

Hearing Date: October 23, 2012 at 11:00 a.m. (ET)
Response Deadline: October 16, 2012 at 4:00 p.m. (ET)

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Proposed Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

Chapter 11

METRO FUEL OIL CORP., *et al.*,¹

Case Nos. 12-46913 (ESS)
12-46914 (ESS)
12-46915 (ESS)
12-46916 (ESS)
12-49617 (ESS)
12-46918 (ESS)
12-46919 (ESS)
12-46920 (ESS)
12-46921 (ESS)
12-46922 (ESS)

Debtors.

Jointly Administered

**DEBTORS' APPLICATION
FOR ENTRY OF AN ORDER AUTHORIZING
THE EMPLOYMENT AND RETENTION OF KIRKLAND &
ELLIS LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS
IN POSSESSION EFFECTIVE *NUNC PRO TUNC* TO THE COMMENCEMENT DATE**

Metro Fuel Oil Corp. ("*Metro Fuel*") and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "*Debtors*"), respectfully represent:

¹ The Debtors are Metro Fuel Oil Corp., Apollo Petroleum Transport, Inc., Apollo Petroleum Transport, LLC, Apollo Pipeline, LLC, Kings Land Realty, Inc., Metro Biofuels, LLC, Metro Energy Group LLC, Metro Plumbing Services Corp., Metro Terminals Corp. and Metro Terminals of Long Island, LLC.

Background

1. The Debtors are a family-owned energy company, founded in 1942, that supplies and delivers bioheat, biodiesel, heating oil, central air conditioning units, ultra low sulfur diesel fuel, natural gas and gasoline throughout the New York City metropolitan area and Long Island. Through strategically placed terminals and storage facilities located in Greenpoint, Brooklyn and Calverton, Long Island, as well as a fleet of 55 transport trucks, the Debtors serve the fuel needs of its commercial and residential customers, including New York City agencies, schools, hospitals, buses and housing developments.

2. On September 27, 2012 (the “*Commencement Date*”), each of the Debtors filed a petition with this Court under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On October 4, 2012, the United States Trustee for the Eastern District of New York (the “*U.S. Trustee*”) appointed an official committee of unsecured creditors (the “*Creditors’ Committee*”).

3. A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this application and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of David Johnston, Chief Restructuring Officer of the Debtors, in Support of First Day Pleadings* [Docket No. 11] (the “*First Day Declaration*”).

Jurisdiction

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

5. Venue is proper pursuant to 28 U.S.C. § 1408.

6. The bases for the relief requested herein are sections 327(a) and 330 of the Bankruptcy Code, Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Eastern District of New York (the “*Local Rules*”).

Relief Requested

7. By this Application, the Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing Debtors to employ and retain Kirkland & Ellis LLP (“*K&E*”) as their attorneys effective *nunc pro tunc* to the Commencement Date in accordance with the terms and conditions set forth in that certain engagement letter between the Debtors and K&E dated as of July 27, 2012 (annexed as **Exhibit 1** to **Exhibit A** and incorporated herein by reference, the “*Engagement Letter*”). In support of this Application, the Debtors submit the declaration of Christopher J. Marcus, a partner at K&E (attached hereto as **Exhibit B**, the “*Marcus Declaration*”).

K&E’s Qualifications

8. The Debtors seek to retain K&E because of K&E’s recognized expertise and extensive experience and knowledge in the field of debtors’ protections, creditors’ rights and business reorganizations under chapter 11 of the Bankruptcy Code.

9. K&E has been actively involved in major chapter 11 cases and has represented debtors in many cases, including, among others: *In re Hawker Beechcraft, Inc.*, Case No. 12-11873 (Bankr. S.D.N.Y. May 30, 2012); *In re Global Aviation Holdings, Inc.*, Case No. 12-40783 (Bankr. E.D.N.Y. Mar. 9, 2012); *In re United Retail Group, Inc.*, Case No. 12-10405 (Bankr. S.D.N.Y. Feb. 22, 2012); *In re Friendly Ice Cream Corp.*, Case No. 11-13167 (Bankr. D. Del. Nov. 1, 2011); *In re Sbarro, Inc.*, Case No. 11-11527 (Bankr. S.D.N.Y. May 3, 2011); *In re MSR Resort Golf Course LLC*, Case No. 11-10372 (Bankr. S.D.N.Y. Mar. 2, 2011); *In re The*

Great Atl. & Pac. Tea Co., Case No. 10-24549 (Bankr. S.D.N.Y. Jan. 12, 2011); *In re Insight Health Servs. Holdings Corp.*, Case No. 10-16564 (Bankr. S.D.N.Y. Jan. 4, 2011); *In re FGIC Corp.*, Case No. 10-14215 (Bankr. S.D.N.Y. Aug. 24, 2010).²

10. K&E began representing the Debtors in July, 2012 with respect to a potential restructuring. In preparing for its representation of the Debtors in these chapter 11 cases, K&E became familiar with the Debtors' businesses and many of the potential legal issues that may arise in the context of these chapter 11 cases. The Debtors believe that K&E is both well qualified and uniquely able to represent the Debtors in these chapter 11 cases in an efficient and timely manner.

Services to be Provided

11. Subject to further order of the Court and consistent with the Engagement Letter, the Debtors request the employment and retention of K&E to render the following legal services:

- a. advising the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their businesses and properties;
- b. advising and consulting on the conduct of these chapter 11 cases, including all of the legal and administrative requirements of operating in chapter 11;
- c. attending meetings and negotiating with representatives of creditors and other parties in interest;
- d. taking all necessary actions to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors and representing the Debtors in negotiations concerning litigation in which the Debtors are involved, including objections to claims filed against the Debtors' estates;

² Because of the voluminous nature of the orders cited herein, they are not attached to this Application. Copies of these orders are available on request from the Debtors' proposed counsel.

- e. preparing pleadings in connection with these chapter 11 cases, including motions, applications, answers, orders, reports and papers necessary or otherwise beneficial to the administration of the Debtors' estates;
- f. representing the Debtors in connection with obtaining authority to continue using cash collateral and postpetition financing;
- g. advising the Debtors in connection with any potential sale of assets;
- h. appearing before the Court and any appellate courts to represent the interests of the Debtors' estates;
- i. advising the Debtors regarding tax matters;
- j. taking any necessary action on behalf of the Debtors to negotiate, prepare and obtain approval of a disclosure statement and confirmation of a chapter 11 plan and all documents related thereto; and
- k. performing all other necessary legal services for the Debtors in connection with the prosecution of these chapter 11 cases, including: (i) analyzing the Debtors' leases and contracts and the assumption and assignment or rejection thereof; (ii) analyzing the validity of liens against the Debtors; and (iii) advising the Debtors on corporate and litigation matters.

In addition, to minimize the professional expenses incurred in these chapter 11 cases, the Debtors intend to file an application to employ and retain Curtis, Mallet-Prevost, Colt & Mosle LLP ("*Curtis*") to advise the Debtors with respect to certain day-to-day matters arising in these chapter 11 cases, including preparation of the Debtors' statements of financial affairs and schedules of assets and liabilities, the claims reconciliation process, matters where K&E has a conflict and certain other litigation matters. The Debtors intend to coordinate efforts between K&E and Curtis to ensure that the services provided by K&E and Curtis are not duplicative.

Professional Compensation

12. K&E intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the guidelines established by the United

States Trustee for Region 2 (the “*U.S. Trustee Guidelines*”) and any other applicable procedures and orders of the Court, on an hourly basis. The hourly rates and corresponding rate structure K&E will use in these chapter 11 cases are equivalent to the hourly rates and corresponding rate structure that K&E predominantly uses for other restructuring matters, as well as similar complex corporate, securities and litigation matters whether in court or otherwise, regardless of whether a fee application is required. These rates and the rate structure reflect that such restructuring and other complex matters typically are national in scope and involve great complexity, high stakes and severe time pressures.

13. K&E operates in a national marketplace for legal services in which rates are driven by multiple factors relating to the individual lawyer, his or her area of specialization, the firm’s expertise, performance and reputation, the nature of the work involved and other factors. Because the sub-markets for legal services are fragmented and are affected by a variety of individualized and interdependent factors, K&E has no one rate for an individual biller that applies to all matters for all clients. K&E’s rates for an individual biller may vary as a function of the type of matter, geographic factors, the nature of certain long-term client relationships and various other factors, including those stated above.

14. K&E’s hourly rates are set at a level designed to compensate K&E fairly for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments to reflect economic and other conditions and are consistent with

the rates charged elsewhere. In particular, K&E's current hourly rates for matters related to these chapter 11 cases range as follows:³

Billing Category	Range
Partners	\$670 – \$1,045
Of Counsel	\$560 – \$1,045
Associates	\$370 – \$750
Paraprofessionals	\$145 – \$320

15. The following professionals presently are expected to have primary responsibility for providing services to the Debtors: Christopher J. Marcus (\$845), Nicole L. Greenblatt (\$795) and Benjamin J. Steele (\$670). In addition, as necessary, other K&E professionals and paraprofessionals will provide services to the Debtors.⁴

16. It is K&E's policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client's case that would not have been incurred except for representation of that particular client. It is also K&E's policy to charge its clients only the amount actually incurred by K&E in connection with such items. Examples of such expenses include postage, overnight mail, courier delivery, transportation, overtime expenses, computer-assisted legal research, photocopying, outgoing facsimile transmissions, airfare, meals and lodging.

17. To ensure compliance with all applicable deadlines in these chapter 11 cases, from time to time K&E utilizes the services of overtime secretaries. K&E charges fees for these

³ For professionals and paraprofessionals residing outside of the U.S., hourly rates are billed in the applicable currency. When billing a U.S. entity, such foreign rates are converted into U.S. dollars at the then applicable conversion rate. After converting these foreign rates into U.S. dollars, it is possible that certain rates may exceed the billing ranges listed in the chart herein.

⁴ Although K&E does not anticipate using contract attorneys during these chapter 11 cases, in the unlikely event that such employment becomes necessary, K&E will not charge a markup to the Debtors with respect to fees billed by contract attorneys. Moreover, any contract attorneys or non-attorneys who are employed by the Debtors in connection with work performed by K&E will be subject to conflict checks and disclosures in accordance with the requirements of the Bankruptcy Code.

services pursuant to the Engagement Letter, which permits K&E to bill the Debtors for overtime secretarial charges that arise out of business necessity. In addition, K&E professionals also may charge their overtime meals and overtime transportation to the Debtors consistent with prepetition practices.

18. K&E currently charges \$0.12 per page for standard duplication in its offices in the United States. K&E does not charge its clients for facsimile transmissions. K&E has negotiated a discounted rate for Westlaw computer-assisted legal research. Computer-assisted legal research is used whenever the researcher determines that using Westlaw is more cost effective than using traditional (non-computer-assisted legal research) techniques.

19. Consistent with the terms of the Engagement Letter, on August 6, 2012, the Debtors paid \$200,000 to K&E as a classic retainer. On September 5, 2012, K&E invoiced the Debtors for \$150,000. Additionally, on September 17, 2012, K&E invoiced the Debtors for \$350,000. Finally, on September 25, 2012, K&E invoiced the Debtors for \$363,212.19. Moreover, pursuant to the Engagement Letter, the classic retainer is property of K&E and not held in a separate or segregated account. The amounts K&E has invoiced the Debtors against the classic retainer for professional services and for the reimbursement of reasonable and necessary expenses incurred in connection therewith are set forth in the chart below.

20. The amounts for legal services billed by K&E and payments made by the Debtors during the 90-day period before the Commencement Date are as follows:

Type of Transaction	Invoice Date	Billed Amount	Payment Date	Retainer Replenishment	Retainer Balance
Classic Retainer	7/31/12	\$200,000.00	8/06/12	N/A	\$200,000.00
Invoice	9/05/12	\$150,000.00	9/17/12	\$84,078.23	\$284,078.23
Invoice	9/17/12	\$350,000.00	9/19/12	\$185,078.10	\$469,156.33
Invoice	9/25/12	\$363,212.12	9/26/12	\$50,000.00	\$519,156.33
Total		\$1,063,212.12			

21. The foregoing retainer payments constitute “classic retainer” payments as defined in *In re Production Assocs., Ltd.*, 264 B.R. 180, 184–85 (Bankr. N.D. Ill. 2001), and *In re McDonald Bros. Construction, Inc.*, 114 B.R. 989, 997–99 (Bankr. N.D. Ill. 1990). As such, K&E earned the classic retainer upon receipt and, consequently, K&E placed the amounts into its general cash account.

22. Moreover, pursuant to Bankruptcy Rule 2016(b), K&E has not shared nor agreed to share (a) any compensation it has received or may receive with another party or person, other than with the partners, associates and contract attorneys associated with K&E or (b) any compensation another person or party has received or may receive. As of the Commencement Date, the Debtors do not owe K&E any amounts for legal services rendered before the Commencement Date. Although certain expenses and fees may have been incurred, but not yet applied to K&E’s classic retainer, such amounts, if any, would be less than the balance of K&E’s classic retainer as of the Commencement Date.

K&E’s Disinterestedness

23. To the best of the Debtors’ knowledge and as disclosed herein and in the Marcus Declaration, (a) K&E is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors’ estates and (b) K&E has no connection to the Debtors, their creditors or their related parties except as may be disclosed in the Marcus Declaration.

24. K&E will review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, K&E will use reasonable efforts to identify

such further developments and will file promptly a supplemental declaration, as required by Bankruptcy Rule 2014(a).

Motion Practice

25. This Application includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Application. Moreover, in addition to all entities otherwise entitled to receive notice, the Debtors have given notice of this Application to all entities believed to have or be claiming an interest in the subject matter of the proposed order or who, it is believed, otherwise would be affected by the proposed order. Accordingly, the Debtors submit that this Application satisfies Local Rule 9013-1.

Notice

26. The Debtors have provided notice of this motion to: (a) the U.S. Trustee; (b) counsel to the Creditors' Committee; (c) counsel to the Debtors' postpetition secured lenders; (d) counsel to the Debtors' prepetition secured lenders; (e) counsel to the trustee for the Debtors' industrial development revenue bonds; (f) counsel to SeedCo Financial, Inc.; (g) counsel to the Debtors' prepetition shareholders; and (h) those parties requesting notice pursuant to Bankruptcy Rule 2002. A copy of this motion is also available on the website of the Debtors' notice and claims agent at <http://dm.epiq11.com/Metro>. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

27. No prior request for the relief sought in this Application has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, in the First Day Declaration and in the Marcus Declaration, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: Brooklyn, New York
October 9, 2012

/s/ David Johnston
David Johnston
Chief Restructuring Officer of the Debtors

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

Chapter 11

METRO FUEL OIL CORP., *et al.*,¹

Case Nos. 12-46913 (ESS)
12-46914 (ESS)
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12-46922 (ESS)

Debtors.

Jointly Administered

**ORDER AUTHORIZING THE
EMPLOYMENT AND RETENTION OF KIRKLAND &
ELLIS LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS
IN POSSESSION EFFECTIVE *NUNC PRO TUNC* TO THE COMMENCEMENT DATE**

Upon the application (the “*Application*”)² of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) for the entry of an order (this “*Order*”) authorizing the Debtors to retain Kirkland & Ellis LLP (“*K&E*”) as their attorneys effective *nunc pro tunc* to the Commencement Date; and upon the Marcus Declaration; and upon the First Day Declaration; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper pursuant to 28 U.S.C. § 1408; and it appearing that the relief requested in the Application

¹ The Debtors are Metro Fuel Oil Corp., Apollo Petroleum Transport, Inc., Apollo Petroleum Transport, LLC, Apollo Pipeline, LLC, Kings Land Realty, Inc., Metro Biofuels, LLC, Metro Energy Group LLC, Metro Plumbing Services Corp., Metro Terminals Corp. and Metro Terminals of Long Island, LLC.

² All capitalized terms used but otherwise not defined herein shall have the meanings ascribed to them in the Application.

is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Debtors having provided adequate and appropriate notice of the Application under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED THAT:

1. The Debtors are authorized to retain K&E as their attorneys in accordance with the terms and conditions set forth in the Application and in the Engagement Letter attached hereto as **Exhibit 1**.

2. K&E is authorized to provide the Debtors with the professional services described in the Application and the Engagement Letter. Specifically, but without limitation, K&E will render the following legal services:

- a. advising the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their businesses and properties;
- b. advising and consulting on the conduct of these chapter 11 cases, including all of the legal and administrative requirements of operating in chapter 11;
- c. attending meetings and negotiating with representatives of creditors and other parties in interest;
- d. taking all necessary actions to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors, and representing the Debtors in negotiations concerning litigation in which the Debtors are involved, including objections to claims filed against the Debtors' estates;
- e. preparing pleadings in connection with these chapter 11 cases, including motions, applications, answers, orders, reports and papers necessary or otherwise beneficial to the administration of the Debtors' estates;
- f. representing the Debtors in connection with obtaining authority to continue using cash collateral and postpetition financing;
- g. advising the Debtors in connection with any potential sale of assets;
- h. appearing before the Court and any appellate courts to represent the interests of the Debtors' estates;

- i. advising the Debtors regarding tax matters;
- j. taking any necessary action on behalf of the Debtors to negotiate, prepare, and obtain approval of a disclosure statement and confirmation of a chapter 11 plan and all documents related thereto; and
- k. performing all other necessary legal services for the Debtors in connection with the prosecution of these chapter 11 cases, including: (i) analyzing the Debtors' leases and contracts and the assumption and assignment or rejection thereof; (ii) analyzing the validity of liens against the Debtors; and (iii) advising the Debtors on corporate and litigation matters.

3. K&E shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable procedures and orders of the Court.

4. Notwithstanding anything in the Engagement Letter to the contrary, K&E shall apply any remaining amounts of its prepetition retainers as a credit toward postpetition fees and expenses, after such postpetition fees and expenses are approved pursuant to an order of the Court awarding fees and expenses to K&E. K&E may reserve and apply amounts from the retainers that would otherwise be applied toward payment of postpetition fees and expenses as are necessary and appropriate to reimburse K&E for prepetition expenses consistent with its ordinary course billing practices. K&E is further authorized to apply fees or expenses incurred on or prior to the Petition Date against its classic retainer in the ordinary course of business without further order of the Court.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

7. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Exhibit 1

Engagement Letter

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

601 Lexington Avenue
New York, New York 10022

Christopher J. Marcus
To Call Writer Directly:
(212) 446-4878
christopher.marcus@kirkland.com

(212) 446-4800
www.kirkland.com

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(212) 446-4900
Dir. Fax: (212) 446-6460

July 27, 2012

Mr. Anthony F. Valente
Vice President - General Counsel
Metro Fuel Oil Corp.
500 Kingsland Avenue
Brooklyn, New York 11222

Re: Retention to Provide Legal Services

Dear Mr. Valente:

We are very pleased that you have asked us to represent Metro Fuel Oil Corp. and its subsidiaries and affiliates (collectively, “you”, “your” or the “Company”) in connection with a potential restructuring. Please note, the Firm’s representation is only of the Company; the Firm does not and will not represent any shareholder, director, officer, partner, or joint venturer of the Company.

General Terms. This retention letter (the “Agreement”) sets forth the terms of your retention of Kirkland & Ellis LLP and Kirkland & Ellis International LLP (collectively “K&E LLP” or the “Firm”) to provide legal services and constitutes an agreement between us. The Agreement sets forth our entire agreement for rendering professional services for the current matter, as well as for all other existing or future matters, except where we otherwise agree in writing (*e.g.*, by signing a different retention letter).

Personnel. I, along with my partner, Nicole Greenblatt, will be primarily responsible for this engagement. Other attorneys and legal assistants also will perform services during the course of this engagement. We will involve such other lawyers and legal assistants in K&E LLP to the extent that your needs make such involvement desirable and acceptable to you.

Fees. The Firm will bill the Company for fees incurred at its regular hourly rates and in quarterly increments of an hour (or in smaller time increments otherwise required by a court). We reserve the right to adjust the Firm’s billing rates from time to time in the ordinary course of the Firm’s representation of the Company.

Metro Fuel Oil Corp.

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Although we will attempt to estimate fees to assist you in your planning if requested, such estimates are subject to change and are not binding unless otherwise expressly and unequivocally stated in writing.

Expenses. Expenses related to providing services shall be included in our statements as disbursements advanced by us on your behalf. Such expenses include photocopying, printing, scanning, witness fees, travel expenses, filing and recording fees, certain secretarial overtime, and other overtime expenses, postage, express mail, and messenger charges, deposition costs, computerized legal research charges, and other computer services, and miscellaneous other charges. Our clients pay directly (and are solely responsible for) certain larger costs, such as consultant or expert witness fees and expenses, and outside suppliers or contractors' charges. By executing this Agreement below, you agree to pay for all charges in accordance with the K&E LLP's schedule of charges, a copy of which is attached hereto at Schedule 1, as revised from time to time.

Billing Procedures. Our statements for fees and expenses are typically rendered monthly and, unless other arrangements are made, payment in full is due upon receipt. We may adjust our billing cycle upon agreement with you. You may have the billing statement in any reasonable format you choose, but we will select an initial format for the statement unless you otherwise request in writing. Depending on the circumstances, however, estimated or summary bills may be provided during certain billing cycles, with supporting time descriptions and expense summaries to follow thereafter.

Retainer. The Company will provide to the Firm, a "classic retainer" in the amount of US \$200,000.00 as defined in *In re Production Associates, Ltd.*, 264 B.R. 180, 184 85 (Bankr. N.D. Ill. 2001), and *In re McDonald Bros. Construction, Inc.*, 114 B.R. 989, 997 99 (Bankr. N.D. Ill. 1990). As such, the classic retainer was earned by the Firm upon receipt. The initial amount of the classic retainer was set to approximate our estimate of fees and expenses expected to be accrued and unpaid by the Company between payment cycles. The Firm's estimate of expected fees and expenses may change based upon actual or expected fees and expenses incurred or expected to be incurred, as applicable. Further, the Company agrees to replenish the classic retainer upon receiving invoices from the Firm so that the classic retainer amount remains at or above the Firm's estimated fees and expenses expected to be accrued and unpaid by the Company between payment cycles.

The classic retainer will be placed into K&E LLP's general cash account, will not be held in a separate account on your behalf, and you will not receive any interest on these monies. You have no interest in the classic retainer. This amount does not constitute a security deposit.

Termination. Our retention may be terminated by either of us at any time by written notice by or to you. Our representation will end at the earliest of (a) your termination of our

Metro Fuel Oil Corp.

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representation, (b) our withdrawal, and (c) the substantial completion of our substantive work. If permission for withdrawal is required by a court, we shall apply promptly for such permission, and termination shall coincide with the court order for withdrawal. If this Agreement or our services are terminated for any reason, such termination shall be effective only to terminate our services prospectively and all the other terms of this Agreement shall survive any such termination.

Upon cessation of our active involvement in a particular matter (even if we continue active involvement in other matters on your behalf), we will have no further duty to inform you of future developments or changes in law as may be relevant to such matter. Further, unless you and we mutually agree in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines that may arise from the matters for which we had been retained.

Cell Phone and E-Mail Communication. K&E LLP hereby informs you and you hereby acknowledge that K&E LLP's attorneys sometimes communicate with their clients and their clients' professionals and agents by cell telephone, that such communications are capable of being intercepted by others and therefore may be deemed no longer protected by the attorney-client privilege, and that you must inform K&E LLP if you do not wish K&E LLP to discuss privileged matters on cell telephones with you or your professionals or agents.

K&E LLP hereby informs you and you hereby acknowledge that K&E LLP's attorneys sometimes communicate with their clients and their clients' professionals and agents by unencrypted e-mail, that such communications are capable of being intercepted by others and therefore may be deemed no longer protected by the attorney-client privilege, and that you must inform K&E LLP if you wish to institute a system to encode all e-mail between K&E LLP and you or your professionals or agents.

File Retention. All records and files will be retained and disposed of in compliance with our policy in effect from time to time. Subject to future changes, it is our current policy generally not to retain records relating to a matter for more than five years. Upon your prior written request, we will return client records to you prior to their destruction. It is not administratively feasible for us to advise you of the closing of a matter or the disposal of records. We recommend, therefore, that you maintain your own files for reference or submit a written request for your client files promptly upon conclusion of a matter.

Conflicts of Interest. Our law firm already serves many clients, and during the course of our work for you we will also be accepting new clients and new cases. Because we represent more than one client at a time, the interests of our various clients may sometimes diverge or conflict. It is even possible that while we represent you one of our other clients may take a

Metro Fuel Oil Corp.

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position adverse to you in a matter in which we represent them. This section of the Agreement sets forth your responsibilities and ours in such a case involving a possible conflict of interest.

Further, in undertaking our representation of the Company, we want to be fair not only to its interests but also to those of our other clients. Because the Company is engaged in activities (and may in the future engage in additional activities) in which its interests may diverge from those of our other clients, the possibility exists that one of our current or future clients may take positions adverse to the Company (including litigation or other dispute resolution mechanisms) in a matter in which K&E LLP may be retained. In the event a present conflict of interest exists between the Company and our other clients or in the event one arises in the future, the Company agrees to waive any such conflict of interest or other objection that would preclude our representation of another client (a) in other current or future matters substantially unrelated to this representation of the Company or (b) other than during a Restructuring Case (as defined below), in other matters related to the Company (including in litigation, arbitration or other dispute resolution mechanism). The Company also agrees that our representation is solely of the Company and that no member or other entity or person related to it (such as directors, officers or employees) has the status of a client for conflict of interest purposes.

Restructuring Cases. If it becomes necessary for you to commence a restructuring case under chapter 11 of the U.S. Bankruptcy Code (“Restructuring Case”), our ongoing employment by you will be subject to the approval of the court with jurisdiction over the petition. If necessary, K&E LLP will take steps necessary to prepare the disclosure materials required in connection with K&E LLP’s retention as lead restructuring counsel. In the near term, K&E LLP will begin conflicts checks on potentially interested parties as provided by you.

If necessary, we will prepare a preliminary draft of a schedule describing K&E LLP’s relationships with certain interested parties (the “Disclosure Schedule”). We will give you a draft of the Disclosure Schedule once it is available. Although K&E LLP believes that these relationships do not constitute actual conflicts of interest, these relationships must be described and disclosed in your application to the court to retain K&E LLP.

If actual conflicts of interest arise in the Company’s restructuring cases, the Company will be required to use separate conflicts counsel in those matters, and the Firm will not participate in those matters.

No Guarantee of Success. It is impossible to provide any promise or guarantee about the outcome of your matters. Nothing in this Agreement or any statement by our staff or attorneys constitutes a promise or guarantee. Any comments about the outcome of your matter are simply expressions of judgment and are not binding on us.

Metro Fuel Oil Corp.

Error! Reference source not found.

Page 5

Consent to Use of Information. In connection with future materials that, for marketing purposes, describe facets of our law practice and recite examples of matters we handle on behalf of clients, you agree that, if those materials avoid disclosing your confidences and secrets as defined by applicable ethical rules, they may identify you as a client, may contain factual synopses of your matters, and may indicate generally the results achieved.

Reimbursement of Expenses. You agree promptly to reimburse us for all fees and expenses, including the amount of K&E LLP's attorney and paralegal time at normal billing rates, as incurred by us in connection with participating in, preparing for, or responding to any action, claim, suit or proceeding brought by or against any third-party that relates to the legal services provided by us under the Agreement. Without limiting the scope of the foregoing, and by way of example only, this paragraph extends to all such fees and expenses incurred by us in responding to document subpoenas, and preparing for and testifying at depositions and trials.

LLP. Kirkland & Ellis LLP is a limited liability partnership organized under the laws of Illinois, and Kirkland & Ellis International LLP is a limited liability partnership organized under the laws of Delaware. Pursuant to those statutory provisions, an obligation incurred by a limited liability partnership, whether arising in tort, contract or otherwise, is solely the obligation of the limited liability partnership, and partners are not personally liable, directly or indirectly, by way of indemnification, contribution, assessment or otherwise, for such obligation solely by reason of being or so acting as a partner.

Miscellaneous. This Agreement sets forth our entire agreement for rendering professional services. It can be amended or modified only in writing and not orally or by course of conduct. Each party signing below is jointly and severally responsible for all obligations due us and represents that each has full authority to execute this Agreement so that it is binding. This Agreement may be signed in one or more counterparts and binds each party countersigning below, whether or not any other proposed signatory ever executes it. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the invalidity or unenforceability shall not affect other provisions or applications of this Agreement which can be given effect without such provisions or application, and to this end the provisions of this Agreement are declared to be severable.

We are not advising you with respect to this Agreement because we would have a conflict of interest in doing so. If you wish advice, you should consult independent counsel of your choice.

* * *

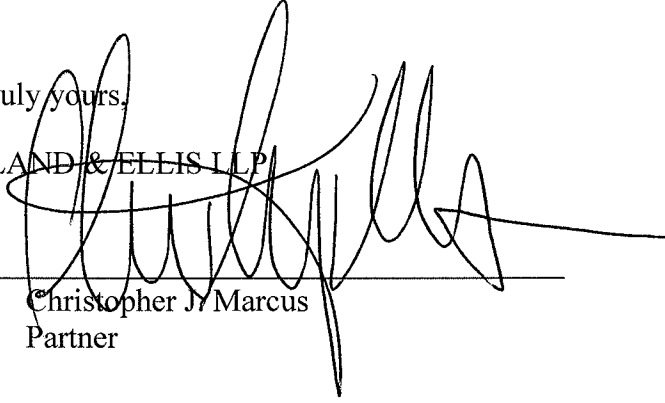
Metro Fuel Oil Corp.
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Page 6

Please confirm your agreement with the arrangements described in this letter by signing below and returning it to us.

Very truly yours,

KIRKLAND & ELLIS LLP

By: _____


Christopher J. Marcus
Partner

Agreed to and accepted this 30 day of July, 2012

Metro Fuel Oil Corp. and its subsidiaries
and affiliates



Name: Gene V. Pullo
Title: Vice President – Metro Fuel Oil
Corp.

Exhibit B

Marcus Declaration

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

In re:

Chapter 11

METRO FUEL OIL CORP., *et al.*,¹

Case Nos. 12-46913 (ESS)
12-46914 (ESS)
12-46915 (ESS)
12-46916 (ESS)
12-49617 (ESS)
12-46918 (ESS)
12-46919 (ESS)
12-46920 (ESS)
12-46921 (ESS)
12-46922 (ESS)

Debtors.

Jointly Administered

**DECLARATION OF
CHRISTOPHER J. MARCUS, IN SUPPORT OF THE
APPLICATION OF THE DEBTORS FOR ENTRY OF AN
ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF
KIRKLAND & ELLIS LLP AS ATTORNEYS FOR THE DEBTORS AND DEBTORS
IN POSSESSION EFFECTIVE *NUNC PRO TUNC* TO THE COMMENCEMENT DATE**

I, Christopher J. Marcus, being duly sworn, state the following under penalty of perjury:

1. I am a partner in the law firm of Kirkland & Ellis LLP (“**K&E**”), 601 Lexington Avenue, New York, New York 10022. I am a member in good standing of the Bar of the State of New York, and I am admitted to practice *pro hac vice* before the United States District Court for the Eastern District of New York in the above-captioned matter.² There are no disciplinary proceedings pending against me.

¹ The Debtors are Metro Fuel Oil Corp., Apollo Petroleum Transport, Inc., Apollo Petroleum Transport, LLC, Apollo Pipeline, LLC, Kings Land Realty, Inc., Metro Biofuels, LLC, Metro Energy Group LLC, Metro Plumbing Services Corp., Metro Terminals Corp. and Metro Terminals of Long Island, LLC.

² See *Order for Admission to Practice Pro Hac Vice* [Docket No. 35].

2. I submit this declaration in support of the *Application of the Debtors for Entry of an Order Authorizing the Employment and Retention of Kirkland & Ellis LLP as Attorneys for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Commencement Date* (the “**Application**”)³ of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for an order pursuant to sections 327(a) and 330 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Eastern District of New York (the “**Local Rules**”). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

K&E’s Qualifications

3. The Debtors seek to retain K&E because of K&E’s recognized expertise and extensive experience and knowledge in the field of corporate restructuring, creditors’ rights and business reorganizations under chapter 11 of the Bankruptcy Code.

4. K&E has been actively involved in major chapter 11 cases and has represented debtors in many cases, including, among others: *In re Hawker Beechcraft, Inc.*, Case No. 12-11873 (Bankr. S.D.N.Y. May 30, 2012); *In re Global Aviation Holdings, Inc.*, Case No. 12-40783 (Bankr. E.D.N.Y. Mar. 9, 2012); *In re United Retail Group, Inc.*, Case No. 12-10405 (Bankr. S.D.N.Y. Feb. 22, 2012); *In re Friendly Ice Cream Corp.*, Case No. 11-13167 (Bankr. D. Del. Nov. 1, 2011); *In re Sbarro, Inc.*, Case No. 11-11527 (Bankr. S.D.N.Y. May 3, 2011); *In re MSR Resort Golf Course LLC*, Case No. 11-10372 (Bankr. S.D.N.Y. Mar. 2, 2011); *In re The Great Atl. & Pac. Tea Co.*, Case No. 10-24549 (Bankr. S.D.N.Y. Jan. 12, 2011); *In re Insight*

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

Health Servs. Holdings Corp., Case No. 10-16564 (Bankr. S.D.N.Y. Jan. 4, 2011); *In re FGIC Corp.*, Case No. 10-14215 (Bankr. S.D.N.Y. Aug. 24, 2010).

5. K&E began representing the Debtors in July, 2012 with respect to a potential restructuring. In preparing for its representation of the Debtors in these chapter 11 cases, K&E became familiar with the Debtors' businesses and many of the potential legal issues that may arise in the context of these chapter 11 cases. K&E is both well-qualified and uniquely able to represent the Debtors in these chapter 11 cases in an efficient and timely manner.

Services to Be Provided

6. Subject to further order of the Court and consistent with that certain engagement letter dated July 27, 2012 (the "***Engagement Letter***"), a copy of which is annexed as **Exhibit 1** to **Exhibit A** to the Application, the Debtors retained K&E to render, without limitation, the following legal services:

- a. advising the Debtors with respect to their powers and duties as debtors in possession in the continued management and operation of their businesses and properties;
- b. advising and consulting on the conduct of these chapter 11 cases, including all of the legal and administrative requirements of operating in chapter 11;
- c. attending meetings and negotiating with representatives of creditors and other parties in interest;
- d. taking all necessary actions to protect and preserve the Debtors' estates, including prosecuting actions on the Debtors' behalf, defending any action commenced against the Debtors and representing the Debtors in negotiations concerning litigation in which the Debtors are involved, including objections to claims filed against the Debtors' estates;
- e. preparing pleadings in connection with these chapter 11 cases, including motions, applications, answers, orders, reports and papers necessary or otherwise beneficial to the administration of the Debtors' estates;
- f. representing the Debtors in connection with obtaining authority to continue using cash collateral and postpetition financing;

- g. advising the Debtors in connection with any potential sale of assets;
- h. appearing before the Court and any appellate courts to represent the interests of the Debtors' estates;
- i. advising the Debtors regarding tax matters;
- j. taking any necessary action on behalf of the Debtors to negotiate, prepare, and obtain approval of a disclosure statement and confirmation of a chapter 11 plan and all documents related thereto; and
- k. performing all other necessary legal services for the Debtors in connection with the prosecution of these chapter 11 cases, including: (i) analyzing the Debtors' leases and contracts and the assumption and assignment or rejection thereof; (ii) analyzing the validity of liens against the Debtors; and (iii) advising the Debtors on corporate and litigation matters.

Professional Compensation

7. K&E intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, the guidelines established by the United States Trustee for Region 2 (the "*U.S. Trustee Guidelines*") and any other applicable procedures or orders of the Court, on an hourly basis. The hourly rates and corresponding rate structure to be utilized by K&E in these chapter 11 cases are equivalent to K&E's hourly rates and corresponding rate structure for other restructuring matters, as well as similar complex corporate, securities and litigation matters whether in court or otherwise, regardless of whether a fee application is required. These rates and the rate structure reflect that such restructuring and other complex matters typically are national in scope and involve great intricacy, high stakes, and severe time pressures.

8. K&E operates in a national marketplace for legal services in which rates are driven by multiple factors relating to the individual lawyer, his or her area of specialization, the firm's expertise, performance and reputation, the nature of the work involved and other factors.

Because the sub-markets for legal services are fragmented and are affected by a variety of individualized and interdependent factors, K&E has no one rate for an individual biller that applies to all matters for all clients. K&E rates for an individual biller may vary as a function of the type of matter, geographic factors, the nature of certain long-term client relationships and various other factors, including those stated above.

9. K&E's hourly rates are set at a level designed to fairly compensate K&E for the work of its attorneys and paralegals and to cover fixed and routine overhead expenses. Hourly rates vary with the experience and seniority of the individuals assigned. These hourly rates are subject to periodic adjustments to reflect economic and other conditions and are consistent with the rates charged elsewhere. In particular, K&E's hourly rates for matters related to these chapter 11 cases range as follows:⁴

<u>Billing Category</u>	<u>Range</u>
Partners	\$670 – \$1,045
Of Counsel	\$560 – \$1,045
Associates	\$370 – \$750
Paraprofessionals	\$145 – \$320

10. Nicole L. Greenblatt (\$795), Benjamin J. Steele (\$670), and I (\$845) presently are expected to have primary responsibility for providing services to the Debtors. In addition, from time to time, other K&E professionals and paraprofessionals will provide services to the Debtors.⁵

⁴ For professionals and paraprofessionals residing outside of the U.S., hourly rates are billed in the applicable currency. When billing a U.S. entity, such foreign rates are converted into U.S. dollars at the then applicable conversion rate. After converting these foreign rates into U.S. dollars, it is possible that certain rates may exceed the billing ranges listed in the chart herein.

⁵ Although K&E does not anticipate using contract attorneys during these chapter 11 cases, in the unlikely event that such employment becomes necessary, K&E will not charge a markup to the Debtors with respect to fees billed by contract attorneys. Moreover, any contract attorneys or non-attorneys who are employed by the Debtors in connection with work performed by K&E will be subject to conflict checks and disclosures in accordance with the requirements of the Bankruptcy Code.

11. It is K&E's policy to charge its clients in all areas of practice for identifiable, non-overhead expenses incurred in connection with the client's case that would not have been incurred except for representation of that particular client. It is also K&E's policy to charge its clients only the amount actually incurred by K&E in connection with such items. Examples of such expenses include postage, overnight mail, courier delivery, transportation, overtime expenses, computer-assisted legal research, photocopying, outgoing facsimile transmissions, airfare, meals and lodging.

12. To ensure compliance with all applicable deadlines in these chapter 11 cases, K&E utilizes the services of overtime secretaries. K&E charges fees for these services pursuant to the Engagement Letter between K&E and the Debtors, which permits K&E to bill the Debtors for overtime secretarial charges that arise out of business necessity. In addition, K&E professionals also may charge their overtime meals and overtime transportation to the Debtors consistent with prepetition practices.

13. K&E currently charges \$0.12 per page for standard duplication in its offices in the United States. K&E does not charge its clients for facsimile transmissions. K&E has negotiated a discounted rate for Westlaw computer-assisted legal research. Computer-assisted legal research is used whenever the researcher determines that using Westlaw is more cost effective than using traditional (non-computer-assisted legal research) techniques.

Compensation Received by K&E from the Debtors

14. Consistent with the terms of the Engagement Letter, on August 6, 2012, the Debtors paid \$200,000 to K&E as a classic retainer. On September 5, 2012, K&E invoiced the Debtors for \$150,000. Additionally, on September 17, 2012, K&E invoiced the Debtors for \$350,000. Finally, on September 25, 2012, K&E invoiced the Debtors for \$363,212.19. Moreover, pursuant to the Engagement Letter, the classic retainer is property of K&E and not

held in a separate or segregated account. The amounts K&E has invoiced the Debtors against the classic retainer for professional services and for the reimbursement of reasonable and necessary expenses incurred in connection therewith are set forth in the chart below.

15. The amounts for legal services billed by K&E and payments made by the Debtors during the 90-day period before the Commencement Date are as follows:

Type of Transaction	Invoice Date	Billed Amount	Payment Date	Retainer Replenishment	Retainer Balance
Classic Retainer	7/31/12	\$200,000.00	8/06/12	N/A	\$200,000.00
Invoice	9/05/12	\$150,000.00	9/17/12	\$84,078.23	\$284,078.23
Invoice	9/17/12	\$350,000.00	9/19/12	\$185,078.10	\$469,156.33
Invoice	9/25/12	\$363,212.12	9/26/12	\$50,000.00	\$519,156.33
Total		\$1,063,212.12			

16. The foregoing retainer payments constitute “classic retainer” payments as defined in *In re Production Associates, Ltd.*, 264 B.R. 180, 184–85 (Bankr. N.D. Ill. 2001) and *In re McDonald Bros. Construction, Inc.*, 114 B.R. 989, 997–99 (Bankr. N.D. Ill. 1990). As such, K&E earned the classic retainer upon receipt and, consequently, K&E placed the amounts into its general cash account.

17. As of the Commencement Date, the Debtors do not owe K&E any amounts for legal services rendered before the Commencement Date, although certain expenses and fees have been incurred by K&E, but not yet applied to K&E’s classic retainer. Such amounts are less than the balance of K&E’s classic retainer as of the Commencement Date.

18. K&E further states that, pursuant to Bankruptcy Rule 2016(b), it has not shared nor agreed to share (a) any compensation it has received or may receive with another party or person, other than with the partners, associates and contract attorneys associated with K&E or (b) any compensation another person or party has received or may receive.

K&E's Disinterestedness

19. In connection with its proposed retention by the Debtors in these chapter 11 cases, K&E undertook to determine whether it had any conflicts or other relationships that might cause it not to be disinterested or to hold or represent an interest adverse to the Debtors. Specifically, K&E obtained from the Debtors and/or their representatives the names of individuals and entities that may be parties in interest in these chapter 11 cases (the “*Potential Parties in Interest*”) and such parties are listed on **Schedule 1** hereto. K&E has searched its electronic database for its connections to the entities listed on **Schedule 1** hereto. To the extent that I have been able to ascertain that K&E has been retained within the last three years to represent any of the Potential Parties in Interest (or their affiliates, as the case may be) in matters unrelated to these cases, such facts are disclosed on **Schedule 2** attached hereto.

20. K&E and certain of its partners and associates may have in the past represented, may currently represent and likely in the future will represent, parties in interest in these chapter 11 cases in connection with matters unrelated (except as otherwise disclosed herein) to the Debtors and these chapter 11 cases. The information listed on **Schedule 1** may have changed without our knowledge and may change during the pendency of these chapter 11 cases. Accordingly, K&E will update this Declaration as necessary and when K&E becomes aware of additional material information. The following is a list of the categories that K&E has searched:

<u>Schedule</u>	<u>Category</u>
1(a)	Entities Affiliated with the Debtors
1(b)	Directors and Officers
1(c)	Non-Debtor Affiliates
1(d)	Banks
1(e)	Competitors
1(f)	Contract Counterparties
1(g)	Customers
1(h)	DIP Lenders
1(i)	Insurers

- 1(j) Lenders
- 1(k) Noteholders
- 1(l) Potential Investors
- 1(m) Professionals
- 1(n) Shareholders
- 1(o) Significant Vendors
- 1(p) Taxing Authorities
- 1(q) Utilities
- 1(r) United States Trustee and Court Personnel for the Eastern District of New York (and Key Staff Members)

21. To the best of my knowledge, (a) K&E is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors’ estates and (b) K&E has no connection to the Debtors, their creditors or their related parties except as may be disclosed in this Declaration.

22. Consistent with Bankruptcy Rule 2014, listed on **Schedule 2** to this Declaration are the results of K&E’s conflicts searches of the above-listed entities.⁶ For the avoidance of doubt, K&E will not commence a cause of action in these chapter 11 cases against the parties listed on **Schedule 2** that are current or ongoing clients of K&E (including parties below-listed under the “Specific Disclosures” section of this Declaration) unless K&E has an applicable waiver on file or first receives a waiver from such party allowing K&E to commence such an action. To the extent that a waiver does not exist or is not obtained from such client and it is

⁶ As referenced in **Schedule 2**, the term “current client” means a client to whom time was posted in the 12 months preceding the Commencement Date. As referenced in **Schedule 2**, the term “former client” means a client to whom time was posted between 12 and 36 months preceding the Commencement Date. As referenced in **Schedule 2**, the term “closed client” means a client to whom time was posted in the 36 months preceding the Commencement Date, but for which the client representation has been closed. As a general matter, K&E discloses connections with former clients or closed clients for whom time was posted in the last 36 months, but does not disclose connections if time was billed more than 36 months before the Commencement Date.

necessary for the Debtors to commence an action against that client, the Debtors will use Curtis, Mallet-Prevost, Colt & Mosle LLP to represent them in that particular matter.

23. K&E's conflicts search of the parties in interest listed on **Schedule 1** (that K&E was able to locate using its reasonable efforts) reveals, to the best of K&E's knowledge, that certain K&E attorneys and paraprofessionals who previously worked at other law firms that represented certain potential parties in interest in these chapter 11 cases have not worked on matters relating to the Debtors' restructuring efforts while at K&E.

24. Based on the conflicts search conducted to date and described herein, to the best of my knowledge, neither I, K&E, nor any partner or associate thereof, insofar as I have been able to ascertain, have any connection with the Debtors, their creditors or any other parties in interest, their respective attorneys and accountants, the United States Trustee for the Region 2 (the "*U.S. Trustee*"), any person employed in the Office of the U.S. Trustee or any Bankruptcy Judge currently serving on the United States Bankruptcy Court for the Eastern District of New York, except as disclosed or otherwise described herein.

25. K&E will review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, K&E will use reasonable efforts to identify such further developments and will file promptly a supplemental declaration, as required by Bankruptcy Rule 2014(a).

26. Generally, it is K&E's policy to disclose clients in the capacity that they first appear in a conflicts search. For example, if a client already has been disclosed in this Declaration in one capacity (*e.g.*, a customer), and the client appears in a subsequent conflicts search in a different capacity (*e.g.*, a vendor), K&E does not disclose the same client again in

supplemental declarations, unless the circumstances are such in the latter capacity that additional disclosure is required.

27. From time to time, K&E has referred work to other professionals to be retained in these chapter 11 cases. Likewise, certain such professionals have referred work to K&E.

28. Certain insurance companies pay the legal bills of K&E clients. Some of these insurance companies may be involved in these chapter 11 cases. None of these insurance companies, however, are K&E clients as a result of the fact that they pay legal fees on behalf of K&E clients.

Specific Disclosures

29. As specifically set forth below and in the attached exhibits, K&E represents certain of the Debtors' creditors, equity security holders or other parties in interest in ongoing matters unrelated to the Debtors and these chapter 11 cases. None of the representations described herein are materially adverse to the interests of the Debtors' estates. Moreover, pursuant to section 327(c) of the Bankruptcy Code, K&E is not disqualified from acting as the Debtors' counsel merely because it represents certain of the Debtors' creditors, equity security holders or other parties in interest in matters unrelated to these chapter 11 cases

I. Chapter 11 Professionals

30. The Debtors filed an application [Docket No. 10], which the Court has granted [Docket No. 58] seeking approval of their retention of Epiq Bankruptcy Solutions ("*Epiq*") as the Debtors' notice and claims agent. Jason Horwitz, a former K&E associate, is currently Vice President of Epiq. Mr. Horwitz's work at K&E was not related to the Debtors or the chapter 11 cases.

II. K&E Attorney and Employee Investments

31. From time to time, K&E partners, of counsel, associates and employees personally invest in mutual funds, retirement funds, private equity funds, venture capital funds, hedge funds and other types of investment funds (the “*Investment Funds*”), through which such individuals indirectly acquire a debt or equity security of many companies, one of which may be one of the Debtors, often without K&E’s knowledge. The investing K&E person(s) generally own substantially less than one percent of such Investment Fund, do not manage or otherwise control such Investment Fund, and have no influence over the Investment Fund’s decision to buy, sell or vote any particular security. The Investment Fund is generally operated as a blind pool, meaning that when the K&E person(s) make an investment in the Investment Fund, he, she or they do not know what securities the blind pool Investment Fund will purchase or sell, and have no control over such purchases or sales.

32. From time to time one or more K&E partners and of counsel voluntarily choose to form an entity (a “*Passive-Intermediary Entity*”) to invest in one or more Investment Funds. Such Passive-Intermediary Entity is composed only of persons who were K&E partners and of counsel at the time of the Passive-Intermediary Entity’s formation (although some are now former K&E partners and of counsel). Participation in such a Passive-Intermediary Entity is wholly voluntary and only a portion of K&E’s partners and of counsel choose to participate. The Passive-Intermediary Entity generally owns substantially less than one percent of any such Investment Fund, does not manage or otherwise control such Investment Fund, and has no influence over the Investment Fund’s decision to buy, sell or vote any particular security. Each Investment Fund in which a Passive-Intermediary Entity invests is operated as a blind pool, so that the Passive-Intermediary Entity does not know what securities the blind pool Investment Funds will purchase or sell, and has no control over such purchases or sales. And, indeed, the

Passive-Intermediary Entity often arranges for statements and communications from the Investment Funds to be sent solely to a blind administrator who edits out all information regarding the identity of the Investment Fund's underlying investments, so that the Passive-Intermediary Entity does not learn (even after the fact) identity of the securities purchased, sold or held by the Investment Fund.

33. From time to time, K&E partners, of counsel, associates and employees personally directly acquire a debt or equity security of a company which may be one of the Debtors. K&E has a long-standing policy prohibiting attorneys and employees from using confidential information that may come to their attention in the course of their work. In this regard, all K&E attorneys and employees are barred from trading in securities with respect to which they possess confidential information.

III. Other Disclosures

34. Finally, certain interrelationships exist among the Debtors. K&E does not believe that the Debtors' relationships to each other pose any conflict of interest because of the general unity of interest among the Debtors. Insofar as I have been able to ascertain, I know of no conflict of interest that would preclude K&E's joint representation of the Debtors in these chapter 11 cases.

35. A K&E associate, Zeev Menes, was previously employed by Judge Elizabeth S. Stong in the U.S. Bankruptcy Court for the Eastern District of New York. Out of an abundance of caution, K&E has instituted formal screening procedures to screen Mr. Menes from all K&E restructuring matters.

36. Under K&E's screening procedures, K&E's conflicts department distributes a memorandum to all K&E attorneys and legal assistants directing them as follows: (a) not to discuss any aspects of K&E's representation of the Debtors with the screened K&E attorneys;

(b) to conduct meetings, phone conferences and other communications regarding K&E's representation of the Debtors in a manner that avoids contact with the screened K&E attorneys;

(c) to take all measures necessary or appropriate to prevent access by the screened K&E attorneys to the files or other information related to K&E's representation of the Debtors; and

(d) to avoid contact between the screened K&E attorneys and all K&E personnel working on the representation of the Debtors unless there is a clear understanding that there will be no discussion of any aspects of K&E's representation of the Debtors. Furthermore, K&E already has implemented procedures to block the screened K&E attorneys from accessing files and documents related to the Debtors that are stored in K&E's electronic document managing system.

Affirmative Statement of Disinterestedness

37. Based on the conflicts search conducted to date and described herein, to the best of my knowledge and insofar as I have been able to ascertain, (a) K&E is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest adverse to the Debtors' estates and (b) K&E has no connection to the Debtors, their creditors or their related parties, except as may be disclosed herein.

[Remainder of page intentionally left blank.]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: October 9, 2012

Respectfully submitted,

/s/ Christopher J. Marcus

Christopher J. Marcus
Partner, Kirkland & Ellis LLP

Schedule 1

The following lists contain the names of reviewed entities as described more fully in the *Declaration of Christopher J. Marcus, in Support of the Application of the Debtors for Entry of an Order Authorizing the Employment and Retention of Kirkland & Ellis LLP as Attorneys for the Debtors and Debtors in Possession Effective Nunc Pro Tunc to the Commencement Date* (the “*Marcus Declaration*”). Where the names of the entities reviewed are incomplete or ambiguous, the scope of the search was intentionally broad and inclusive, and Kirkland & Ellis LLP reviewed each entity in its records, as more fully described in the Marcus Declaration, matching the incomplete or ambiguous name.

List of Schedules

<u>Schedule</u>	<u>Category</u>
1(a)	Entities Affiliated with the Debtors
1(b)	Directors and Officers
1(c)	Non-Debtor Affiliates
1(d)	Banks
1(e)	Competitors
1(f)	Contract Counterparties
1(g)	Customers
1(h)	DIP Lenders
1(i)	Insurers
1(j)	Lenders
1(k)	Noteholders
1(l)	Professionals
1(m)	Shareholders
1(n)	Significant Vendors
1(o)	Taxing Authorities
1(p)	Utilities
1(q)	United States Trustee and Court Personnel for the Eastern District of New York (and Key Staff Members)

SCHEDULE 1(a)

Entities Affiliated with the Debtors

Apollo Petroleum Transport LLC
Apollo Petroleum LLC
Apollo Pipeline LLC
Kings Land Realty Inc.
McGuiness Realty
Metro Biofuels LLC
Metro Energy Group LLC
Metro Fuel Oil Corp.
Metro Plumbing Services Corp.
Metro Terminals Corp.
Metro Terminals of Long Island, LLC

SCHEDULE 1(b)

Directors and Officers

Pullo, Gene V.
Pullo, Paul J.

SCHEDULE 1(c)

Non-Debtor Affiliates

Blockhaven Realty Associates LLC
Eckford Realty LLC
Metro Equities Management LLC
Metro Motion Management
Point 166 Realty Associates, LLC
Point 202 Realty Associates LLC
Point Equities Management Inc.
West India Development LLC

SCHEDULE 1(d)

Banks

New York Commercial Bank
TD Bank, N.A.

SCHEDULE 1(e)

Competitors

Bayside Fuel Oil
Carbo Industries Inc.
Castle Oil
Hess Corp.
Motiva Enterprises LLC
Sprague Energy

SCHEDULE 1(f)

Contract Counterparties

Buckeye Pipeline Co. LP
Global Cos. LLC
Hess Corp.
Sprague Energy

SCHEDULE 1(g)**Customers**

147-37 Roosevelt Condo	Metropolitan Hospital Center (NYC)
2190 Boston Owners Inc.	Mid Island Salvage Corp.
3569 Assoc LLC	MJB Service Station
Asplundh Construction Corp.	Montauk Fish Dock Inc.
Astoria Studios Ltd.	Montauk Inlet Seafood Inc.
Babylon, Town of (NY)	MTA BSC
Barker Aggregates Ltd	MTA-Bus Col Pt
Barker Materials Ltd	National Grid
Bartlett Dairy Inc.	National Grid Energy
Beyer Farms Inc.	National Waste Services LLC
Big Six Towers Inc.	New York City Department
Brookhaven National Laboratory	New York City Department of
Buckeye Partners	Sanitation
Camp Smith	New York City Housing Authority
Castaways Yacht Club Inc.	(NYCHA)
Cofire Industries LLC	New York City Paratransit
Derle Farms Inc.	New York Police Department -
East Island Asphalt Corp.	Aviation
EBT Inc.	New York State Office of Mental
Elmhurst Dairy Inc.	Health (NYSOMH)
Evergreen Eagle	New York Times Co.
Excel Recycling LLC	Nicolia Ready Mix Corp.
E-Z Station	Oak Tree Farm Dairy Inc.
Floral Park, Village of (NY)	OMH\50310 Consolidated
Glen Cove Schools	Orleans Realty LLC
H&K Firm Inc.	Oyster Bay Department of Public
Half Hollow Hills CSD	Works\CWS, Town of (NY)
Hampton Bays UFSD	Paragon Industries LLC
Hempstead, Village of (NY)	PC Richards & Son Inc.
Hess Corp.	Pilgrim Psychiatric Center
Hub Truck Rental Corp.	Posillico Materials LLC
K&W Realty	Promenade Associates
Kings Ready Mix Inc.	Queensboro Farm Products Inc.
Kingsborough Community College	Scatt Materials Corp.
Lawrence UFSD	SDC Assets Insurance
LIPA Co.	Sea Transfer Corp.
Long Beach, City of (NY)	Seville Central Mix Corp.
Lydel Brookhaven Corp.	Sky Chefs Inc.
Manhattan Psy Center	Skyliner Travel & Tour Bus
Massapequa UFSD	Smithtown Highway Department,
Mendon Leasing Corp.	Town of (NY)

Staten Island Developmental
Disabilities Service Office
Steven M Mezynieski Inc.
Suffolk Bus Corp.
Suffolk Materials Corp.
Sutton Investments Ltd.
Towne Bus LLC
Tracey Towers Housing Co Inc.
Truck Rite Distribution
United States Department of Veterans
Affairs

Veterans Administration Medical
Center
Wards Island
We Transport Inc.
We Transport LP
Welsbach Electric Corp.
Westchester Towers Owners Corp.
Westhab-Coachman Family Center
Winters Bros. Transfer Station

SCHEDULE 1(h)

DIP Lenders

Zell Credit Opportunities Master Fund LP
Third Avenue Capital

SCHEDULE 1(i)

Insurers

AFLAC New York
AICPA
Alliance Health & Safety
Allied Administrators for Delta Dental
Atlantic Coast Surety LLC
Capacity Group of NY LLC
Chubb Group of Insurance
Empire Blue Cross
Empire Healthchoice Assurance
Fiduciary Insurance Co.
First Insurance Funding
First United American Life
GHI
Health Fund 917
Health Insurance Plan of Greater NY
Health Pass
Humana Inc.
IPFS Corp.
Liberty Mutual Group
Lincoln Life & Annuity Co.
Metlife
National Benefit Life
New York State Unemployment
Insurance
Oxford Health Plans
Philadelphia Indemnity Insurance
Prudential
United States Life Insurance, The

SCHEDULE 1(j)

Lenders

Cathay Bank
New York Commercial Bank
People's United Bank
SeedCo Financial Services
Third Avenue Capital
Valley National Bank

SCHEDULE 1(k)

Noteholders

New York City Industrial Development Agency
SeedCo Financial Services

SCHEDULE 1(O)

Professionals

AlixPartners
Agostino & Associates PC
Akerman Senterfitt LLP
Bartlett Ludlam & Dill
Berdon LLP
Cappa, James A., Esq.
Connelly McLaughlin
Cremer & Associates LLP
Ellen, John J.
Epiq Systems Inc.
Jeffrey C. Isaacs Inc.
Loeb & Loeb
Michael Mapes PE
Mintz Levin
Nixon Peabody LLP
Norton & Associates LLC
Phoenix Management Consulting
Porzio Bromberg & Newman
Prusinowski, Victor J.
Sullivan & Worcester LLP
Tuchman Korngold Weiss
US Bank NA

SCHEDULE 1(m)

Shareholders

Jellen, John
Pullo, Gene V.
Pullo, Paul J.
Pullo, Sr., Paul

SCHEDULE 1(n)

Significant Vendors

4th Avenue Burner	Brodan Engineering LLC
A1 Compressed Gas Inc.	Brooklyn Truck Wash
A-1 Welding & Safety Equipment Inc.	Buckeye Partners
Aaron Equipment Co.	Buckeye Pipeline
Abco Refrigeration Supply Co.	Busch LLC
Acme Heat & Power Inc.	Cardinal Tank Corp.
Action Tire Services	Cargo Tank Concepts Ltd.
ADC Wholesale Fuel Inc.	Cargo Tank Concepts Ltd.
Advanced Digital Data	Century Industrial & Bearing Supply
Agee Heating Service Corp.	Citi AAdvantage Business Card
Agostino & Associates PC	Conference Associates Inc.
All Boro Transportation Inc.	Connelly McLaughlin & Woloz
Alliance Mechanical Division	Conoco Phillips Co.
Alliance Mechanical Division LLC	Control Associates Inc.
AMAF Burner & Control Supply	Cowboy's Electrical Supply Inc.
Amareda Hess Corp.	Cratz, Jane R.
American Auto Body Supplies Inc.	Cremer & Associates
American Auto Body Supplies Inc.	Datumeg Inc.
American Express	Diverse Printing & Graphics Inc.
American Industrial Supply	Diversified Heat Transfer Inc.
American Liberty Boiler Cleaning Inc.	Dynamic Sheet Metal Ltd.
Americol Maintenance Corp.	Eagle Wireless Communications
Amerigreen Energy Inc.	Eastern Aviation Fuels Inc.
Amspec Services LLC	Eastern Steel Corp.
Armorica Sales Inc.	Economy Pump & Motor Repair
Ast Construction Inc.	Empire Healthchoice Assurance
AT&T/Cingular Wireless	Evertight Tank Lining Co.
Atlantech Distribution Inc.	Fastenal Co.
Atlantic Product Services Inc.	First Insurance Funding Corp.
B&F Electric Motors Inc.	Foam Technology Inc.
Balco Industries Inc.	Foster & Co. Inc.
Baldwin Business Systems Inc.	G&O Equipment Corp.
Ball Trading Corp.	G&S Truck&Auto Repair Inc.
Barnwell House of Tires Inc.	Gabrielli Truck Sales Ltd.
Bayside Fuel Oil Depot Corp.	GBS Heating & Cooling Supply Inc.
Beardslee Transmission Equipment Co.	Girard Equipment Inc.
Big Apple Energy	Global Cos. LLC
Blackman Plumbing Supply Co.	Greenpoint Truckstop Inc.
Blackman Plumbing Supply Co. Inc.	Greenpoint YMCA
Brake Service Inc.	GTS Tank Service
Brenner Environmental Products	H&R Fuel Corp.
Broadview Networks	Hayes Pump Inc.

Health Insurance Plan of Greater NY
Hess Corp.
Hev-E-Oil Burner Distributors
Hub Spring & Suspensions
IDC Corp.
IDC Corp.
International Processplants & Equipment
J&S Supply Corp.
JJ Keller & Associates Inc.
Joseph Raso Landscaping Inc.
Juniper Elbow Co. Inc.
Kingsland Realty Inc.
Kirby Offshore Marine Operating LLC
K-Sea Transportation Corp.
Leonard Engineering PC
LMB Consultants Inc.
LNL Distributing Corp.
Long Island Fireproof Door
Long Island Truck Parts Inc.
M&M Heating Supplies Inc.
Manhattan Heating & Cooling Supply
Mapes, Michael, PE
Marcy Tire Inc.
Marly Building Supply Corp.
Mas Sales
Mayer Malbin
McMaster-Carr Supply Co.
McNichols Co.
Meller Electric Co.
MGY Mechanical LLC
Mid:Com/Midwest Computer
Midwest Meter Inc.
Mike's Towing Inc.
Miles Petroleum Co. Inc.
Mondial Automotive
Motiva Enterprises LLC
Motiva Enterprises LLC
Mullooly Jeffrey Rooney & Flynn LLP
New York Boiler Inc.
New York City Department of Finance
New York State Commissioner of Taxation
and Finance
New York State Sales Tax
NIC Holding Corp.
Nixon Peabody LLP
NMS Carting Inc.

Norton & Associates LLC
OCS Chemical Engineering Co.
Patterson Battery Inc.
PC Mall
Petroleum Kings LLC
Phillips 66 Co.
Pitney Bowes Global Financial Services
PM Auto Parts
Polar Service Centers
Poling Cutler Marine
Poling Cutler Marine Transportation
Porzio Bromberg & Newman PC
Power Brake Service Inc.
Primo Uniform Service Co.
Prospect Transportation Inc.
Purchase Power
Radiant Professionals Alliance
Rapid Recovery
RDS Industries Inc.
Reg Marketing & Logistics
Ridgewood Savings Bank
Rini Tank & Truck Service
Rini Tank & Truck Service Inc.
RIT Printing Corp.
Riverhead Building Supply Corp.
Rubicon Industries Corp.
Rudox Engine & Equipment Co.
Safety-Kleen Systems Inc.
Sid Harvey Metro
Siegel Bros. Supply Co. Inc.
Skyline Credit Ride Inc.
Spot Market Petroleum Inc.
Sulzer Chemtech USA Inc.
Superior Distributors
TJ Mycon Industries Inc.
TW Smith Corp.
Ultra Green
United States Treasury
US Bank
UTI Transport Solutions Inc.
Valero
Valero Marketing & Supply
Valero Marketing & Supply Co.
Vanna Fuel
W.H. Christian
W.W. Grainger Inc.

Wells Fargo

Xtreme Auto Glass Inc.

SCHEDULE 1(o)

Taxing Authorities

Internal Revenue Service (IRS)
New York, State of

SCHEDULE 1(p)

Utilities

BMP Productions
Broadview Networks
Cablevision
Consolidated Edison Co.
Digital Dispatcher
Eagle Wireless Communication
LIPA
National Grid
New York City Water Board
Sprint
Suffolk County Water Authority (NY)
Verizon

SCHEDULE 1(q)

United States Trustee and Court Personnel for the Eastern District of New York (and Key Staff Members)

Amador-Santiago, Mildred
Anemone, Veronica
Azoff, Jonathan
Bloomfield, Clifford
Clarke, Janease
Craig, Carla E., Hon.
Curtin, William E.
Czarniecki, Leiden
Drapan, George
Ducille, Chevonne
Feller, Jerome, Hon.
Flom, Beret
Goldstein, Martin
Gottesman, Joan
Howard, Angela
Jackson, Sheree
Kanter, Elise
Leonard, Tracie
Leonhard, Alicia M.
LeVien, Matthew
Martin, Marylou
Mignone, Nicole
Rettagliata, Lynda A.
Rosenthal, Joel B., Hon.
Scherman, Randi
Stavis, Robert
Stong, Elizabeth S., Hon
Weiss, Sharon
Zucker, Evan

SCHEDULE 2

Name of Entity Searched	Name of Entity and/or Affiliate of Entity, that is a K&E Client	Status
AlixPartners	AlixPartners, LLC Citicorp Venture Capital, Ltd. CVC Asia Fund III CVC Asia Pacific Funds I CVC Asia Pacific Funds II CVC Asia Pacific Limited CVC Capital Partners Advisory Company Limited CVC Capital Partners Asia II Limited CVC Capital Partners Asia III Limited CVC Capital Partners Asia Limited CVC Capital Partners Asia Pacific Fund III CVC Capital Partners Asia Pacific III CVC Capital Partners Asia Pacific LP CVC Capital Partners Limited CVC European Equity III Limited CVC European Equity IV AB Limited CVC European Equity Tandem GP Limited CVC European Equity V Limited CVC Infrastructure GP Limited Susan Markel	Current Former Current Closed Closed Closed Closed Closed Closed Current Closed Current Current Closed Current Current Former Former Current Current Current Current Closed
American Express Co.	American Express Company American Express Travel Related Services American Express Travel Related Services Company, Inc.	Current Closed Closed
Astoria Studios Ltd.	Astoria Studios Limited Partnership II	Current

AT&T/Cingular Wireless	Ameritech AT&T Corp. AT&T Inc. AT&T Mobility LLC AT&T Services, Inc. David Krantz SBC Internet Services, Inc.	Closed Current Current Current Current Current Current
Cablevision	Cablevision Systems Corp. Cablevision Systems Corporation CSC Holdings Company James Dolan	Current Closed Current Closed
Citi AAdvantage Business Card	Citi Alternative Investments Citibank, N.A. Citicorp Mezzanine III, L.P. Citigroup Global Markets Asia Limited Citigroup Global Markets Inc. Citigroup Global Markets Ltd. Citigroup Global Markets Realty Corp. Craig Barrack Old Lane Hedge Fund GP, LLC	Former Current Current Current Current Current Current Closed Closed

ConocoPhillips Co.	ConocoPhillips (00-21) Pty. Ltd.	Closed
	ConocoPhillips (03-12) Pty. Ltd.	Closed
	ConocoPhillips (03-13) Pty. Ltd.	Closed
	ConocoPhillips (03-19) Pty. Ltd.	Closed
	ConocoPhillips (03-20) Pty. Ltd.	Closed
	ConocoPhillips (03-21) Pty. Ltd.	Closed
	ConocoPhillips (91-12) Pty. Ltd.	Closed
	ConocoPhillips (91-13) Pty. Ltd.	Closed
	ConocoPhillips (95-19) Pty. Ltd.	Closed
	ConocoPhillips (96-16) Pty. Ltd.	Closed
	ConocoPhillips (96-20) Pty. Ltd.	Closed
	ConocoPhillips Australia Pty. Ltd.	Closed
	ConocoPhillips Company	Current
	ConocoPhillips JPDA Pty. Ltd.	Closed
	ConocoPhillips Norway	Current
	ConocoPhillips Pipeline Australia Pty. Ltd.	Closed
	ConocoPhillips STL Pty. Ltd.	Closed
	ConocoPhillips WA-248 Pty. Ltd.	Closed
	Darwin LNG Pty. Ltd.	Closed
	Phillips Indonesia, Inc.	Closed
	Phillips International Investment, Inc.	Closed
	Phillips Petroleum (96-20), Inc.	Closed
	Phillips Petroleum Company Indonesia	Closed
	Phillips Petroleum Company ZOC Pty. Ltd.	Closed
	Phillips Petroleum Production Indonesia, Inc.	Closed
	Phillips Petroleum Timor Sea Pty. Ltd.	Closed
	Phillips Petroleum Timor Sea, Inc.	Closed
	Tokyo Timor Sea Resources Inc.	Closed
	Tokyo Timor Sea Resources Pty. Ltd.	Closed

Epiq Systems Inc.	Epiq Systems, Inc.	Current
GHI	DPG USA, Inc.	Closed
IDC Corp.	Audax Capital Audax Group	Current Current
Lazard Capital	Antonio Weiss The Edgewater Funds Lazard Alternative Investments LLC Lazard Capital Markets LLC Lazard Freres Real Estate Investors LLC	Closed Current Current Former Closed
Lincoln Life & Annuity Co.	Lincoln Financial Group Lincoln Life & Annuity Company of New York Lincoln National Corporation Lincoln National Life Insurance Lincoln National Life Insurance Company	Current Former Former Current Current
National Grid National Grid Energy	National Grid Development Holdings Corp. National Grid USA National Grid USA Service Company, Inc	Current Current Current
Oxford Health Plans	United Healthcare, Inc.	Current
Phillips 66 Co.	Phillips 66 Company	Current
TD Bank	Toronto Dominion Capital	Current
United States Life Insurance, The	Advisory Committee of AIG Asian Real Estate Partners II (Cayman), L.P. AIG Asian Real Estate Partners II (USD Feeder), L.P. AIG Asian Real Estate Partners II (USD), L.P. AIG Retirement Services, Inc. HSA Residential Mortgage Services of Texas MorEquity Inc.	Closed Closed Closed Closed Former Closed

US Bank US Bank NA	U.S. Bank National Association	Current
Verizon	Alltel Communications of Michigan RSAs, Inc. Alltel Communications, LLC Cellco Partnership Empire City Subway Company GTE Corporation Ivan G. Seidenberg Lowell C. McAdam MCI Communications Services, Inc. Randall S. Milch Verizon Business Verizon Communications Inc. Verizon New York, Inc. Verizon NY Inc. Verizon Wireless	Former Current Current Current Current Current Current Current Current Closed Current Current Closed Current
W.W. Grainger Inc.	W.W. Grainger, Inc.	Current
Wells Fargo	Norwest Equity Partners Norwest Venture Partners Wachovia Capital Partners 2006 LLC Wells Fargo Bank, N.A.	Closed Closed Current Current
Zell Credit Opportunities Master Fund LP	Equity Group Investments, L.L.C. Sam Zell Samuel Zell Zell Credit Opportunities Master Fund, L.P.	Current Closed Current Closed