed compromise should be approved.
3. No one raised any objection to the Voting Procedures or the consolidation for voting purposes either at or before the hearing to approve voting procedures, so the Hamiltons’ objections on these issues are waived or moot.
4. Confirmation is in the best interest of all creditors. The Plan provides that the DIP Lenders (who hold a \$12 Million superpriority administrative expense and also encumber

---

<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).

commercial tort claims, such as D&O claims) will voluntarily divide any future recoveries by the Litigation Trust on a 55/45 basis with the unsecured creditors and convert their superpriority administrative expense into new shares of the Reorganized HIIT. The Plan provides that the Litigation Trust will be funded with new money advanced by the DIP Lenders of no less than \$100,000 on the Effective Date and up to \$500,000. In addition to trust recoveries, the Plan provides unsecured creditors with a guaranteed payment of 5% of shares in the Reorganized HIIT. If the case converts to chapter 7, the unsecured creditors will get nothing. The argument that the unsecured creditors would be better off if the case converted is false.

5. The Plan has been overwhelmingly approved by creditors. The ballot tabulation shows well over 98% in amount and over 90% in number in the convenience class (Class 3) voted to accept. The general unsecured class (Class 4) voted 99% in favor of the Plan in amount and over 88% in number. Even if all of the Hamiltons' votes were counted, Class 4 would still have voted to accept the plan.<sup>2</sup> If voting had not been consolidated, large creditors with guarantees from multiple debtors would have had their claims multiplied.

6. The objection filed by Harris County has been resolved by an agreement to include in the confirmation order language that will clarify that the Harris County Taxes will be paid on the effective date of the Plan.

7. Thus, only the Ad Hoc Committee's Objection and the Hamiltons' Objections remain.

---

<sup>2</sup> According to the Balloting Agent, if all the Hamiltons' votes counted, the total of voting general unsecured claims would have been \$8,429,128.57 in amount and either 21 or 22 in number (depending on whether the claim jointly owned by William Mark Hamilton and Sharon K. Hamilton counted as being owned by an entity other than William Mark Hamilton individually and Sharon K. Hamilton individually). As 15 entities in number voted to accept (and 15 is greater than one-half of either 21 or 22) and \$5,656,294.07 in amount voted to accept (which is more than two-thirds of \$8,429,128.57), Class 4 would still have accepted the plan.

### **Ad Hoc Committee's Objection**

8. The Ad Hoc Committee's Objection should be overruled. As part of the Mediated Settlement Agreement, the Ad Hoc Committee agreed to withdraw all of its motions alleging wrongdoing of the board and CRO with prejudice. Also, the Ad Hoc Committee agreed not to oppose confirmation and to use good faith efforts to have the Plan confirmed.<sup>3</sup> Every iteration of the Plan (including that which was on file with the Court at the time of mediation), included releases of the members of the Official Committee of Unsecured Creditors (the "Committee"), certain of the Debtors' directors, and their attorneys and agents. These releases were the fundamental motivation for the mediation because the objections to the releases, the plan, and meritless claims against the CRO had delayed confirmation. The compromise reflected in the Mediated Settlement Agreement envisioned withdrawal of the Ad Hoc Group's motions with prejudice and supporting releases under the Plan, and the Ad Hoc Committee's assertions otherwise are disingenuous.

9. During the mediation, the Ad Hoc Committee negotiated full and complete releases from the Debtors' estates, the DIP Lenders, and the Committee of its own counsel (Mr. Simon and Mr. Kennedy).<sup>4</sup> The Ad Hoc Committee's argument that the Plan's release of the Committee, the named directors, and their agents violates the Mediated Settlement Agreement is again disingenuous—especially given that the Ad Hoc Committee contemporaneously negotiated releases of its own counsel.

---

<sup>3</sup> The Mediated Settlement Agreement provides, in several parts, that the Ad Hoc group will "use their good faith efforts to obtain approval of the plan and disclosure statement" and "not prosecute further objections the Debtor's plan, the Disclosure Statement...."

<sup>4</sup> Mediated Settlement Agreement ¶ 7(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.").

10. The Challenge Deadline to oppose the DIP Lenders' liens<sup>5</sup> (including liens on D&O claims) expired. The DIP Loan specifically perfects a first priority lien on all avoidance actions for \$12 Million. The DIP Loan also requires that any confirmed plan include a release of the DIP Lenders.<sup>6</sup> If the Plan were not confirmed, the DIP Lenders would own all the claims that the Ad Hoc Committee says should not be released. The DIP Lenders and Debtors have negotiated the releases as an integral part of the Plan.

11. The Ad Hoc Group filed an amended objection erroneously claiming that 80% of the \$500,000 paid to the Litigation Trust would pay professional fees or administrative expenses. That is not correct. The Litigation Trust will receive its money as promised and that money is not used to pay pre-confirmation expenses. The Plan correctly identifies the use of the funds. The amended objection also complains of the selection of Elizabeth Guffy as Litigation Trustee, though counsel was informed (and consented) to her role a month ago.

12. The Debtors can settle disputes during the case notwithstanding the settlement agreement. Article XX of the Disclosure Statement describes how the Plan is a compromise of claims against, among others, insiders and the DIP Lenders. The Disclosure Statement provided notice of the Debtors' intent to compromise claims against insiders for the benefit of the reorganization process after an investigation by the Committee. The Committee has concluded its investigation and determined the compromise is in the best interests of these Debtors' estates. The compromise benefits the estate because 1) there are no valuable claims, 2) management will assist the litigation trust and 3) specious claims would needlessly dilute the D&O policy and hinder payment for wrongs of Mulliniks and Cox.

---

<sup>5</sup> See Final DIP Order (Docket #149).

<sup>6</sup> Final DIP Order ¶ 18(d) ("Unless the DIP Lenders consent thereto, no order shall be entered confirming a plan in any of these Cases unless such order provides for payment in full in cash of all of the DIP Facility on the effective date thereof, together with releases, waivers, and indemnification acceptable to the DIP Lenders, in their sole discretion.").

13. Finally, there is a difference between litigation explicitly preserved and litigation estopped, which cannot be ignored. The Plan estops claims against the Committee, the estate professionals, and the named directors for the conduct regarding the bankruptcy case because, after notice to all creditors and parties in interest, they had the opportunity to complain. If anyone has a complaint against the CRO, the Committee, the HII board or estate professionals for actions taken during these Chapter 11 cases, they should make the complaint to this Court, who has the sole and exclusive duty to administer the case and monitor professionals.<sup>7</sup> Otherwise, the Court will enter findings in the context of confirmation that can estop future claims.<sup>8</sup>

### **The Hamiltons' Objections**

14. The Hamiltons' Objections fail for the following reasons and should be overruled.

15. **Consolidation** There was no opposition to consolidated voting when the Voting Procedures were approved, even though counsel for the Hamiltons was present at the hearing. That issue therefore has been waived.

16. Had the Hamiltons objected to consolidation for voting and distribution purposes, the Debtors would have noted that consolidation, for purposes of both voting and distribution, met the legal standards applicable to that limited relief because:

- a. Without consolidation, large creditors with guarantees from all Debtors would control millions in claims against each Debtor, resulting in their number and

---

<sup>7</sup> *In re Pacific Lumber*, 584 F.3d 229, 253 (5th Cir. 2009) (“We agree, however, with courts that have held that 11 U.S.C. §1103(c), which lists the creditor’s committee’s powers, implies committee members *have qualified immunity for actions within the scope of their duties.*”) (emphasis added)

<sup>8</sup> See, e.g. *Osherow v. Ernst & Young, LLP (In re Intelogic Trace, Inc.)*, 200 F.3d 382 (5th Cir. 2000) (suit against former estate professionals after final application and confirmation is estopped); see also *Capitol Hill Group v. Pillsbury Winthrop Shaw Pittman, LLP*, 574 F. Supp. 2d 143, 149 (D.D.C. 2008), *aff’d* 569 F.3d 485 (D.C. Cir. 2009) (same); *Grauz v. Englander*, 321 F.3d 467 (4th Cir. 2003); *Iannochino v. Rodolakis (In re Iannochino)*, 242 F.3d 36 (1st Cir. 2001) (same).

amount of claims effectively being multiplied by five and diluting the vote of creditors like the Hamiltons.

- b. The Debtors were part of a tax consolidation group, and all Debtors must reorganize in order to preserve the consolidated tax attributes. Confirming Chapter 11 plans for only 4/5ths of the Debtors would not accomplish that goal and, accordingly, is not a realistic alternative to the Plan.
- c. The Disclosure Statement sets forth numerous reasons that the distribution must be consolidated, including to effectively preserve the tax attributes, efficiency of operation and administration, and the release of intercompany claims. The Disclosure Statement constitutes notice of the intent to consolidate distribution, which is not the same as disregarding the corporate form.
- d. HII's net intercompany receivables from the other Debtor subsidiaries exceed \$28 Million. If the Debtors are not consolidated for distribution purposes, most of the available funds from the subsidiary Debtors would be upstreamed to HII.
- e. The Debtors are not seeking to disregard the corporate form, so the case law cited for that remedy is inapplicable. Without consolidation for purposes of distribution, a handful of large creditors and HII (the Debtor parent) would receive substantially all of the recoveries from subsidiaries, and the ordinary creditors of a subsidiary would lose as a consequence. Consolidation for purposes of distribution actually benefits smaller creditors of a single subsidiary, such as the Hamiltons. And, as noted above, the unsecured creditors have overwhelmingly accepted the proposed consolidation for purposes of distribution – a fact not present in the cases cited by the Hamiltons.
- f. The Hamiltons filed their claims on the claims register of HII, the Debtor parent, not the subsidiary Debtor, Hamilton Investment Group ("HIG"). A small issue, to be sure, but it is illogical to argue against consolidation when the effect of nonconsolidation could be to invalidate one's own claims, given that the Hamiltons' claims appear to be against HIG.
- g. The Disclosure Statement discloses that all of the Debtors are either directly or indirectly owned by the same Debtor parent and share employees, premises, operating methods, and financial obligations, and filed consolidated financial statements; all of the Debtors are borrowers or guarantors of the Estates' major secured debt to the DIP Lenders, which have liens on substantially all of the Debtors' assets.

17. **Voting Generally** The Hamiltons' objections relating to the classification of their claims, voting, and alleged misidentification as insiders are moot because, even if their

votes counted in the full amount of their alleged claims, the existing votes of other creditors in the same class as the Hamiltons' claims exceed the threshold for confirmation purposes.<sup>9</sup>

18. **Convenience Class** The Hamiltons incorrectly argue that there are only three convenience class creditors and that the very existence of the convenience class constitutes gerrymandering. The Hamiltons' argument is centered upon a misconception—scheduled unsecured creditors who did not file proofs of claim are entitled to vote and received ballots. Although only three convenience class creditors filed proofs of claim, the Debtors scheduled dozens more such creditors. Per the balloting agent, ballots were sent to sixty-five convenience class (Class 3) creditors (and an additional five creditors opted in).

19. The Plan's provision for a convenience class is not gerrymandering—it creates a legitimate class for a legitimate reason. Getting these smaller creditors out of the picture reduces the number of claimants to the Litigation Trust, and thus reduces the administrative burden on the Litigation Trustee. This is exactly the purpose of a convenience class.

20. **Insider Status.** The Hamiltons' object that they are not insiders, though they are insiders of an affiliate, and that their votes were disregarded as insiders. This claim misunderstands the Bankruptcy Code and the reason their votes were not counted.

21. The Hamiltons admit they are insiders of HIG, but claim that they are not insiders of HII. The Hamiltons' argument fails as a matter of law. An insider of an affiliate is an insider of the Debtor "as if such affiliate were the debtor". 11 U.S.C. §101(31)(E). HIG is 100% owned by HII and is thus an "affiliate" 11 U.S.C. §101(2)(B). The Hamiltons are statutorily defined as insiders of HII.<sup>10</sup>

---

<sup>9</sup> See *supra* note 2.

<sup>10</sup> In addition, the statutory definition of an "insider" is not an exclusive list and the Hamiltons are insiders by nature of their fiduciary roles.

22. But, whether or not Hamiltons are insiders of HII, the Hamiltons' concerns are misplaced. As the Debtors understand it, the Hamiltons' argument is that section 1129(a)(10)'s requirement that acceptance should be determined "without including any acceptance of the plan by an insider" should not deprive the Hamiltons of their vote in a plan substantively consolidated for voting purposes (and where the Hamiltons are insiders of only one of the entities).

23. Contrary to the Hamiltons' assertion, the Debtors did not exclude the Hamiltons' votes because they were insiders. The Debtors objected to some (but not all) of the Hamiltons' claims, and it is because of these claim objections (not insider status) that the Hamiltons' claims are excluded for voting purposes.<sup>11</sup>

24. **Feasibility.** The Hamiltons' feasibility objection demonstrates a misunderstanding of the Plan. "Feasibility" in a reorganization context refers to the ability of a reorganized debtor to consummate contemplated future transactions (*e.g.*, payments over the life of a plan) and whether the reorganized debtor risks returning to bankruptcy court. 11 U.S.C. § 1129(a)(11). In a liquidation context, because a liquidating plan does not contemplate future transactions by a reorganized debtor, liquidation is feasible as a matter of law. This Plan has elements of both a reorganization and liquidation.

25. As to the Reorganized Debtors, the Plan is "feasible" because no creditor (not even the DIP Lenders) is to receive future payments from the Reorganized Debtors. Reorganized HIIT will have a 95% shareholder that is clearly solvent and liquid. The Reorganized Debtors will have no debt and a stream of cash flows. But even if this were not the case, creditors are to be paid from the Litigation Trust, not the Reorganized Debtors. As to the Reorganized Debtors, the Plan is feasible.

---

<sup>11</sup> Again, as noted above, even if all of the Hamiltons' votes counted, Class 4 would still have accepted the Plan.



26. As to the Litigation Trust, the Plan is clearly feasible because the Litigation Trust is a limited trust for the purposes of collecting and distributing assets as a liquidator of claims. The Trust will be funded by entities that have already funded considerable amounts in this case—\$12 Million (a superpriority administrative expense) to pay off the Prepetition Lenders and provide new cash for the Chapter 11 cases. As lienholders and administrative expense holders, the DIP Lenders currently have a right to 100% of the recoveries on the tort claims against the Hamiltons, Mulliniks and Cox. Instead, the Plan distributes 45% of that recovery to the unsecured creditors.

27. The Hamiltons' argument that the Plan is not feasible because "success is predicated on a \$5 million litigation recovery" demonstrates a fundamental misunderstanding of the Plan. Even if every litigation action is unsuccessful, the Plan will not fall apart. The Reorganized Debtors have no interest in the Litigation Trust, so the success or failure of litigation will have no effect on its viability. In the unlikely event that every litigation action were unsuccessful, the DIP Lenders (who are funding the Litigation Trust) will lose up to the \$500,000 they funded and the unsecured creditors will be left with their 5% interest in the Reorganized HIIT (which is still more than they would receive in a Chapter 7 case). The Plan is therefore feasible as to both the Reorganized Debtors and the Litigation Trust.

**28. Unfair Discrimination.** The Plan treats all holders of allowed Class 4 claims in the same fair and equitable manner. No allowed Class 4 claim receives treatment different than any other allowed Class 4 claim. The Hamiltons essentially argue that the settlement with the Ad Hoc Committee (to which they did not object) should be offered to them. That is not unfair discrimination under 11 U.S.C. § 1129. In any event, the Hamiltons are prohibited from making an unfair discrimination argument because their claims are Class 4 claims, and Class 4 voted to

accept the plan. *See* 11 U.S.C. § 1129(b)(1) (requiring that plans not discriminate unfairly “with respect to each class of claims or interests that is impaired under, *and has not accepted*, the plan”) (emphasis added).

**29.** The Hamiltons argue Mulliniks and Cox are unsecured Class 4 claimants receiving a “manufactured” priority claim, but that is factually inaccurate. The Mediated Settlement Agreement with the Ad Hoc Committee settled a secured, perfected first lien claim, not just unsecured claims. Indeed, Mulliniks and Cox held over \$300,000 in secured notes on assets of the Debtor AES, perfected before the Prepetition Lenders notes, to which Mulliniks and Cox contractually subordinated payment to the Prepetition Lenders. Mulliniks and Cox argued that they were entitled to payment from the AES estate as AES was not an obligor on the intercreditor agreement with prepetition lenders. Mulliniks and Cox also asserted large unsecured claims.

**30.** To resolve these debts and all of the Debtors’ ongoing fights with the Ad Hoc Committee (of which Mulliniks and Cox were members), the lien claims were replaced with a priority claim of \$150,000 and an upfront cash payment of \$100,000 (which includes \$50,000 already escrowed from sales proceeds). The settlement is reasonable and should be approved under Bankruptcy Rule 9019.

**31.** A settlement under Bankruptcy Rule 9019 is subject to the lowest level of reasonableness standard, not an “absolute fairness” test. The Hamiltons apply the wrong legal standard to the compromise. Under any standard, the unfair discrimination objection fails because the Plan provides for a single class of general unsecured creditors holding claims of over \$1,000 that are all treated the same, and that class has overwhelmingly accepted that treatment under the Plan.

32. **Bad Faith.** In a zealous and impassioned narrative, the Hamiltons allege that the DIP Lenders, the Committee, the Ad Hoc Committee, the Debtors, and the CRO all have negotiated the Debtors' Plan in bad faith. The frustration is palpable in the advocacy, and it is understandable under the circumstances. The Hamiltons are litigation targets who received millions of dollars from HII thirteen months prior to the bankruptcy filing. Their concern about being sued is valid. But the desire to preserve the value of litigation claims for the benefit of creditors is not indicative of bad faith.

33. On January 22, 2016, the Hamiltons sued Mr. Flemming, the CEO of HII, without seeking relief from the automatic stay. They allege that he, as CEO, falsely promised that a Debtor would pay the Hamiltons on the Debtor's alleged obligation.<sup>12</sup> The failure to disclose that litigation to this Court beforehand or to seek relief from the stay should weigh in the Court's good-faith analysis. Nowhere in their objection do the Hamiltons disclose that they sued Mr. Flemming postbankruptcy for his actions as HII's CEO. Good faith is, at minimum, the absence of sharp practice.

34. Here, the Debtors, the DIP Lenders, the Committee and the CRO disclosed their intentions to preserve for the Litigation Trust the right to sue the Hamiltons. The Debtors made the disclosure to creditors and the Court before filing any suit. Conversely, the Hamiltons are conducting an end-run on the process by directly suing the Debtors' board members for actions they took for the Debtors, without prior notice to the Court or relief from the automatic stay.

35. The dispute about whether a claim should be a "payable" or a "loan" does not indicate bad faith. It is not relevant for the Disclosure Statement, Plan or Confirmation Order

---

<sup>12</sup> Cause of action CJ-2016-18 in the Oklahoma State District Court, Subsequently removed by Mr. Flemming as Case No. 16-cv-00280-W, pending in the United States District Court for the Western District of Oklahoma, attached as **Exhibit A**.

whether the Hamiltons' claim is a loan or a payable. It is not bad faith for two persons to interpret facts differently. The Debtors proposed their plan in good faith.

36. The Debtors demonstrated good faith by full disclosure well in advance of the possible suit against the Hamiltons and by submission of their proposal to the bankruptcy process. The Hamiltons chose not to address their claims against the Debtors' CEO with the Court, and they have filed a multi-faceted objection to derail confirmation for the obvious improper purpose of gaining a perceived litigation benefit. For two millennia, good faith was judged under the maxim "*essem quam videre*". One must actually have good faith, rather than to just appear to have it.

### **Conclusion**

37. No creditor has raised a legitimate issue to the confirmability of the Plan, demonstrated that liquidation under chapter 7 would result in a better option for the unsecured creditors, or established that the Plan is patently unconfirmable or otherwise unfair. The balloting shows Class 3 and Class 4 overwhelmingly accepted their treatment under the Plan. The Plan remains the only mechanism to bring realistic recoveries to the unsecured creditors and should therefore be confirmed.

The Debtors request that the objections be overruled and the Plan (as amended) be confirmed.

Dated: April 14, 2016.

**McKool Smith, P.C.**

By: /s/ Hugh M. Ray, III  
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 Debtors-in-Possession*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on April 14, 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/ Hugh M. Ray, III

Hugh M. Ray, III

**Exhibit A**

The Hamiltons' January 22, 2016 State-Court Lawsuit Against Matthew  
Flemming

3-4-16  
Delivered  
SC

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

S & M ASSETS, LLC, an Oklahoma limited liability  
company, WILLIAM MARK HAMILTON, an  
individual, and SHARON K. HAMILTON, an  
individual,

Plaintiff,

v.

MATTHEW C. FLEMMING, an individual;

Defendants.

Case No. CT-2016-18

**SUMMONS**

TO: Matthew C. Flemming  
At any address.

You have been sued by the above-named Plaintiff, and you are directed to file a written answer to the attached Petition in the Court of the above address within twenty (20) days after service of this Summons upon you exclusive of the day of service. Within the same time, a copy of your Answer must be delivered or mailed to the attorney for the Plaintiff. Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

Issued this 22 day of January 2016.

REJEANIA ZMEK, COURT CLERK

By: 

Deputy Court Clerk

Attorneys for Plaintiff:

Victor F. Albert, OBA #12069  
Matthew L. Warren, OBA #31260  
CONNER & WINTERS, LLP  
One Leadership Square, Suite 1700  
211 North Robinson  
Oklahoma City, OK 73102-7101  
Telephone: (405) 272-5711  
Facsimile: (405) 232-2695

This Summons was served on \_\_\_\_\_  
(Date of Service)

\_\_\_\_\_  
Signature of person serving Summons)

**YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS  
SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT  
AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.**

IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA  
LOGAN COUNTY SS  
FILED FOR RECORD

2016 JAN 22 PM 3:02

REJEANNA ZMEK  
COURT CLERK

BY \_\_\_\_\_ DEPUTY

S & M ASSETS, LLC, an Oklahoma limited  
liability company, WILLIAM MARK  
HAMILTON, an individual, and SHARON K.  
HAMILTON, an individual,

Plaintiff,

v.

MATTHEW C. FLEMMING, an individual;

Defendants.

Case No.

CJ-2016-18

**PETITION**

Plaintiffs, S & M Assets, LLC ("S & M Assets"), William Mark Hamilton and Sharon K. Hamilton (together, the "Hamiltons"), for their Petition against Defendant, states as follows;

**PARTIES**

1. Plaintiff, S & M Assets, is an Oklahoma limited liability corporation with its principal place of business in Guthrie, Logan County, Oklahoma.
2. Plaintiffs, William Mark Hamilton and Sharon K. Hamilton, are husband and wife and reside in Logan County, Oklahoma.
3. Upon information and belief, Defendant, Matthew C. Flemming ("Flemming"), is an individual and resident of the State of Texas.

**JURISDICTION AND VENUE**

4. The conduct which forms the basis of this Petition occurred in the State of Oklahoma; arose out of a contractual relationship between the parties that was originated, negotiated, and consummated in Oklahoma; and involves several, ongoing



communications between the parties which were either directed to a person in Oklahoma or originated from a person in Oklahoma. As such, the Court has personal jurisdiction over the parties and has subject matter jurisdiction over the matters alleged in this Petition.

5. The amount in controversy is over \$10,000 which places this matter on the Court's regular civil docket.

6. A substantial part of the matters alleged in this Petition occurred in Logan County, and venue is proper in this Court.

**COUNT I: FRAUD  
(Loan)**

7. Plaintiffs re-allege and incorporate herein paragraphs 1 through 6 as though fully set forth herein.

8. On or about August 12, 2014, the Hamiltons entered into a stock purchase agreement ("SPA") with HII Technologies, Inc. ("HII"), wherein the Hamiltons agreed to sell Hamilton Investment Group, Inc. ("HIG"), their wholly-owned oilfield services company, to HII.

9. Flemming was at all relevant times the Chief Executive Officer ("CEO") of HII. As CEO, Flemming negotiated and executed the SPA on behalf of HII.

10. The purchase price HII agreed to pay for HIG included a Working Capital Adjustment, which the SPA provided would be calculated and payable at a time

subsequent to the closing. As a result of this calculation, the parties mutually determined that the Hamiltons were owed an additional \$2,428,871.39 for their shares of HIG.

11. On or about September 11, 2014, Flemming called the Hamilton and asked if they would be agreeable to loan the \$2,428,871.39 back to HII. During this conversation, Flemming represented to Plaintiff William Mark Hamiltons that HII was in possession of the money owing to the Hamiltons under the Working Capital Adjustment, but would prefer to borrow-back the same amount on the following terms: HII would make monthly interest payments at the rate of 10% per annum on the principal, and that HII would be able to pay the outstanding principal amount within the first year after the loan was made.

12. Flemming's representations to the Hamiltons concerning HII's financial condition, including but not limited to HII's ability to ever pay off the loan, were false. These false representations were made knowingly by Flemming with the intent to induce the Hamiltons into loaning money to HII.

13. As a result of Flemming's representations, the Hamiltons agreed to loan the money to HII. Specifically, the Hamiltons relied on Flemming's representation that HII would be able to repay the outstanding principal balance within one year in making their determination to loan the money to HII. This reliance was to the Hamilton's detriment.

14. During the following months, up to and including April 2015, Flemming repeated these false representations to the Hamiltons, assuring them that HII would be in a position to repay the money in full. Specifically, Flemming represented to Plaintiff William Mark Hamilton on January 16, 2015, that HII would be in a position to repay the

loan by March 2015 or earlier. And again on April 6, 2015, Flemming represented to the Hamiltons that HII would be in a position to repay the loan by August 2015. Given the dire state of HII's financial condition at that time of these representations, of which Flemming was fully aware, these representations were false and intended to deceive and mislead the Hamiltons.

15. HII failed to make the required monthly interest payments from May 2015 through the date of the filing of its Chapter 11 bankruptcy petition on September 18, 2015.

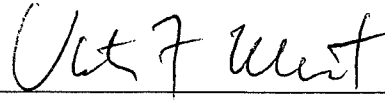
16. The Hamiltons were damaged on the basis of Flemming's misrepresentations in the amount of \$2,428,871.39, exclusive of interest, attorney's fees and costs.

WHEREFORE, Plaintiffs respectfully requests this Court enter a judgment providing as follows:

1. Awarding Plaintiffs the damages caused by Flemming;
2. Awarding Plaintiffs their costs and attorney's fees of this action;
3. Awarding Plaintiffs pre- and post- judgment interest; and
4. Such other relief as the Court deems just and equitable.

**JURY TRIAL DEMANDED**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vict F. Albert", written over a horizontal line.

Victor F. Albert, OBA #12069

Matthew L. Warren, OBA #31260

CONNER & WINTERS, LLP

One Leadership Square, Suite 1700

211 North Robinson

Oklahoma City, OK 73102-7101

Telephone: (405) 272-5711

Facsimile: (405) 232-2695

**ATTORNEYS FOR PLAINTIFFS S & M  
ASSETS, LLC, WILLIAM MARK  
HAMILTON, and SHARON K.  
HAMLITON**

**IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA**

STATE OF OKLAHOMA  
LOGAN COUNTY SS  
FILED FOR RECORD  
2016 FEB 18 PM 1:03

S & M ASSETS, LLC, an Oklahoma limited  
liability company, WILLIAM MARK  
HAMILTON, an individual, and SHARON K.  
HAMILTON, an individual,

Plaintiff,

v.

MATTHEW C. FLEMMING, an individual;

Defendants.

Case No. CJ-2016-18

REJEANIA ZHEK  
COURT CLERK  
BY \_\_\_\_\_ DEPUTY

**AMENDED PETITION**

COMES NOW Plaintiffs, S & M Assets, LLC ("S & M Assets"), William Mark Hamilton and Sharon K. Hamilton (together, the "Hamiltons"), and pursuant to OKLA. STAT. tit. 12, § 2015(A), submit their Amended Petition against Defendant. In support thereof, Plaintiffs state as follows:

**PARTIES**

1. Plaintiff, S & M Assets, is an Oklahoma limited liability corporation with its principal place of business in Guthrie, Logan County, Oklahoma.
2. Plaintiffs, William Mark Hamilton and Sharon K. Hamilton, are husband and wife and reside in Logan County, Oklahoma.
3. Upon information and belief, Defendant, Matthew C. Flemming ("Flemming"), is an individual and resident of the State of Texas.

**JURISDICTION AND VENUE**

4. The conduct which forms the basis of this Petition occurred in the State of Oklahoma; arose out of a contractual relationship between the parties that was

originated, negotiated, and consummated in Oklahoma; and involves several, ongoing transactions between the parties concerning both the sale and lease of real and personal property situated in Oklahoma. As such, the Court has personal jurisdiction over the parties and has subject matter jurisdiction over the matters alleged in this Petition.

5. The amount in controversy is over \$10,000 which places this matter on the Court's regular civil docket.
6. A substantial part of the matters alleged in this Petition occurred in Logan County, and venue is proper in this Court.

#### **COUNT I: FRAUD**

7. Plaintiffs re-allege and incorporate herein paragraphs 1 through 6 as though fully set forth herein.
8. On or about August 12, 2014, the Hamiltons entered into a stock purchase agreement ("SPA") with HII Technologies, Inc. ("HII"), wherein the Hamiltons agreed to sell Hamilton Investment Group, Inc. ("HIG"), their wholly-owned oilfield services company, to HII.
9. Flemming was at all relevant times the Chief Executive Officer ("CEO") of HII. As CEO, Flemming negotiated and executed the SPA on behalf of HII.
10. The purchase price HII agreed to pay for HIG included a Working Capital Adjustment, which the SPA provided would be calculated and payable at a

time subsequent to the closing. As a result of this calculation, the parties mutually determined that the Hamiltons were owed an additional \$2,428,871.39 for their shares of HIG.

11. On or about September 11, 2014, Flemming called the Hamiltons and asked if they would be agreeable to loan the \$2,428,871.39 back to HII. During this conversation, Flemming represented to Plaintiff William Mark Hamiltons that HII was in possession of the money owing to the Hamiltons under the Working Capital Adjustment, but would prefer to borrow-back the same amount on the following terms: HII would make monthly interest payments at the rate of 10% per annum on the principal, and that HII would be able to pay the outstanding principal amount within the first year after the loan was made.
12. Flemming's representations to the Hamiltons concerning HII's financial condition, including but not limited to HII's ability to ever pay off the loan, were false. These false representations were made knowingly by Flemming with the intent to induce the Hamiltons into loaning money to HII.
13. As a result of Flemming's representations, the Hamiltons agreed to loan the money to HII. Specifically, the Hamiltons relied on Flemming's representation that HII would be able to repay the outstanding principal balance within one year in making their determination to loan the money to HII. This reliance was to the Hamilton's detriment.
14. During the following months, up to and including April 2015, Flemming repeated these false representations to the Hamiltons, assuring them that HII

would be in a position to repay the money in full. Specifically, Flemming represented to Plaintiff William Mark Hamilton on January 16, 2015, that HII would be in a position to repay the loan by March 2015 or earlier. And again on April 6, 2015, Flemming represented to the Hamiltons that HII would be in a position to repay the loan by August 2015. Given the dire state of HII's financial condition at that time of these representations, of which Flemming was fully aware, these representations were false and intended to deceive and mislead the Hamiltons.

15. HII failed to make the required monthly interest payments from May 2015 through the date of the filing of its Chapter 11 bankruptcy petition on September 18, 2015.

16. The Hamiltons were damaged on the basis of Flemming's misrepresentations in the amount of \$2,428,871.39, exclusive of interest, attorney's fees and costs.

## **COUNT II: NEGLIGENT MISREPRESENTATION**

17. Plaintiffs re-allege and incorporate herein paragraphs 1 through 16 as though fully set forth herein.

18. To the extent that Flemming's representations to the Hamiltons were not made knowingly, they were made negligently and / or with reckless disregard for the truth.



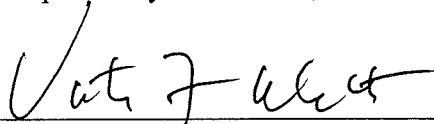
19. The Hamiltons were damaged on the basis of Flemming's negligent and / or reckless misrepresentations in the amount of \$2,428,871.39, exclusive of interest, attorney's fees and costs.

WHEREFORE, Plaintiffs respectfully requests this Court enter a judgment providing as follows:

1. Awarding Plaintiffs the damages caused by Flemming;
2. Awarding Plaintiffs their costs and attorney's fees of this action;
3. Awarding Plaintiffs pre- and post- judgment interest; and
4. Such other relief as the Court deems just and equitable.

**JURY TRIAL DEMANDED**

Respectfully submitted,



---

Victor F. Albert, OBA #12069  
Matthew L. Warren, OBA #31260  
CONNER & WINTERS, LLP  
One Leadership Square, Suite 1700  
211 North Robinson  
Oklahoma City, OK 73102-7101  
Telephone: (405) 272-5711  
Facsimile: (405) 232-2695

**ATTORNEYS FOR PLAINTIFFS S & M  
ASSETS, LLC, WILLIAM MARK  
HAMILTON, and SHARON K.  
HAMLITON**

**IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA**

S & M ASSETS, LLC, an Oklahoma limited liability company, WILLIAM MARK HAMILTON, an individual, and SHARON K. HAMILTON, an individual,

Plaintiff,

v.

MATTHEW C. FLEMMING, an individual;

Defendants.

Case No. CJ-2016-18

**PLAINTIFFS' REQUESTS FOR ADMISSION TO PLAINTIFF**

Pursuant to 12 O.S. §§ 3236, Plaintiffs, S & M Assets, LLC ("S & M Assets"), William Mark Hamilton ("Mark Hamilton"), Sharon K. Hamilton ("Sharon Hamilton") (collectively, the "Plaintiffs"), demand that Defendant, Matthew C. Flemming ("Defendant"), answer in writing and under oath each of the following Requests for Admission in accordance with the definitions and instructions set forth herein no more than forty-five (45) days from receipt hereof. Plaintiffs request that Defendant serve his responses at the offices of Conner & Winters, LLP, 211 North Robinson, Suite 1700, Oklahoma City, Oklahoma 73102-7101.

**DEFINITIONS**

1. The pronouns "you" and "your" are intended to and shall embrace and include, in addition to the named Defendant, his counsel and all of his or their agents, servants, employees, representatives, private investigators and others who are in possession or may have obtained information for or on behalf of the named Defendant.

2. "The Hamiltons" shall mean William Mark Hamilton and Sharon Hamilton.

3. “Defendant” shall mean Defendant, Matthew C. Flemming, and any Person acting on your behalf.

4. “HII” shall mean HII Technologies, Inc.

5. The term “Loan” refers to the \$2,428,871.29 Plaintiffs loaned HII on or about September 2014, as alleged in the Petition.

6. “Person” shall mean any natural person, firm, association, partnership, corporation or other form of legal business entity.

7. “Entity” shall mean any corporation, joint stock association, public or private limited company, partnership, proprietorship, association, organization, team, trust, governmental body (including any subdivision, bureau, agency, service or department thereof), or joint venture, and any other form of entity.

8. “Identify” or “Identification” when used in regard to a natural person, shall mean to state that person’s full name, residential address, present or last known occupation, position and business affiliation, educational background and professional licenses.

9. “Identify” or “Identification” when used in regard to an entity other than a natural person, shall mean to state the legal form of such entity (*e.g.*, limited liability company, limited partnership, joint venture or corporation). If the entity is any form of partnership or joint venture, identify each partner or participant. If the entity is a corporation, provide the state and date of incorporation, address and telephone number for the principal place of business, and identify any person or entity holding an interest greater than five percent (5%) in the corporation.

10. “Identify” or “Identification” when used in regard to a document or writing shall mean to provide a description sufficient for service of a subpoena *duces tecum* or request for production pursuant to 12 O.S. § 3234, and to give the present location and custodian of such document or writing. If any document or writing is no longer in your possession or control, state the disposition of such document or writing and the date thereof and the identity of the person(s) responsible for making the decision and carrying out such disposition.

11. “Identify” or “Identification” when used in regard to information or fact shall mean describe in detail the substance of such fact or information; state how, when and from whom you learned of the fact or information; and identify any person, document or communication from which you learned of such fact or information.

12. “Describe in detail” shall mean to set forth with specificity and particularity every aspect of every fact, circumstance, act, omission, or course of conduct known to you relating to the subject matter of that interrogatory.

13. “Document” and “Documents” shall mean any printed, typewritten or handwritten matter, or any writing or other tangible thing of any kind or description, however produced or reproduced, or any type of electronically stored information in your possession, custody or control. This includes without limitation, accountings, advertisements, affidavits, agreements, analyses, appointment books, appraisals, articles, assays, assignments, batch records, bills, bills of lading, bills of sale, books, books of account, brochures, bulletins, calendars, canceled checks, charts, charts of account, checks, circulars, confirmations, communications, comparisons, computer tapes,

computer printouts, consulting agreements, contracts, correspondence, data compilations from which information can be obtained and translated (if necessary, by you through devices into reasonably usable form), data computations (both in existence and stored in memory components), data printouts, data-processing paper results, deeds, deeds of trust, deposition transcriptions, diaries, directives, drafts, drawings, electronic storage devices or databases, employment agreements, escrow agreements, expense reimbursement forms, expressions or statements of policy, films, financial statements, financing statements, reports, graphs, guarantees, inter-office communications, instructions, invoices, journals, logs, ledgers, letters, letters of credit, letters of credit applications, licenses, liens, lists, lists of persons attending meetings or conferences, literature, magazine articles, magazines, management agreements, manuals, medical journals, memoranda, memoranda of telephone or personal conversations, messages, microfiche or microfilm, minutes or records of meetings, mortgages, movies, newspapers, newspaper articles, notes, notices, offers, opinions, options, order forms, orders, pamphlets, periodicals, phone records, photographs, press releases, projections, promissory notes, proposals, prospectuses, questionnaires, receipts, records, recordings, regulations, releases, reports, reports and/or summaries of investigation or examination, reviews, rules, security agreements, sound or oral recordings or tapes of any kind, statements, statistical compilations, summaries, surveys, tables, tapes for visual or audio production or recording, tax returns (for any city, county, state, or local district of any type, and for the federal government), telecopies, telegrams, teletype or telefax messages, telexes, time

records or time sheets, titles, trust agreements, voice recordings, work sheets, working papers, or materials similar to any of the foregoing, however denominated by you.

### **INSTRUCTIONS**

1. As to any Request for Admission ("Request") that you refuse to answer or are unable to answer, in whole or in part, for any reason, please state the grounds for your refusal or inability to answer. When you believe that a complete answer to a particular Request or part of the Request is not possible, please answer each Request to the extent possible and furnish a statement explaining:

- a) the reason for your inability to answer further; and
- b) what information or knowledge you do have concerning the unanswered portion.

2. Furnish all information available to you and known by you, or in your possession, or that of your agents and attorneys or appearing in your records.

3. If you do not use the duplicate copy of the Requests for serving your responses, please restate or retype the Request before answering. When Requests contain sub-parts, indicate in your answer the sub-part to which each particular part of your answer is in response.

4. The conjunction "or" as used in these requests should not be read to limit part of the Request but, whenever applicable, the word "or" should have the same meaning as the word "and." For example, a Request stating "support or refer" should be read as "support and refer" if an answer that does both can be made.

5. These Requests are continuing in nature and require supplemental answers in the event you, or any other person acting on your behalf, become aware of additional information between the time your answers are given and the time of trial that renders your answers no longer true or complete.

6. When these Requests require that you identify a communication, if any part of the communication was written, identify the document or documents that refer to or evidence the communication and, to the extent that the communication was not transcribed or written, identify the date and time when the unwritten communication occurred, the place where the communication took place, a narrative statement of the subject matter of the communication, and the identity of each person who is a party to the unwritten communication.

7. If any or all documents identified in your answers to these Requests are no longer in your possession, custody or control because of destruction, loss or any other reason, then please follow the instructions described in sub-parts (a)-(e) below for each such document.

- (a) describe the nature of the document (e.g., letter or memorandum);
- (b) state the date of the document;
- (c) identify the person(s) who sent and received the original and/or any copy of the document;
- (d) state in detail the contents of the document; and
- (e) state the manner and date of disposition of the document and without limitation, describe what disposition was made of it, the person

responsible for making the decision regarding the disposition, and the person responsible for carrying out the disposition.

8. If you contend that you are entitled to withhold from production any or all of the documents identified in these Requests on the basis of attorney-client privilege, the work-product doctrine, or any other ground, then please follow the instructions described in sub-parts (a)-(e) below for each withheld document:

- (a) describe the nature of the document (e.g., letter or memorandum);
- (b) state the date of the document;
- (c) identify the person(s) who sent and received the original and/or any copy of the document;
- (d) state in detail the contents of the document; and
- (e) state the basis upon which you contend you are entitled to withhold the document from production.

### **REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:** Admit that you served as Chief Executive Officer of HII during the time-period from July 2014 through September 2015.

**REQUEST FOR ADMISSION NO. 2:** Admit that HII entered into a Stock Purchase Agreement (“SPA”) with Hamilton Investment Group, LLC (“HIG”) on August 11, 2014, wherein HII purchased the Hamiltons shares of HIG owned by William Mark Hamilton and Sharon Hamilton.



**REQUEST FOR ADMISSION NO. 3.** Admit that you signed the SPA described in Plaintiffs' Request for Admission Number 2 on behalf of HII and had binding authority to do so.

**REQUEST FOR ADMISSION NO. 4:** Admit that, as a result of the transaction described in Plaintiffs' Request for Admission Number 2 and as described in the SPA, HII owed the Hamiltons an additional cash payment for the working capital adjustment of the HIG purchase (the "Working Capital Adjustment").

**REQUEST FOR ADMISSION NO. 5.** Admit that the Working Capital Adjustment owed to the Hamiltons as a result of the transaction described in Plaintiffs' Request for Admission Number 2 and as described in the SPA, was ultimately determined to be \$2,428,871.29.

**REQUEST FOR ADMISSION NO. 6.** Admit that you did not object pursuant to Section 2.4D of the SPA to the determination that the Working Capital Adjustment owed to the Hamiltons was \$2,428,871.29.

**REQUEST FOR ADMISSION NO. 7.** Admit that you affirmatively represented to the Hamiltons that the determination of the Working Capital Adjustment owed to the Hamiltons was \$2,428,871.29.

**REQUEST FOR ADMISSION NO. 8.** Admit that you called Mark Hamilton sometime between August 11, 2014 and September 30, 2014, and told him that HII had received the funds from Heartland Bank to pay to the Hamiltons the full amount owed for the Working Capital Adjustment.

**REQUEST FOR ADMISSION NO. 9.**

Admit that in the same phone call referenced in Request for Admission Number 8 above, you asked Mark Hamilton if the Hamiltons would make a loan back to HII of the full amount owed for the Working Capital Adjustment.

**REQUEST FOR ADMISSION NO. 10.**

Admit that in the same hone call referenced in Request for Admission Numbers 8 and 9 above, Mark Hamilton responded by asking you if HII would make monthly interest payments on the amount of the loan.

**REQUEST FOR ADMISSION NO. 11.**

Admit that in the same one call referenced in Request for Admission Numbers 8, 9 and 10 above, you responded to Mark Hamilton that HII would make monthly interest payments on the amount of the loan.

**REQUEST FOR ADMISSION NO. 12.**

Admit that in the same one call referenced in Request for Admission umbers 8, 9, 10 and 11 above, you agreed that HII would pay the Hamiltons monthly interest on the principal balance of the \$2,428,871.29 loaned by the Hamiltons to HII.

**REQUEST FOR ADMISSION NO. 13.**

Admit that HII made interest payments on the principal balance of the loan each month between September 2014 and April 2015.

**REQUEST FOR ADMISSION NO. 14.**

Admit that you authored and sent an email to Mark Hamilton dated January 16, 2015 (Exhibit 1), wherein you wrote: "I believe we will be in a position to pay back the principal by March or earlier."

**REQUEST FOR ADMISSION NO. 15.**

Admit that you intended March 2015 as the time reference in making the statement to Mark Hamilton of: “I believe we will be in a position to pay back the principal by March or earlier.”

**REQUEST FOR ADMISSION NO. 16.**

Admit that the statement that you made to Mark Hamilton dated January 16, 2015 of “I believe we will be in a position to pay back the principal by March or earlier” was a false statement.

**REQUEST FOR ADMISSION NO. 17.**

Admit that the statement that you made to Mark Hamilton dated January 16, 2015 of “I believe we will be in a position to pay back the principal by March or earlier” was made without any basis for whether it was a true statement or not.

**REQUEST FOR ADMISSION NO. 18.**

Admit that the statement that you made to Mark Hamilton dated January 16, 2015 of “I believe we will be in a position to pay back the principal by March or earlier” was made to keep the Hamiltons from taking action against HII for the payment of the principal on the loan.

**REQUEST FOR ADMISSION NO. 19.**

Admit that the statement that you made to Mark Hamilton dated January 16, 2015 of “I believe we will be in a position to pay back the principal by March or earlier” was made to mislead the Hamiltons.

**REQUEST FOR ADMISSION NO. 20.**

Admit that you authored and sent an email to Mark Hamilton dated April 6, 2015 (Exhibit 2), wherein you wrote: “I understand that now you want the money returned and since being told of this I have

been working on a plan to accomplish it. I want to be clear that I understand your request.”

**REQUEST FOR ADMISSION NO. 21.** Admit that you authored and sent an email to Mark Hamilton dated April 6, 2015 (Exhibit 2), wherein you wrote: “Given what has happened in the capital markets in the last months my best estimate is August to comply with the request. Because the markets seem to be improving very recently my hope and wish is that it will allow us to access this capital sooner than the August time frame plan.”

**REQUEST FOR ADMISSION NO. 22.** Admit that you intended August 2015 as the time reference in making the statements to Mark Hamilton set out in Request for Admission Numbers 20 and 21 above.

**REQUEST FOR ADMISSION NO. 23.** Admit that the statements that you made to Mark Hamilton dated April 6, 2015, of returning the money loaned by the Hamiltons by August 2015, were false.

**REQUEST FOR ADMISSION NO. 24.** Admit that the statements that you made to Mark Hamilton dated April 6, 2015, of returning the money loaned by the Hamiltons by August 2015, were made without any basis for whether they were true statements or not.

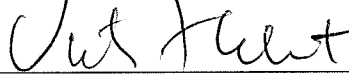
**REQUEST FOR ADMISSION NO. 25.** Admit that the statements that you made to Mark Hamilton dated April 6, 2015, of returning the money loaned by the Hamiltons by August 2015, were made to keep the Hamiltons from taking action against HII for the payment of the principal on the loan.

**REQUEST FOR ADMISSION NO. 26.**

Admit that the statements

that you made to Mark Hamilton dated April 6, 2015, of returning the money loaned by the Hamiltons by August 2015, were made to mislead the Hamiltons.

Respectfully,



---

VICTOR F. ALBERT, OBA #12069

MATTHEW L. WARREN, OBA #31260

CONNER & WINTERS, L.L.P.

1700 One Leadership Square

211 North Robinson

Oklahoma City, Oklahoma 73102

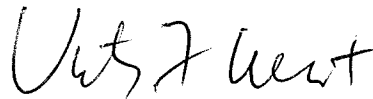
Telephone: 405/272-5711

Facsimile: 405/232-2695

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

This is to certify that at the same time as the service of the Summons, Petition and Amended Petition in this case, a copy of the above and foregoing Plaintiffs' First Set of Requests for Admissions to Defendant were served by the Process server on Defendant.

A handwritten signature in black ink, appearing to read "Victor F. Albert", written in a cursive style.

---

VICTOR F. ALBERT

From: **Matt Flemming** matt@hillinc.com  
Subject: Fwd: Hamilton interest payments  
Date: January 16, 2015 at 4:11 PM  
To: Mark Ipad markh-3385@

**Hi Mark**

per your text enclosed is the payments for interest  
please let me know if you have received the last payment  
earlier this month.

Also, when Mark Milliner returns on Monday I will get  
timing for next payment.

As mentioned, with upcoming milestones I believe we will  
be in a position to pay the principal by March or earlier.

Thank you

**Matt**

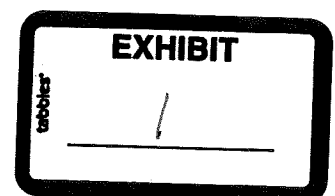
--

Matt Flemming

CEO

**Hill Technologies, Inc.**

*Oilfield Services*





(2 unread) - hig5631 - Yahoo Mail

Page 1 of 1

Home Mail Search News Sports Finance Weather Games Answers Screen Flickr Mobile Yahoo Mail on Firefox »

Search

Search Mail

Search Web

Home

Sharon



Compose

Search results Delete Move Spam More

Inbox (2)

Drafts

Sent

Spam (80)

Trash (54)

Important

Unread

Starred

People

Social

Travel

Shopping

Finance

Tools

Account Numbers

ADP

ATT

Chase-Banks

Christmas

Chrysler Capital

CODCJ

Computers

Craig

Customers

Dealership

DISA

DOT

Doug

Employee

Employee Test Res...

Equipment

Farmers

Financials

Fleetmatics

FRCs

Geri

h

Hamilton Oil

HII Tech

Inc - Legal

insurance

Insurance Health

Insurance-Greenwo...

Invoices

ISNetworld

Junk

Keith

Mark

MSA

Notes

Outlaw

Permits License

HIG and HII Technologies

Important

Matt Flemming &lt;matt@hiitinc.com&gt;

Apr 6 at 9:27 PM

To 'markh-3385' 'Sharon'

CC Acie Palmer, Matt Flemming

Mark/Sharon

As I mentioned earlier today, that I would send you an email regarding the working capital excess payment in the HIG transaction.

I want to be your primary contact for working capital payment matters while Acie will continue on with day to day financial items that he has been working on.

In summary, we deployed the capital excess after agreeing on an amount, receiving your permission and started paying 10% per annum interest on the money --which I believe has been paid monthly so far.

I understand that now you want the money returned and since being told of this I have been working on a plan to accomplish it. I want to be clear that I understand your request.

The down turn in the industry has slowed our business and made the ability to pay the money out of our current cash flow an unacceptably long time frame.

The bank has been supportive of our company in a general sense during this time but will not advance more funds for our line of credit or term loan facilities.

The company has been working for some time now to raise equity in order to gain more working capital and ultimately be able to address the requested payment.

Currently our believe is that a good size equity raise is in order for the company to gain working capital and also perform on your request to return the excess working capital to the Hamilton sellers.

Given what has happened in the capital markets in the last months my best estimate is August to comply with the request. Because the markets seem to be improving very recently my hope and wish is that it will allow us to access this capital sooner than the August time frame plan.

I will keep you posted and if you have questions on this matter please contact me directly. Thanks.

Regards,

Matt Flemming

CEO

HII Technologies, Inc.

Oilfield Services

8588 Katy Freeway, Suite 430

Houston, Tx 77024

www.HIITinc.com <<http://www.hiitinc.com/>>  
(Symbol: HIIT)

713-821-3157 Main  
713-821-3224 Direct  
832-553-1924 Fax

\*\*\*\*\*Email Confidentiality Footer\*\*\*\*\*

This email and any files transmitted with it are privileged, confidential and/or protected by work product immunity or other legal rules. This transmission is intended solely for the use of the individual or entity to which they are addressed. If you have received this email in error, you may not copy or disseminate this message in any manner. Please notify us by return email

**PROGRESSIVE**

SAVE an average of

**\$548**

a year

GET A QUOTE

EXHIBIT

2



**IN THE DISTRICT COURT OF LOGAN COUNTY  
STATE OF OKLAHOMA**

S & M ASSETS, LLC, an Oklahoma limited liability company, WILLIAM MARK HAMILTON, an individual, and SHARON K. HAMILTON, an individual,

Plaintiff,

v.

MATTHEW C. FLEMMING, an individual;

Defendants.

Case No. CJ-2016-18

**PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS TO DEFENDANT MATTHEW C. FLEMMING**

Pursuant to 12 O.S. §§ 3233 and 3234, Plaintiffs, S & M Assets, LLC ("S & M Assets"), William Mark Hamilton ("Mark Hamilton"), Sharon K. Hamilton ("Sharon Hamilton") (collectively, the "Plaintiffs"), demand that Defendant, Matthew C. Flemming ("Defendant"), answer in writing and under oath each of the following Interrogatories and Requests for Production of Documents in accordance with the definitions and instructions set forth herein no more than forty-five (45) days from receipt hereof. Plaintiffs request that Defendant serve his responses at the offices of Conner & Winters, LLP, 211 North Robinson, Suite 1700, Oklahoma City, Oklahoma 73102-7101

**DEFINITIONS**

1. The pronouns "you" and "your" are intended to and shall embrace and include, in addition to the named Defendant, his counsel and all of his or their agents, servants, employees, representatives, private investigators and others who

are in possession or may have obtained information for or on behalf of the named Defendant.

2. “Defendant” shall mean Defendant, Matthew C. Flemming, and any Person acting on your behalf.

3. “HII” shall mean HII Technologies, Inc.

4. The term “Loan” refers to the \$2,428,871.29 Plaintiffs loaned HII on or about September 2014, as alleged in the Petition.

5. “Person” shall mean any natural person, firm, association, partnership, corporation or other form of legal business entity.

6. “Entity” shall mean any corporation, joint stock association, public or private limited company, partnership, proprietorship, association, organization, team, trust, governmental body (including any subdivision, bureau, agency, service or department thereof), or joint venture, and any other form of entity.

7. “Identify” or “Identification” when used in regard to a natural person, shall mean to state that person’s full name, residential address, present or last known occupation, position and business affiliation, educational background and professional licenses.

8. “Identify” or “Identification” when used in regard to an entity other than a natural person, shall mean to state the legal form of such entity (*e.g.*, limited liability company, limited partnership, joint venture or corporation). If the entity is any form of partnership or joint venture, identify each partner or participant. If the entity is a corporation, provide the state and date of incorporation, address and

telephone number for the principal place of business, and identify any person or entity holding an interest greater than five percent (5%) in the corporation.

9. “Identify” or “Identification” when used in regard to a document or writing shall mean to provide a description sufficient for service of a subpoena *duces tecum* or request for production pursuant to 12 O.S. § 3234, and to give the present location and custodian of such document or writing. If any document or writing is no longer in your possession or control, state the disposition of such document or writing and the date thereof and the identity of the person(s) responsible for making the decision and carrying out such disposition.

10. “Identify” or “Identification” when used in regard to information or fact shall mean describe in detail the substance of such fact or information; state how, when and from whom you learned of the fact or information; and identify any person, document or communication from which you learned of such fact or information.

11. “Describe in detail” shall mean to set forth with specificity and particularity every aspect of every fact, circumstance, act, omission, or course of conduct known to you relating to the subject matter of that interrogatory.

12. “Document” and “Documents” shall mean any printed, typewritten or handwritten matter, or any writing or other tangible thing of any kind or description, however produced or reproduced, or any type of electronically stored information in your possession, custody or control. This includes without limitation, accountings, advertisements, affidavits, agreements, analyses,

appointment books, appraisals, articles, essays, assignments, batch records, bills, bills of lading, bills of sale, books, books of account, brochures, bulletins, calendars, canceled checks, charts, charts of account, checks, circulars, confirmations, communications, comparisons, computer tapes, computer printouts, consulting agreements, contracts, correspondence, data compilations from which information can be obtained and translated (if necessary, by you through devices into reasonably usable form), data computations (both in existence and stored in memory components), data printouts, data-processing paper results, deeds, deeds of trust, deposition transcriptions, diaries, directives, drafts, drawings, electronic storage devices or databases, employment agreements, escrow agreements, expense reimbursement forms, expressions or statements of policy, films, financial statements, financing statements, reports, graphs, guarantees, inter-office communications, instructions, invoices, journals, logs, ledgers, letters, letters of credit, letters of credit applications, licenses, liens, lists, lists of persons attending meetings or conferences, literature, magazine articles, magazines, management agreements, manuals, medical journals, memoranda, memoranda of telephone or personal conversations, messages, microfiche or microfilm, minutes or records of meetings, mortgages, movies, newspapers, newspaper articles, notes, notices, offers, opinions, options, order forms, orders, pamphlets, periodicals, phone records, photographs, press releases, projections, promissory notes, proposals, prospectuses, questionnaires, receipts, records, recordings, regulations, releases, reports, reports and/or summaries of investigation or examination, reviews, rules,

security agreements, sound or oral recordings or tapes of any kind, statements, statistical compilations, summaries, surveys, tables, tapes for visual or audio production or recording, tax returns (for any city, county, state, or local district of any type, and for the federal government), telecopies, telegrams, teletype or telefax messages, telexes, time records or time sheets, titles, trust agreements, voice recordings, work sheets, working papers, or materials similar to any of the foregoing, however denominated by you.

### **INSTRUCTIONS**

1. As to any Request for Admission (“Request”) that you refuse to answer or are unable to answer, in whole or in part, for any reason, please state the grounds for your refusal or inability to answer. When you believe that a complete answer to a particular Request or part of the Request is not possible, please answer each Request to the extent possible and furnish a statement explaining:

- a) the reason for your inability to answer further; and
- b) what information or knowledge you do have concerning the unanswered portion.

2. Furnish all information available to you and known by you, or in your possession, or that of your agents and attorneys or appearing in your records.

3. If you do not use the duplicate copy of the Requests for serving your responses, please restate or retype the Request before answering. When Requests contain sub-parts, indicate in your answer the sub-part to which each particular part of your answer is in response.

4. The conjunction "or" as used in these requests should not be read to limit part of the Request but, whenever applicable, the word "or" should have the same meaning as the word "and." For example, a Request stating "support or refer" should be read as "support and refer" if an answer that does both can be made.

5. These Requests are continuing in nature and require supplemental answers in the event you, or any other person acting on your behalf, become aware of additional information between the time your answers are given and the time of trial that renders your answers no longer true or complete.

6. When these Requests require that you identify a communication, if any part of the communication was written, identify the document or documents that refer to or evidence the communication and, to the extent that the communication was not transcribed or written, identify the date and time when the unwritten communication occurred, the place where the communication took place, a narrative statement of the subject matter of the communication, and the identity of each person who is a party to the unwritten communication.

7. If any or all documents identified in your answers to these Requests are no longer in your possession, custody or control because of destruction, loss or any other reason, then please follow the instructions described in sub-parts (a)-(e) below for each such document.

(a) describe the nature of the document (e.g., letter or memorandum);

- (b) state the date of the document;
- (c) identify the person(s) who sent and received the original and/or any copy of the document;
- (d) state in detail the contents of the document; and
- (e) state the manner and date of disposition of the document and without limitation, describe what disposition was made of it, the person responsible for making the decision regarding the disposition, and the person responsible for carrying out the disposition.

8. If you contend that you are entitled to withhold from production any or all of the documents identified in these Requests on the basis of attorney-client privilege, the work-product doctrine, or any other ground, then please follow the instructions described in sub-parts (a)-(e) below for each withheld document:

- (a) describe the nature of the document (e.g., letter or memorandum);
- (b) state the date of the document;
- (c) identify the person(s) who sent and received the original and/or any copy of the document;
- (d) state in detail the contents of the document; and
- (e) state the basis upon which you contend you are entitled to withhold the document from production.

### **INTERROGATORIES**

**INTERROGATORY NO. 1:** As to each person who supplies any information upon which answers to these Interrogatories are based, state his/her full name, residence address, business address, and occupation and identify each discovery request for which each such person provided an answer.

**INTERROGATORY NO. 2:** Identify each person who has or claims to have knowledge of relevant facts or information relating to any facts, circumstances, damages, or issues pertaining to the claims asserted. For each such person, please state the name, title, address and relation of such person to any of the entities involved in this litigation as well as a detailed summary of such knowledge for each such person.

**INTERROGATORY NO. 3:** For each Request for Admission that you did not unequivocally admit, state the Request by its number and provide the facts that you rely upon to, in good faith, not unequivocally admit the substance of that Request.

**INTERROGATORY NO. 4:** Please state whether, on or about September 2014, HII entered into an agreement with Plaintiffs whereby Plaintiffs agreed to loan \$2,428,871.39 (the "Loan") to HII.

**INTERROGATORY NO. 5:** Please state whether, prior to the time that Plaintiffs agreed to loan \$2,428,871.39 to HII, you represented to plaintiffs that HII would repay the Loan with interest.



**INTERROGATORY NO. 6:** If your answer to Interrogatory Number 5 was yes, please set forth the date that representation was made.

**INTERROGATORY NO. 7:** If your answer to Interrogatory Number 5 was yes, please describe in detail each fact that supported your statement that HII would repay the Loan with interest.

**INTERROGATORY NO. 8:** As to each fact identified in your answer to Interrogatory Number 7, please identify each person who had knowledge relating to such fact at the time you represented to the same to Plaintiffs.

**INTERROGATORY NO. 9:** As to each fact identified in your answer to Interrogatory Number 7, please identify each writing related to such fact.

**INTERROGATORY NO. 10:** If your answer to Interrogatory Number 5 was yes, please state whether you conducted any investigation to determine whether your statement that HII would repay the Loan with interest was a true statement.

**INTERROGATORY NO. 11:** If your answer to Interrogatory Number 10 was yes, please describe in detail the nature and scope of the investigation you conducted, including by identifying each person participating in the investigation and each writing relating to the investigation.

**INTERROGATORY NO. 12:** If your answer to Interrogatory Number 10 was no, please state each reason that you did not conduct an investigation.

**INTERROGATORY NO. 13:** Please state whether, at the time you represented to Plaintiffs that HII would repay the Loan with interest, you believed HII had the ability to repay the loan as agreed.

**INTERROGATORY NO. 14:** If your answer to Interrogatory Number 13 was yes, please describe in detail each fact that supported your belief that HII would be able to repay the loan as agreed.

**INTERROGATORY NO. 15:** If your answer to Interrogatory Number 13 was yes, please identify each writing you relied upon in forming your belief that HII would be able to repay the loan as agreed.

**INTERROGATORY NO. 16:** Please state whether, subsequent to your representation to Plaintiffs that HII would repay the Loan, your belief changed and you formed the opinion that HII would not repay the Loan as agreed.

**INTERROGATORY NO. 17:** If the answer to Interrogatory Number 16 was yes, please identify the date your belief changed.

**INTERROGATORY NO. 18:** If the answer to Interrogatory Number 16 was yes, please describe in detail each fact that you relied upon or otherwise took into consideration when changing your belief.

**INTERROGATORY NO. 19:** Please identify the date that you first became aware of each fact set forth in Interrogatory Number 18.

**INTERROGATORY NO. 20:** Please state whether, at the time you represented to Plaintiffs that HII would repay the Loan with interest, that statement was true.

**INTERROGATORY NO. 21:** If your answer to Interrogatory Number 20 was yes, please describe in detail each fact which demonstrates that the statement was true.

**INTERROGATORY NO. 22:** Do you contend that, at the time you represented to Plaintiffs that HII would repay the Loan with interest, you did not know that your representation was false?

**INTERROGATORY NO. 23:** Do you contend that, at the time you represented to Plaintiffs that HII would repay the Loan with interest, you believed such representation to be true?

**INTERROGATORY NO. 24:** If your answer to either Interrogatory Number 22 or Interrogatory Number 23 was yes, please describe in detail each fact that supports your response.

**INTERROGATORY NO. 25:** Please set forth each reason that you represented to Plaintiffs that HII would repay the Loan as interest.

**INTERROGATORY NO. 26:** Do you contend that, at the time you stated to Plaintiffs that HII would repay the Loan with interest, you did not intend that Plaintiffs would agree to loan HII the money?

**INTERROGATORY NO. 27:** Do you contend that when Plaintiffs loaned \$2,428,871.39 to HII, that they did not do so in reliance upon your representation that HII would repay the Loan with interest?

**INTERROGATORY NO. 28:** Do you contend that Plaintiffs loaned \$2,428,871.39 to HII for any reason other than your representation that HII would repay the Loan with interest?

**INTERROGATORY NO. 29:** Do you contend that, at the time Plaintiffs loaned \$2,428,871.39 to HII, Plaintiffs had actual knowledge of any fact that demonstrated that your representation that HII would repay the Loan with interest was false?

**INTERROGATORY NO. 30:** Do you contend that Plaintiffs' reliance upon your statement that HII would repay the Loan with interest was not justified?

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST FOR PRODUCTION NO. 1:** Produce and identify all communications that you have had with Plaintiffs, or any representatives of Plaintiffs, regarding any issues related to this action.

**REQUEST FOR PRODUCTION NO. 2:** Produce and identify all communications that you have had with any other individuals or entities regarding any issues related to this action.

**REQUEST FOR PRODUCTION NO. 3:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 3.

**REQUEST FOR PRODUCTION NO. 4:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 9.

**REQUEST FOR PRODUCTION NO. 5:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 11.

**REQUEST FOR PRODUCTION NO. 6:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 15.

**REQUEST FOR PRODUCTION NO. 7:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 17.

**REQUEST FOR PRODUCTION NO. 8:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 18.

**REQUEST FOR PRODUCTION NO. 9:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 19.

**REQUEST FOR PRODUCTION NO. 10:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 21.

**REQUEST FOR PRODUCTION NO. 11:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 24.

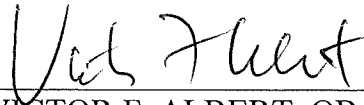
**REQUEST FOR PRODUCTION NO. 12:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 29.

**REQUEST FOR PRODUCTION NO. 13:** Produce and identify all documents that you believe support, or tend to support, your answer to Interrogatory Number 30.

**REQUEST FOR PRODUCTION NO. 14:** Produce and identify all documents that you intend to use as exhibits in this action in the event of a Trial.

**REQUEST FOR PRODUCTION NO. 15:** Produce and identify all insurance agreements which may provide coverage for the matters alleged in this lawsuit.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Vict F Albert", written over a horizontal line.

VICTOR F. ALBERT, OBA #12069

MATTHEW L. WARREN, OBA #31260

CONNER & WINTERS, L.L.P.

1700 One Leadership Square

211 North Robinson

Oklahoma City, Oklahoma 73102

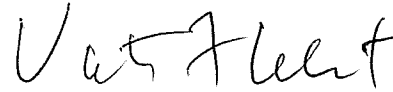
Telephone: 405/272-5711

Facsimile: 405/232-2695

*Attorneys for Plaintiffs.*

**CERTIFICATE OF SERVICE**

This is to certify that at the same time as the service of the Summons, Petition and Amended Petition in this case, a copy of the above and foregoing Plaintiffs' First Set of Interrogatories and Requests for Production of Documents to Defendant served by the Process server on Defendant.

A handwritten signature in black ink, appearing to read "Victor F. Albert", written in a cursive style.

---

VICTOR F. ALBERT