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### The Reorganization of Erickson, Incorporated et al.

Taylor Grills

Ben Tarpley

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**THE REORGANIZATION OF ERICKSON, INCORPORATED ET AL**

**BY**

**TAYLOR GRILLS**

**AND**

**BEN TARPLEY**

**SPRING 2017**

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## I. BACKGROUND

On November 8, 2016, Erickson Incorporated, EAC Acquisition Corporation, Erickson Helicopters, Inc., Erickson Transport, Inc., Evergreen Helicopters International, Inc., Evergreen Equity, Inc., and Evergreen Unmanned Systems, Inc., (collectively, the “Debtors” or “Erickson”) voluntarily filed for bankruptcy under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).<sup>1</sup>

### A. *The Debtors’ Business*

The Debtors provide a wide array of aviation services, as well as manufacture and operate the Erickson S-64 Aircrane helicopter (the “Aircrane”), a flying crane capable of lifting as much as 25,000 pounds.<sup>2</sup> The Debtors are affiliated with entities in Brazil, Canada, India, Malaysia, Peru, Trinidad, Turkey, and Uganda, and they employ approximately 711 domestic and foreign employees.<sup>3</sup> The Debtors possess a fleet of 69 aircraft, which must be regularly adjusted to meet specific contract needs.<sup>4</sup> Upon a successful contract bid, the Debtors adjust their fleet accordingly.<sup>5</sup> Because of the fleet adjustments required to perform under any given contract, the Debtors incur large capital expenditures long before generating revenue.<sup>6</sup>

Among the aviation services that the Debtors provide are defense and security services, civil aviation services, and manufacturing and maintenance, repair, and overhaul services.<sup>7</sup>

The Debtors provide defense and security services to the United States Department of Defense (the “Department of Defense”),<sup>8</sup> other United States government agencies and organizations, international government agencies and organizations, and third parties that contract

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<sup>1</sup> See [Debtors’ Voluntary Petition for Bankruptcy, Doc. No. 1](#).

<sup>2</sup> See [Debtors’ Second Amended Disclosure Statement, Doc. No. 382, at pp. 20-21](#).

<sup>3</sup> See [id.](#), at p. 21.

<sup>4</sup> See [id.](#), at p. 22. Especially in connection with United States Government contracts, the Debtors must adjust their fleet by upgrading existing aircraft, or acquiring or leasing additional aircraft. Such contracts provide detailed specifications for and modifications to the aircraft and equipment that must be used.

<sup>5</sup> See [id.](#)

<sup>6</sup> See [id.](#)

<sup>7</sup> See [id.](#)

<sup>8</sup> The Debtors have been authorized by the Commercial Airlift Review Board to transport passengers for the Department of Defense.

with United States or international government agencies and organizations.<sup>9</sup> The often mission-critical services that the Debtors provide include the transport of troops and cargo, delivery of supplies to ships, and evacuation or rescue of personnel.<sup>10</sup> To help the Debtors perform these services, their aircraft can be equipped with night vision, ballistic protection, and roller systems.<sup>11</sup> The Debtors also provide logistical support in connection with their defense and security services.<sup>12</sup>

The civil aviation services that the Debtors provide include firefighting, timber harvesting, crewing,<sup>13</sup> infrastructure construction, oil and gas operational support, and humanitarian relief.<sup>14</sup> The Debtors use their Aircranes to combat forest fires in Australia, Canada, Greece, Italy, Turkey, and the United States by dropping more than 25,000 gallons of water or other fire suppressants per hour on the fires.<sup>15</sup> The Debtors provide timber-harvesting services primarily in Canada and Malaysia, using their Aircranes to lift and transport timber.<sup>16</sup> The Debtors also use their Aircranes to help construct utility grids, wind turbines, and pipelines, and to deliver and install heavyweight ventilation and air conditioning units.<sup>17</sup> Finally, the Debtors support the oil and gas industry in Canada, Ecuador, Mexico, Peru, and the United States by providing lift services for personnel, drilling supplies, and rig production equipment.<sup>18</sup>

The Debtors provide manufacturing and maintenance, repair, and overhaul services to customers around the world that operate legacy aircraft.<sup>19</sup> As the manufacturer of the Aircrane, the Debtors provide engineering solutions, product support, and Aircrane operator training

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<sup>9</sup> See [id.](#)

<sup>10</sup> See [id.](#)

<sup>11</sup> See [id.](#) Night vision is the ability to see in low-light conditions, ballistic protection defends aircraft against projectiles, and roller systems enable the quick delivery of cargo from aircraft.

<sup>12</sup> See [id.](#)

<sup>13</sup> The Debtors often provide crew members to operate the aircraft they provide.

<sup>14</sup> See [id.](#), at p. 23.

<sup>15</sup> See [id.](#)

<sup>16</sup> See [id.](#)

<sup>17</sup> See [id.](#), at pp. 23-24.

<sup>18</sup> See [id.](#), at p. 24.

<sup>19</sup> See [id.](#) Legacy aircraft are previous generations of aircraft for which parts are no longer currently produced, but that are still in operation around the world.

services.<sup>20</sup> They fabricate current parts and reproduce parts that are no longer available.<sup>21</sup> Among the maintenance, repair, and overhaul services that the Debtors offer are the disassembly, cleaning, inspection, repair, and reassembly of airframes, engines, components, and accessories.<sup>22</sup> They also ensure that completed engines and components conform to applicable standards.<sup>23</sup>

*B. Events Leading to the Debtors' Bankruptcy*

The Debtors filed for bankruptcy under chapter 11 of the Bankruptcy Code due, in large part, to significantly declining revenues from the Debtors' defense and security and civil aviation business segments.<sup>24</sup> For the six months ended June 2016, revenues generated from these segments decreased by \$20.8 million and \$19.6 million, respectively, and the Debtors recognized a \$65 million operating loss.<sup>25</sup> The Debtors' decreased revenue from their defense and security segment was the result of the expiration of certain contracts, as well as the Department of Defense's decreased activity in the Middle East.<sup>26</sup> The Debtors' decreased revenue from their civil aviation segment was attributable to the loss of a firefighting contract with the United States Forest Service, which occurred as a result of the Debtors' loss of their small business qualification,<sup>27</sup> and to a reduction in services provided to the oil and gas industry.<sup>28</sup>

To turn their business around, the Debtors focused on integrating and consolidating their operations, reducing the size of their workforce, redoubling their efforts to secure profitable contracts, and implementing energy reduction initiatives.<sup>29</sup> Nevertheless, the Debtors' revenues continued to decline, causing reduced borrowing availability under their existing first lien

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<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

<sup>23</sup> See *id.*

<sup>24</sup> See *id.*, at p. 25.

<sup>25</sup> See *id.*

<sup>26</sup> See *id.*

<sup>27</sup> Prior to the Debtors' disqualification as a small business, they had won eight of the United States Forest Service's twelve exclusive use contracts.

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

revolving credit facility (the “First Lien Facility”).<sup>30</sup> The Debtors’ existing first lien lenders (the “First Lien Lenders”) demanded that they refinance the First Lien Facility or incur substantial penalties.<sup>31</sup> In addition, the Debtors were to make a \$14.1 million interest payment to their second priority senior secured note holders (the “Second Lien Lenders”) on November 1, 2016.<sup>32</sup> Because of the Debtors’ limited ability to borrow from the First Lien Facility, their accruing refinancing penalties, and the looming interest payment to the Second Lien Lenders, the Debtors were not able to make fleet adjustments necessary to perform under certain contracts, including a contract with the Military Sealift Command to take part in its Vertical Replenishment Program (the “Sealift Contract”).<sup>33</sup> Seemingly left with no other option, the Debtors petitioned the Court for relief under Chapter 11 of the Bankruptcy Code.<sup>34</sup>

### *C. Cast of Characters*

#### **1. The Debtors**

The Debtors, founded in 1971, operate and manufacture the Aircrane, as well as provide global aviation services.<sup>35</sup> They are headquartered in Portland, Oregon.<sup>36</sup> On November 8, 2016 (the “Petition Date”), each of the Debtors filed with the Court “voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code.”<sup>37</sup>

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<sup>30</sup> See [id.](#)

<sup>31</sup> See [id.](#), at p. 26.

<sup>32</sup> See [id.](#)

<sup>33</sup> See [id.](#) Under its Vertical Replenishment Program, the Military Sealift Command contracts with commercial helicopter operators to replenish the United States Navy’s active warships, allowing the ships to operate in far-flung areas for extended periods of time. The Sealift Contract promised to generate millions of dollars of revenue over its remaining five-year term, but without sufficient financing, the Debtors would be unable to purchase and make adjustments to the aircraft necessary to perform under the contract. In light of their declining revenues, securing the Sealift Contract represented a significant victory for the Debtors.

<sup>34</sup> See [id.](#), at p. 27.

<sup>35</sup> See [Debtors’ Disclosure Statement, Doc. No. 212, at p. 19.](#)

<sup>36</sup> See [id.](#), at p. 20.

<sup>37</sup> See [Debtors’ Disclosure Statement, Doc. No. 212, at p. 3-4.](#)

<b>Debtor Name</b>	<b>Debtor Case Number</b>
Evergreen Helicopters International, Inc.	16-34392
Erickson Incorporated	16-34393
EAC Acquisition Corporation	16-34394
Erickson Helicopters, Inc.	16-34395
Erickson Transport, Inc.	16-34396
Evergreen Equity, Inc.	16-34397
Evergreen Unmanned Systems, Inc.	16-34398

Their cases are being jointly administered under Case No. 16-34393.<sup>38</sup>

## **2. Court and Administrators**

The Honorable Harlin D. Hale is overseeing the case.<sup>39</sup> Judge Hale was appointed in 2002 and received his J.D. from Louisiana State University.<sup>40</sup> Prior to being appointed a bankruptcy judge, Judge Hale was a clerk for Justice James L. Dennis and worked in a private firm in Dallas practicing bankruptcy law.<sup>41</sup>

A trustee was not appointed in the case.

## **3. Attorneys, Firms, and Agents**

The Debtors are represented by Kenric D. Kattner, Kourtney Lyda, and Ian T. Peck from Haynes and Boone, LLP, out of Houston and Dallas.<sup>42</sup>

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<sup>38</sup> See [Debtors' KCC Website](#).

<sup>39</sup> See [Debtors' KCC Website](#).

<sup>40</sup> See [Ballotpedia](#).

<sup>41</sup> See *id.*

<sup>42</sup> See [Debtors' KCC Website](#).



The IRS is represented by Assistant United States Attorney Dawn Whalen Theiss.<sup>43</sup>

The Claims and Balloting Agent is Kurtzman Carson Consultants LLC.<sup>44</sup>

Imperial Capital, LLC is an investment-banking firm, which advised the Debtors in connection with their efforts to obtain prepetition and post-petition financing.

Numerous other attorneys and professionals are involved in the case, but they are not necessary to mention for purposes of this paper.

#### 4. Erickson Incorporated's Management

The following is a list of the management of Erickson, Incorporated.<sup>45</sup>

Name	Title
Jeffery G. Roberts	President/CEO
David W. Lancelot	VP/CFO
Robert H. Lewis	VP & Gen. Mgr. Commercial Business
Brian Pierson	VP: Global Defense & Security
Zachary Cotner	Investor Relations

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<sup>43</sup> See [United States of America's Objection to Debtor's Second Amended Joint Plan of Reorganization.](#)

<sup>44</sup> See [Debtors' Second Amended Chapter 11 Plan, Doc. No. 381, Ex. A, at p. 3.](#)

<sup>45</sup> See [Bloomberg Law - Company Management.](#) (Requires login information).

## 5. Major Unsecured Creditors

The creditors below represent the Debtors' twenty largest unsecured claims.<sup>46</sup>

Date Filed	Creditor	Debtor	Amount
03/17/2017	HeliFleet 2013-01, LLC	Erickson Helicopters, Inc.	\$17,605,485.00
03/20/2017	World Fuel Services, Inc.	Evergreen Helicopters International, Inc.	\$14,546,621.92
03/17/2017	HeliFleet 2013-01, LLC	Evergreen Equity, Inc.	\$3,980,993.00
03/17/2017	Zm Private Equity Fund I, L.P.	EAC Acquisition Corporation	\$2,272,975.00
03/21/2017	SENTRY AIRCRAFT LEASING 8, LLC	Erickson Incorporated	\$1,764,836.10
03/17/2017	10th Lane Finance Co.,LLC	EAC Acquisition Corporation	\$1,737,351.00
02/10/2017	Boeing Company	Erickson Incorporated	\$1,700,722.84
03/21/2017	Sentry Capital Corporation of Utah	Erickson Incorporated	\$1,307,042.35
03/17/2017	Zm Eac LLC	EAC Acquisition Corporation	\$1,264,433.00
03/21/2017	Sentry Aircraft Leasing 1, LLC	Erickson Incorporated	\$1,066,477.84
03/17/2017	Zm Private Equity Fund II, L.P.	EAC Acquisition Corporation	\$974,132.00
03/21/2017	SENTRY AIRCRAFT LEASING 3, LLC	Erickson Incorporated	\$785,379.24
02/02/2017	Heli-One (Norway) AS	Erickson Helicopters, Inc.	\$688,734.00
03/17/2017	Zm Private Equity Fund II, L.P.	Erickson Incorporated	\$589,044.00
03/17/2017	Zm Private Equity Fund I, L.P.	Erickson Incorporated	\$589,044.00
03/06/2017	Star-Cash LTD	Erickson Incorporated	\$550,000.00
03/20/2017	Coliseum Capital Partners, L.P.	Erickson Incorporated	\$526,607.34
03/16/2017	Howmet Corporation	Erickson Incorporated	\$376,100.00

<sup>46</sup> See [Debtors' KCC Website, Creditor Search](#).

03/21/2017	SENTRY AIRCRAFT LEASING 5, LLC	Erickson Incorporated	\$376,055.52
03/16/2017	Airbus DS Military Aircraft Inc	Erickson Helicopters, Inc.	\$369,834.29

## II. FIRST DAY MOTIONS

The first motion that the Debtors filed was one seeking the joint administration of the Debtors' cases.<sup>47</sup> The Debtors reasoned that the procedural consolidation of their cases would avoid duplication, saving the Court and all interested parties time and money.<sup>48</sup> Further, because the Debtors' cases would only be jointly administered for procedural purposes, the Debtors' creditors could still file claims against individual estates.<sup>49</sup> The Court granted the Debtors' motion on November 10, 2016.<sup>50</sup>

The Debtors also moved the Court to extend the deadline by which they were required to file certain schedules and financial statements, waive the requirement to file a list of and provide notice to their equity holders, and approve the form and manner of notifying their creditors of the commencement of the bankruptcy cases.<sup>51</sup> The Debtors determined that they required more time in which to file schedules and statements because of the size and complexity of their business, as well as the limited number of employees with the skill and knowledge required to adequately review the Debtors' records.<sup>52</sup> The Debtors petitioned for the waiver of the requirement that they provide a list of and notice to all of their equity holders because they did not maintain such a list, and they intended to provide notice to Erickson

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<sup>47</sup> See [Debtors' Emergency Motion for Joint Administration of Bankruptcy Cases, Doc. No. 5.](#)

<sup>48</sup> See [id.](#), at p. 5.

<sup>49</sup> See [id.](#)

<sup>50</sup> See [Order Directing Joint Administration of Debtors' Bankruptcy Cases, Doc. No. 39.](#)

<sup>51</sup> See [Debtors' Emergency Motion to Extend Time to File Schedules and Statements, to Waive Requirement to Provide List of and Notice to Equity Holders, and for Approval of Form and Manner of Notifying Creditors of Bankruptcy Cases, Doc. No. 7.](#)

<sup>52</sup> See [id.](#), at p. 4.

Incorporated's registered equity holders.<sup>53</sup> The Court granted the Debtors' motion on November 10, 2016.<sup>54</sup>

To further facilitate the restructuring of the Debtors' business, they also moved the Court to authorize the continued use of their existing business forms and records, the maintenance of their existing cash management system, which consists of bank accounts at Wells Fargo Bank, N.A. ("Wells Fargo"), the continuation of transactions with their non-debtor affiliates with administrative priority, and to waive certain U.S. Trustee requirements.<sup>55</sup> The Debtors' argued that the denial of their motion would result in undue administrative expense and delay.<sup>56</sup> The Court also granted this motion on November 10, 2016.<sup>57</sup>

Also on November 9, 2016, the Debtors filed a motion to reject three of their twenty-seven aircraft leases.<sup>58</sup> The Debtors determined that these leases were burdensome and no longer necessary to operate their business.<sup>59</sup> These leases were no longer necessary because the aircraft leased under them would no longer fit within the Debtors' business model and they had become too expensive to operate.<sup>60</sup> Despite a lessor's objection,<sup>61</sup> the Court granted the

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<sup>53</sup> See [id.](#), at pp. 6-7.

<sup>54</sup> See [Order Extending Time to File Schedules and Statements, Waiving Requirement to Provide List of and Notice to Equity Holders, and Approving Form and Manner of Notifying Creditors of Bankruptcy Cases, Doc. No. 50.](#)

<sup>55</sup> See [Debtors' Emergency Motion to Continue to Use Existing Business Forms and Records, to Maintain Existing Corporate Bank Accounts and Cash Management System, to Waive Certain U.S. Trustee Requirements, and to Continue Intercompany Transfers, Doc. No. 8.](#)

<sup>56</sup> See [id.](#), at p. 10.

<sup>57</sup> See [Order Authorizing Continued Use of Existing Business Forms and Records, Authorizing Maintenance of Existing Corporate Bank Accounts and Cash Management System, Authorizing Continued Intercompany Transactions, and Waiving Certain U.S. Trustee Requirements.](#)

<sup>58</sup> See [Debtors' First Omnibus Motion to Reject Certain Aircraft Leases, Doc. No. 22.](#)

<sup>59</sup> See [id.](#), at p. 3.

<sup>60</sup> See [id.](#), at p. 4.

<sup>61</sup> See [Copter Lease, LLC's Objection to Debtors' First Omnibus Motion to Reject Certain Aircraft Leases, Doc. No. 99.](#)

Debtors' motion to reject two of the three unnecessary aircraft leases on December 1, 2016,<sup>62</sup> and granted the Debtors' motion to reject the third on March 17, 2017.<sup>63</sup>

Among the other first day motions the Debtors filed were those to retain certain agents,<sup>64</sup> to continue their payment of insurance policies and financing obligations,<sup>65</sup> to make certain prepetition payments related to employees and independent contractors,<sup>66</sup> to maintain and honor prepetition warranty programs,<sup>67</sup> to prohibit utility companies from altering or discontinuing their services,<sup>68</sup> to pay certain prepetition taxes and assessments,<sup>69</sup> to make certain prepetition payments to fuel providers and vendors,<sup>70</sup> to pay certain prepetition obligations owed to foreign creditors,<sup>71</sup> and to establish notification and hearing procedures related to certain equity securities.<sup>72</sup> The Court entered interim and final orders, granting most of these motions, on November 10, 2016 and December 2, 2016, respectively. On December

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<sup>62</sup> See [Order Authorizing Rejection of Certain Aircraft Leases, Doc. No. 132](#).

<sup>63</sup> See [Order Authorizing Rejection of Certain Aircraft Lease, Doc. No. 528](#).

<sup>64</sup> See [Debtors' Emergency Motion to Retain and Appoint Kurtzman Carson Consultants LLC as Claims, Noticing, and Balloting Agent Nunc Pro Tunc, Doc. No. 9](#).

<sup>65</sup> See [Debtors' Emergency Motion to Continue to Make Payments Related to Their Insurance Policies and Financing Obligations, Doc. No. 10](#).

<sup>66</sup> See [Debtors' Emergency Motion to Make Certain Prepetition Payments Related to Employees and Independent Contractors, to Continue Employee Benefit Programs, to Modify the Automatic Stay as to Workers' Compensation Claims, and to Authorize Financial Institutions to Honor and Process Checks and Transfers Related Thereto, Doc. No. 11](#).

<sup>67</sup> See [Debtors' Emergency Motion to Maintain and Honor Prepetition Warranty Programs, Doc. No. 12](#).

<sup>68</sup> See [Debtor's Emergency Motion to Prohibit Utility Companies from Altering or Discontinuing Services, for Approval of Deposit Account as Adequate Assurance of Payment, and to Establish Procedures for Resolving Requests for Additional Assurances of Payment, Doc. No. 13](#).

<sup>69</sup> See [Debtors' Emergency Motion to Pay Certain Prepetition Taxes and Assessments, Doc. No. 14](#).

<sup>70</sup> See [Debtors' Emergency Motion to Make Certain Prepetition Payments to Fuel Providers, 503\(b\)\(9\) Claimants, Potential Lien Claimants, and Certain Essential Vendors, Doc. No. 15](#).

<sup>71</sup> See [Debtors' Emergency Motion to Pay Certain Prepetition Obligations Owed to Foreign Creditors, Doc. No. 16](#).

<sup>72</sup> See [Debtors' Emergency Motion to Establish Notification and Hearing Procedures Related to Certain Equity Securities, Doc. No. 17](#).

5, 2016, the Court entered an interim order, granting the Debtors' motion to prohibit utility companies from altering or discontinuing their services.<sup>73</sup>

### III. DEBTOR-IN-POSSESSION FINANCING

Also among the initial motions the Debtors filed on November 9, 2016 was one to obtain post-petition financing to meet their urgent capital needs (the "Post-Petition Financing Motion").<sup>74</sup> Erickson had been unable to meet those needs because of reduced borrowing availability under the First Lien Facility.<sup>75</sup> Without post-petition financing, Erickson stood to lose employees, relationships with critical vendors necessary to ensure continued operations, and valuable contracts, including the Sealift Contract.<sup>76</sup> Fortunately, the First Lien Lenders and the Second Lien Lenders agreed to provide the proposed financing.<sup>77</sup> The First Lien Lenders agreed to provide a first lien, super-priority revolving credit facility (the "DIP Revolving Facility"), and the Second Lien Lenders agreed to provide a second lien, super-priority term credit facility (the "DIP Term Facility," and, together with the DIP Revolving Facility, the "DIP Facilities").<sup>78</sup>

If a debtor-in-possession is unable to obtain credit that is otherwise allowable as an unsecured administrative expense, the court may authorize the obtaining of credit with priority over any or all administrative expenses, secured by a lien on unencumbered estate property, or secured by a junior lien on encumbered estate property.<sup>79</sup> A debtor-in-possession may also obtain credit secured by a senior lien on already encumbered property only where it may be shown that the debtor-in-possession is otherwise unable to obtain such credit, and that there is

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<sup>73</sup> See [Order Prohibiting Utility Companies from Altering or Discontinuing Services, Approving Deposit Account as Adequate Assurance of Payment, and Establishing Procedures for Resolving Requests for Additional Assurances of Payment, Doc. No. 139](#).

<sup>74</sup> See [Debtors' Emergency Motion to Obtain Post-Petition Financing, Doc. No. 18](#).

<sup>75</sup> See *id.*, at p. 17.

<sup>76</sup> See *id.*

<sup>77</sup> See *id.*, at pp. 23, 26.

<sup>78</sup> See *id.*

<sup>79</sup> 11 U.S.C. § 364(c)(1)-(3).

adequate protection of the prior lien holders' interests.<sup>80</sup> The debtor-in-possession bears the burden of proving that the prior lien holders' interests are adequately protected.<sup>81</sup>

In the Post-Petition Financing Motion, the Debtors argued that the proposed DIP Facilities were the only available options for debtor-in-possession financing.<sup>82</sup> After the First Lien Lenders refused Erickson's initial request to be the primary post-petition lenders, or, alternatively, to subordinate their interests, Erickson solicited financing from several third parties.<sup>83</sup> No third parties would provide the financing, however, due to the limited amount of time available to conduct due diligence, the junior status of any such financing, Erickson's lack of unencumbered assets, and the complexity of and limits imposed by Erickson's prepetition capital structure.<sup>84</sup> Unable to obtain debtor-in-possession financing from third parties, Erickson returned to its First Lien Lenders and Second Lien Lenders, who, after much negotiation, agreed to provide the DIP Facilities.<sup>85</sup> In support of the Post-Petition Financing Motion, the Debtors' provided the declarations of David Lancelot (the "Lancelot Declaration"),<sup>86</sup> Erickson's Chief Restructuring Officer, and Christopher Shepard (the "Shepard Declaration"),<sup>87</sup> the Co-Head of Investment Banking at the advisory and investment-banking firm of Imperial Capital, LLC ("Imperial"). Both the Lancelot Declaration and Shepard Declaration supported the Debtors' asserted inability to obtain financing by means other than the DIP Facilities.<sup>88</sup> The Lancelot Declaration discussed the potential third party lenders' reluctance to engage in a priming fight with the First Lien Lenders,<sup>89</sup> which would be necessary to grant a new lender priority over the First Lien Lenders, and the Shepard

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<sup>80</sup> 11 U.S.C § 364(d)(1)(A)-(B).

<sup>81</sup> 11 U.S.C § 364(d)(2).

<sup>82</sup> See [Debtors' Emergency Motion to Obtain Post-Petition Financing, Doc. No. 18, at pp. 33-35.](#)

<sup>83</sup> See [id.](#), at pp. 19-20.

<sup>84</sup> See [id.](#), at p. 21.

<sup>85</sup> See [id.](#) The First Lien Lenders and Second Lien Lenders agreed to provide the DIP Facilities in exchange for replacement liens on all of the Debtors' prepetition and post-petition collateral, as well as loans made under the DIP Facilities bearing interest at higher rates.

<sup>86</sup> See [Declaration of David Lancelot, Doc. No. 6.](#)

<sup>87</sup> See [Declaration of Christopher Shepard, Doc. No. 20.](#)

<sup>88</sup> See [Declaration of David Lancelot, Doc. No. 6, at p. 21; Declaration of Christopher Shepard, Doc. No. 20, at p. 7.](#)

<sup>89</sup> See [Declaration of David Lancelot, Doc. No. 6, at p. 21.](#)

Declaration described in detail the ultimately unsuccessful marketing process that Imperial conducted on behalf of the Debtors, citing the same reasons contained in the Post-Petition Financing Motion for its failure.<sup>90</sup>

The Post-Petition Financing Motion further argued that the proposed DIP Facilities provided adequate protection of the First Lien Lenders and Second Lien Lenders' prepetition interests.<sup>91</sup> The DIP Revolving Facility called for the application of the proceeds of the First Lien Lenders' prepetition collateral to the reduction of the prepetition first lien credit facility,<sup>92</sup> as well as provided the First Lien Lenders with current cash interest payments calculated at the non-default rate provided in the First Lien Lenders' prepetition credit agreement, and current cash payments for the reasonable and documented fees, costs, and expenses of the First Lien Lenders' legal counsel and other professional advisers.<sup>93</sup> The proposed DIP Term Facility provided the Second Lien Lenders with the continued accrual of interest calculated at the non-default rate provided in the Second Lien Lenders prepetition notes, and with current cash payments for the reasonable and documented fees, costs, and expenses of the Second Lien Lenders' legal counsel and other professional advisers.<sup>94</sup> In addition, the DIP facilities provided both the First Lien Lenders and Second Lien Lenders senior replacement liens on the Debtors' post-petition collateral.<sup>95</sup> In support, the Shepard Declaration concluded that the terms on which the DIP Facilities would be provided were fair and reasonable, and that they were typical of post-petition financing.<sup>96</sup> The First Lien Lenders and Second Lien Lenders also indicated their support for the court's approval of the DIP Facilities by entering into an agreement (the "Creditor Support Agreement") pursuant to which each promised to perform its obligations under the agreements related to the DIP Facilities.<sup>97</sup>

Following the filing of the Post-Petition Financing Motion, the Court entered an interim order (the "Preliminary Hearing Order") identical to the Debtors' proposed interim order, authorizing the Debtors to obtain the DIP Revolving Facility in a principal amount of

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<sup>90</sup> See [Declaration of Christopher Shepard, Doc. No. 20, at pp. 6-7.](#)

<sup>91</sup> See [Debtors' Emergency Motion to Obtain Post-Petition Financing, Doc. No. 18, at p. 38.](#)

<sup>92</sup> See [Declaration of David Lancelot, Doc. No. 6, at p. 27.](#)

<sup>93</sup> See [Debtors' Emergency Motion to Obtain Post-Petition Financing, Doc. No. 18, at p. 29.](#)

<sup>94</sup> See *id.*

<sup>95</sup> See [Debtors' Proposed Interim Order, Doc. No. 18-1, at pp. 38-41.](#)

<sup>96</sup> See [Declaration of Christopher Shepard, Doc. No. 20, at p. 8.](#)

<sup>97</sup> See [Creditor Support Agreement.](#)



\$116,000,000 and the DIP Term Facility in a principal amount of \$66,670,000.<sup>98</sup> The Court also authorized the Debtors to enter into the First Lien Super Priority Debtor-In-Possession Facility Credit Agreement (the “DIP Revolving Facility Agreement”), and the Second Lien Super Priority Debtor-In-Possession Credit Agreement (the “DIP Term Facility Agreement,” and, together with the DIP Revolving Facility Agreement, the “DIP Facility Agreements”) to implement the DIP Facilities.<sup>99</sup> On December 2, 2016, the Court entered a final order (the “Final Hearing Order”), substantially the same as the Preliminary Hearing Order, authorizing the Debtors to obtain the DIP Facilities on the terms set forth in the DIP Facility Agreements.<sup>100</sup>

#### A. *Terms of the Loans*

### 1. **The DIP Revolving Facility**

Effective as of November 8, 2016, the Debtors, Wells Fargo, HSBC Bank USA, N.A., Bank of the West, and Deutsche Bank Trust Company Americas (collectively, the “DIP Revolving Lenders”)<sup>101</sup> entered into the DIP Revolving Facility Agreement under which Wells Fargo acted as the administrative agent for the DIP Revolving Lenders, lead arranger, book runner, syndication agent, and documentation agent.<sup>102</sup> The proceeds of the DIP Revolving Facility were to be used to fund the Debtors’ continued operations, as well as to repay amounts owed under the prepetition first lien credit facility.<sup>103</sup>

Under the DIP Revolving Facility Agreement, the DIP Revolving Lenders agreed to make revolving loans to the Debtors at any given time not to exceed the lesser of the DIP Revolving Lenders’ respective commitments, or the DIP Revolving Lenders’ pro rata share of the lesser of amounts derived from the Maximum Revolver Amount<sup>104</sup> and a prescribed borrowing base.<sup>105</sup> Generally, to borrow under the DIP Revolving Facility, the Debtors must

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<sup>98</sup> See [Interim Order Authorizing the Debtors to Obtain Post-Petition Financing, Doc. No. 40, at pp. 2-3.](#)

<sup>99</sup> See [id.](#), at pp. 2-4.

<sup>100</sup> See [Final Order Authorizing the Debtors to Obtain Post-Petition Financing, Doc. No. 133.](#)

<sup>101</sup> To avoid confusion, the DIP Revolving Lenders are the same as the First Lien Lenders.

<sup>102</sup> See [DIP Revolving Facility Agreement, Doc. No. 114-1, p. 9.](#)

<sup>103</sup> See [id.](#)

<sup>104</sup> The Maximum Revolver Amount means \$130,763,851.06. However, that amount is to be decreased upon the payment of \$14,890,364, the first repayment of amounts owed under the prepetition first lien credit facility.

<sup>105</sup> See [DIP Revolving Facility Agreement, Doc. No. 114-1, p. 12.](#)

make a written request of Wells Fargo, who then alerts the remaining DIP Revolving Lenders to make available their pro rata shares.<sup>106</sup> Any DIP Revolving Lender that fails to timely remit its pro rata share to Wells Fargo must pay interest at a default rate until its pro rata share is remitted, and that lender is generally not entitled to any portion of payments made by the Debtors while in default.<sup>107</sup>

Upon the Debtors' payment of principal, interest, fees, and expenses, Wells Fargo must ratably apportion such amounts among the DIP Revolving Lenders, assuming none are in default.<sup>108</sup> Typically, the Debtors' payments must first be applied to reduce the amounts owed under the debtors' prepetition first lien credit facility, and then to reduce the amounts owed under the DIP Revolving Facility.<sup>109</sup> The Debtors must repay all of the amounts owed under the DIP Revolving Facility, including principal, interest, premiums, fees, costs, and expenses, on May 8, 2017 or the maturity date of the DIP Term Facility Agreement, whichever is earlier.<sup>110</sup> However, the Debtors may prepay any amounts owed under the DIP Revolving Facility at anytime without premium or penalty.<sup>111</sup> The repayment of the amounts owed under the DIP Revolving Facility is secured by a lien on all of the Debtors' assets that has priority over all other liens, except for the Second Lien Lenders' lien on the DIP Term Facility Priority Account.<sup>112</sup>

Unless the Debtors are in default, all amounts owed under the DIP Revolving Facility bear interest at either the LIBOR rate plus 7.5%, or a base rate<sup>113</sup> plus 6.5%.<sup>114</sup> If the Debtors

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<sup>106</sup> See [id.](#), at pp. 14-15.

<sup>107</sup> See [id.](#), at pp. 15, 19.

<sup>108</sup> See [id.](#), at p. 22.

<sup>109</sup> See [id.](#)

<sup>110</sup> See [id.](#), at pp. 27, 149.

<sup>111</sup> See [id.](#), at p. 25.

<sup>112</sup> See [DIP Intercreditor Agreement](#), pp. 14-15.

<sup>113</sup> The base rate equals the greatest of the federal funds rate plus 0.5%, the LIBOR rate plus 1%, and the Wells Fargo prime rate. See [DIP Revolving Facility Agreement](#), at pp. 121-22.

<sup>114</sup> See [id.](#), at pp. 27, 119, 121, 148.

are in default, the interest rate increases by 2%.<sup>115</sup> The Debtors' interest payments are generally due and payable on the first day of each month.<sup>116</sup>

Until maturity, the DIP Revolving Lenders must continue to extend credit under the DIP Revolving Facility to the Debtors unless the Debtors' representations and warranties<sup>117</sup> are materially false, default or an event of default has occurred, or an injunction, writ, or other order prohibiting the extension of such credit has been issued against the Debtors or any of the DIP Revolving Lenders.<sup>118</sup> Upon the DIP Revolving Facility's maturity, all outstanding amounts owed become immediately due and payable.<sup>119</sup>

An event of default will occur if the Debtors fail to make timely payments of amounts owed under the DIP Revolving Facility, fail to perform any covenant in the DIP Revolving Facility Agreement, have a judgment for \$20,000,000 or more entered against them, default under the DIP Term Facility Agreement, or experience a change in control, to name a few reasons.<sup>120</sup> Upon an event of default, Wells Fargo may accelerate all amounts owed under the DIP Revolving Facility, forgo extending further credit to the Debtors, and terminate the DIP Revolving Facility Agreement.<sup>121</sup>

Elsewhere included in the DIP Revolving Facility Agreement are fairly standard provisions, including an expansive indemnification provision, a choice of law provision,

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<sup>115</sup> See [id.](#), at pp. 27-28.

<sup>116</sup> See [id.](#), at p. 28.

<sup>117</sup> Among other representations and warranties, the Debtors represented and warranted that they were duly organized and qualified and authorized to enter into the DIP Revolving Facility Agreement, that they held good and valid interests in all of their respective assets, and that there were no threatened or pending actions, suits, or proceedings that could materially and adversely affect their business. The Debtors also made certain representations and warranties related to their spare parts, engines, aircraft, and FAA certificates, licenses and permits. Also pursuant to the DIP Revolving Facility Agreement, the Debtors covenanted that they would maintain insurance covering all of their assets, as well as certain insurance related to aircraft. The Debtors also made certain covenants related to the continued ownership and location of their inventory, engines, and aircraft.

<sup>118</sup> See [id.](#), at p. 46.

<sup>119</sup> See [id.](#)

<sup>120</sup> See [id.](#), at pp. 73-76.

<sup>121</sup> See [id.](#), at pp. 78-79.

provisions related to assignments, participations, amendments, and waivers, and other miscellaneous provisions.<sup>122</sup>

## 2. The DIP Term Facility

Also effective as of November 8, 2016, but dated December 8, 2016, the Debtors, Wayzata Opportunities Fund III, L.P., Wayzata Opportunities Fund Offshore III, L.P., Corbin Opportunity Fund, L.P., Foxhill Opportunity Fund, L.P., and MHR Institutional Partners IV, L.P. (collectively, the “DIP Term Lenders”)<sup>123</sup> entered into the DIP Term Facility Agreement under which Wilmington Savings Fund Society, FSB (“Wilmington”) served as administrative agent.<sup>124</sup>

Under the DIP Term Facility Agreement, the DIP Term Lenders agreed to make initial term loans to the Debtors not to exceed an aggregate amount of \$55,666,667, and subsequent term loans to the Debtors not to exceed an aggregate amount of \$11,000,000.<sup>125</sup> Unlike amounts lent by the DIP Revolving Lenders under the DIP Revolving Facility, amounts paid or prepaid under the DIP Term Facility may not be borrowed again.<sup>126</sup> The proceeds of the initial and subsequent term loans must be deposited in a specific account (the “DIP Term Facility Priority Account”) and held as cash on deposit.<sup>127</sup> To borrow under the DIP Term Facility, the Debtors must make a written request of Wilmington, who then alerts the DIP Term Lenders to make available their pro rata shares, which are then deposited in the DIP Term Facility Priority Account.<sup>128</sup> Any DIP Term Lender that fails to remit its pro rata share of the initial or subsequent term loan amounts is generally not entitled to any portion of payments

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<sup>122</sup> See [id.](#), at pp. 79-103.

<sup>123</sup> To avoid confusion, the DIP Term Lenders are the same as the Second Lien Lenders.

<sup>124</sup> See [DIP Term Facility Agreement](#), at p. 1.

<sup>125</sup> See [id.](#), at pp. 3. Corbin Opportunity Fund’s pro rata shares of the aggregate initial and subsequent term loan amounts are \$914,506 and \$180,710, respectively. Foxhill Opportunity Fund’s pro rata shares of the aggregate initial and subsequent term loan amounts are \$1,015,101 and \$200,589, respectively. MHR Institutional Partners IV’s pro rata shares of the aggregate initial and subsequent term loan amounts are \$26,141,315 and \$5,165,649, respectively. Wayzata Opportunities Fund III’s pro rata shares of the aggregate initial and subsequent term loan amounts are \$26,215,958 and \$5,180,399, respectively. Wayzata Opportunities Fund Offshore III’s pro rata shares of the aggregate initial and subsequent term loan amounts are \$1,379,787 and \$272,653, respectively. See [DIP Term Facility Agreement, Schedule C-1](#).

<sup>126</sup> See [id.](#), at p. 3.

<sup>127</sup> See [id.](#)

<sup>128</sup> See [id.](#), at p. 4.

made by the Debtors while in default.<sup>129</sup> After the DIP Term Facility Priority Account's funding, the Debtors may withdraw funds upon written request of Wilmington.<sup>130</sup>

Wilmington must ratably apportion the Debtors' payments of principal, interest, fees, and expenses among the DIP Term Lenders, assuming none are in default.<sup>131</sup> Generally, those payments must be applied to reduce the amounts owed under the DIP Term Facility.<sup>132</sup> With some exception, the Debtors may prepay amounts owed under the DIP Term Facility without premium or penalty; however, the amount of any prepayment must not be less than \$500,000.<sup>133</sup> The Debtors must pay certain of the DIP Term Lenders' expenses on the first day of the month following the date on which the expenses were incurred, and must pay the full amounts owed under the term loans on the earliest of May 10, 2017, the date of the consummation of a confirmed plan of reorganization, the date of the closing of a sale of all or substantially all of the Debtors' assets, or the date on which the term loans otherwise become due and payable.<sup>134</sup> The repayment of the amounts owed under the DIP Term Facility is secured by a lien on all of the Debtors' assets that is junior to the DIP Revolving Lenders' lien on the same collateral.<sup>135</sup> However, the DIP Term Lenders' lien on the DIP Term Facility Priority Account, securing the repayment of amounts owed under the DIP Term Facility, takes priority over all other liens or security interests.<sup>136</sup>

Generally, the term loans made under the DIP Term Facility bear interest at 12%; however, if the Debtors are in default, the rate increases by 2%.<sup>137</sup> The Debtors' interest payments are due and payable on the first day of each month, and amounts in arrears must be paid in full upon the term loans' maturity dates.<sup>138</sup> Additionally, upon repayment or

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<sup>129</sup> See [id.](#), at p. 5.

<sup>130</sup> See [id.](#), at p. 4.

<sup>131</sup> See [id.](#), at p. 6.

<sup>132</sup> See [id.](#)

<sup>133</sup> See [id.](#), at p. 7.

<sup>134</sup> See [id.](#), a p. 8. See also, [DIP Term Facility Agreement, Schedule 1.1, pp. 5, 15, 27.](#)

<sup>135</sup> See [DIP Intercreditor Agreement, pp. 14-16.](#)

<sup>136</sup> See [id.](#)

<sup>137</sup> See [DIP Term Facility Agreement, at p. 9.](#)

<sup>138</sup> See [id.](#)

prepayment of any of the term loans, the Debtors must pay an exit premium equal to 7.5% of the principal amount of the loans repaid or prepaid.<sup>139</sup>

As under the DIP Revolving Facility Agreement, the DIP Term Lenders must only extend credit under the DIP Term Facility if the Debtors' representations and warranties<sup>140</sup> are materially true, the Debtors are not in default, no order prohibiting the making of the term loans has been entered, and the extension of the term loans complies with the Debtors' debtor-in-possession budget.<sup>141</sup> The same conditions apply to the Debtors' withdrawals from the DIP Term Facility Priority Account.<sup>142</sup> Upon maturity, all outstanding amounts owed become immediately due and payable, and the DIP Term Lenders' obligations to make the term loans cease.<sup>143</sup>

Similar to the DIP Revolving Facility Agreement, the Debtors will be in default under the DIP Term Facility Agreement if they fail to make timely payments with respect to the term loans, fail to carry out any covenant in the agreement, have a judgment for \$16,665,000 or more entered against them, default under the DIP Revolving Facility Agreement, or experience a change in control.<sup>144</sup> If the Debtors experience an event of default, Wilmington may, at the written instruction of the DIP Term Lenders, declare all amounts owed under the DIP Term Facility immediately due and payable.<sup>145</sup> Wilmington may also cease extending credit to the Debtors, terminate the DIP Term Facility Agreement, and apply the funds in the DIP Term Facility Priority Account to the repayment of the term loans.<sup>146</sup>

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<sup>139</sup> See [id.](#), at p. 10.

<sup>140</sup> The Debtors made substantially the same representations, warranties, and covenants under the DIP Term Facility Agreement as in the DIP Revolving Facility Agreement. The Debtors also generally covenanted that the sum of their actual receipts would not be less than 87.5% of their projected receipts, that the sum of their actual operating disbursements would not exceed 112.5% of their projected operating disbursements, and that the sum of their actual cash flow after the payment of all debt obligations would not be less than 90% of their projected cash flow after the payment of all debt obligations.

<sup>141</sup> See [id.](#), at pp. 14-15.

<sup>142</sup> See [id.](#), at p. 15.

<sup>143</sup> See [id.](#)

<sup>144</sup> See [id.](#), at pp. 37-38.

<sup>145</sup> See [id.](#), at pp. 40-41.

<sup>146</sup> See [id.](#), at p. 41.

The remainder of the DIP Term Facility Agreement contains the standard provisions also found in the DIP Revolving Facility Agreement.<sup>147</sup>

#### IV. THE CHAPTER 11 PLAN

##### A. *Timeline for Plans and Disclosure Statements Filed*

The timeline for the plans and disclosure statements, and amendments thereto, are as follows:

Date Filed	Filing
12/23/2016	Debtors filed the Plan and Disclosure Statement <sup>148</sup>
1/19/2017	Debtors filed the Amended Plan and Disclosure Statement <sup>149</sup>
2/3/2017	Debtors filed Second Amended Plan and Second Amended Disclosure Statement <sup>150</sup>
3/6/2017	Order approving the Second Amended Disclosure Statement <sup>151</sup>
3/22/2017	Order confirming the Second Amended Plan <sup>152</sup>

##### B. *The Joint Plan of Reorganization and the Disclosure Statement*

On March 22, 2017, the Court confirmed the Debtors Second Amended Joint Plan of Reorganization (the “Second Amended Plan”) and the Second Amended Disclosure Statement in

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<sup>147</sup> See [id.](#), at pp. 41-65.

<sup>148</sup> See [Debtors’ Chapter 11 Plan, Doc. No. 211](#); [Debtors’ Disclosure Statement, Doc. No. 212](#).

<sup>149</sup> See [Debtors’ Amended Chapter 11 Plan, Doc. No. 332](#); [Debtors’ Amended Disclosure Statement, Doc. No. 333](#).

<sup>150</sup> See [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381](#); [Debtors’ Second Amended Disclosure Statement, Doc. No. 382](#).

<sup>151</sup> See [Order Approving Debtors’ Second Amended Disclosure Statement, Doc. No. 388](#).

<sup>152</sup> See [Order Confirming Debtors’ Second Amended Joint Plan of Reorganization, Doc. No. 581](#).

Support of the Second Amended Joint Plan of Reorganization (the “Second Amended Disclosure Statement”) which detailed the summary of the Claims<sup>153</sup> against Debtor.<sup>154</sup>

### 1. Administrative Claims and Priority Claims<sup>155</sup>

In Article II of the Plan, the following Classes of Claims and Interests were not classified for plan voting and treatment purposes: Administrative Claims,<sup>156</sup> Professional Compensation Claims,<sup>157</sup> DIP Revolving Facility Claims,<sup>158</sup> DIP Term Facility Claims,<sup>159</sup> and Priority Unsecured Tax Claims.<sup>160</sup> Each of these unclassified Claims will be paid if certain qualifications are met, and the unclassified Claims “shall be terminated and of no further force and effect.”<sup>161</sup> Administrative

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<sup>153</sup> See [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381, Ex. A, at p. 3](#). (“Claim means a “claim,” as defined in Bankruptcy Code § 101(5), Filed against any of the Debtors.”).

<sup>154</sup> See [id.](#); [Debtors’ Disclosure Statement, Doc. No. 212](#).

<sup>155</sup> See [Debtors’ Chapter 11 Plan, Doc. No. 211, at p. 1-2](#). Pursuant to the Plan, Article I provides that the Glossary of Defined Terms attached as Exhibit A and the usual rules of interpretation provision. The governing law for the Plan is the Bankruptcy Code. Further, any reference to Debtors or Reorganized Debtors is intended to include both parties which is defined basically as Erickson Inc. and its subsidiaries.

<sup>156</sup> See [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381, Ex. A, at p. 1](#). (“Administrative Claim means a Claim, Cause of Action, right, or other liability, or the portion thereof, that is entitled to priority under Bankruptcy Code sections 503(b), 507(a)(2), and 507(b), including (i) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and/or in connection with operating the Debtors’ businesses (such as wages, salaries, or payments for goods and services); (ii) Professional Compensation Claims; and (iii) all fees and charges assessed against the Estates under 28 U.S.C. § 1930. The term Administrative Claim specifically excludes all Intercompany Claims.”).

<sup>157</sup> See [id.](#), [Ex. A, at p. 14](#). (“Professional Compensation Claim means a Claim for compensation or reimbursement of expenses of a Professional incurred on and after the Petition Date and prior to the Effective Date, including fees and expenses incurred in preparing final fee applications and participating in hearings on such applications, and requested in accordance with the provisions of Bankruptcy Code sections 326, 327, 328, 330, 331, 503(b) or 1103.”).

<sup>158</sup> See [id.](#), [Ex. A, at p. 5](#). (“DIP Revolving Facility Claim means a Claim held by any of the DIP Revolving Facility Parties arising under or relating to the DIP Revolving Facility Credit Agreement or the DIP Financing Order, including any and all fees, interest paid in kind, and accrued but unpaid interest and fees arising under the DIP Revolving Facility Credit Agreement, and all Obligations as defined thereunder.”).

<sup>159</sup> See [id.](#), [Ex. A, at p. 6](#). (“DIP Term Facility Claim means a Claim held by any of the DIP Term Facility Parties arising under or relating to the DIP Term Facility Credit Agreement or the DIP Financing Order, including any and all fees, interests paid in kind, and accrued but unpaid interest and fees arising under the DIP Term Facility Credit Agreement.”).

<sup>160</sup> See [id.](#), [at p. 2](#). See Bankruptcy Code section 1123(a)(1).

<sup>161</sup> See [id.](#), [at pp. 2-4](#).



Claims will be paid so long as the claim was allowed and the request filed and served no later than the Administrative Claim Bar Date.<sup>162</sup> If the Administrative Claim was not filed and served before this bar date, then it will be forever barred.<sup>163</sup> DIP Revolving Facility Claims will be paid in full unless the holder agreed to a less favorable treatment.<sup>164</sup> DIP Term Facility Claims holders will receive “its Pro Rata share of (1) the New Second Lien Credit Facility, as set forth on Annex A to the Plan, and (2) the DIP Equity Distribution.”<sup>165</sup> Similar to the Administrative Claims, the Professional Compensation Claim holders will be required to file and serve their requests before the Professional Compensation Claim Bar Date.<sup>166</sup> However, after the Confirmation Date, the Debtors will pay Cash to Professional Compensation Claims holders, subject to court approval of their fees and expenses.<sup>167</sup> Priority Unsecured Tax Claim holders will be treated in accordance with section 1129(a)(9)(C) and 507(a)(8) of the Bankruptcy Code.<sup>168</sup>

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<sup>162</sup> See [id., Ex. A, at p. 1](#). (“Administrative Claim Bar Date means the first Business Day that is thirty (30) days after the Effective Date or such earlier deadline established by an order of the Bankruptcy Court.”).

<sup>163</sup> See [id., at p. 2-3](#).

<sup>164</sup> See [id., at p. 3](#). (This provision is applicable to all Excluded Classes of Claims and Interests in Article II.)

<sup>165</sup> See [id.](#) . See Debtor-In-Possession Financing Section. Annex A is the DIP Term Facility Claim Distribution Term Sheet.

<sup>166</sup> See [id., at p. 4](#); [id., Ex. A, at p. 14](#) (“Professional Compensation Claim Bar Date means forty-five (45) days after the Effective Date.”).

<sup>167</sup> See [id.](#).

<sup>168</sup> See [id.](#); [id., Ex. A, at p. 14](#). Section 1129 is the Confirmation of the Plan.

## 2. Classification and Treatment of Claims and Interests

Article III of the Plan provided “for the resolution of Claims against and Interests in the Debtors and implement[ed] a distribution scheme pursuant to the Bankruptcy Code.”<sup>169</sup> The Plan separated the Claims and Interests into the following classes:<sup>170</sup>

<b>Class</b>	<b>Class Description</b>	<b>Status</b>	<b>Voting Rights</b>
Class 1	Other Priority Unsecured Claims	Impaired	Entitled to Vote
Class 2	Other Secured Claims	Impaired	Entitled to Vote
Class 3	Secured Tax Claims	Impaired	Entitled to Vote
Class 4	Existing First Lien Credit Facility Claims	Impaired	Entitled to Vote
Class 5	Existing Second Lien Secured Claims	Impaired	Entitled to Vote
Class 6	Existing Second Lien Convenience Claims	Impaired	Entitled to Vote
Class 7	General Unsecured Claims	Impaired	Entitled to Vote
Class 8	Intercompany Claims	Unimpaired/ Impaired	Not Entitled to Vote (Deemed to Reject)
Class 9	Erickson Incorporated Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
Class 10	Intercompany Interests	Unimpaired	Not Entitled to Vote (Deemed to Reject)

The Amended Plan and the Second Amended Plan both removed the Class 6 Claims of Existing Second Lien Convenience Claims as follows:<sup>171</sup>

<sup>169</sup> See [Debtors’ Disclosure Statement, Doc. No. 212, at p. 1](#). (providing that distributions shall be made with: (1) Cash on hand, including Cash from operations; (2) the New Common Stock; (3) the New First Lien Credit Facility (4) the New Second Lien Credit Facility; (5) the Rights; (6) the proceeds from the Rights Offering; and (7) interests in the Litigation Trust, as applicable); Chapter 11 Plan, Doc. No. 211, at p. 4 (“in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code”).

<sup>170</sup> See [Debtors’ Chapter 11 Plan, Doc. No. 211, at pp. 4-5](#). “The Plan groups the Debtors together solely for the purpose of describing treatment of Claims and Interests under the Plan and confirmation of the Plan.”

<sup>171</sup> See [Debtors’ Amended Chapter 11 Plan, Doc. No. 332, at p. 5](#); [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381, at p. 5](#).

<b>Class</b>	<b>Class Description</b>	<b>Status</b>	<b>Voting Rights</b>
Class 1	Other Priority Unsecured Claims	Impaired	Entitled to Vote
Class 2	Other Secured Claims	Impaired	Entitled to Vote
Class 3	Secured Tax Claims	Impaired	Entitled to Vote
Class 4	Existing First Lien Credit Facility Claims	Impaired	Entitled to Vote
Class 5	Existing Second Lien Secured Claims	Impaired	Entitled to Vote
Class 6	General Unsecured Claims	Impaired	Entitled to Vote
Class 7	Intercompany Claims	Unimpaired/ Impaired	Not Entitled to Vote (Deemed to Reject)
Class 8	Erickson Incorporated Interests	Impaired	Not Entitled to Vote (Deemed to Reject)
Class 9	Intercompany Interests	Unimpaired	Not Entitled to Vote (Deemed to Reject)

Convenience Claims are claims that are small (e.g. in the hundreds or thousands of dollars range) and numerous are often grouped into a single class and settled for cash for administrative convenience.<sup>172</sup> However, under the Second Amended Plan, an “Eligible Offeree” means a holder of a Second Lien Convenience Claim that elects to have its claim treated as Class 5 Existing Second Lien Secured Claims.<sup>173</sup> Hence, the Debtor either settled these Claims or the holder elected to have them treated as Class 5 Claims, both of which resulted in the removal of the Class 6 Claims.

Article III also contains the treatment of the Claims and Interests which includes details regarding the voting, classification, treatment, and allowance for each class.<sup>174</sup> Generally, holders of Claims and Interests will submit Ballots by the deadline to the balloting agent, Kurtzman Carson

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<sup>172</sup> See [Glossary of Bankruptcy Terms](#).

<sup>173</sup> See [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381, at p. 7](#).

<sup>174</sup> See [Debtors’ Second Amended Disclosure Statement, Doc. No. 382, at p. 8](#).

Consultants LLC.<sup>175</sup> There are some special instructions for Beneficial Holders, Nominees, and others.<sup>176</sup>

Further, a class may be designated as impaired or unimpaired. Pursuant to the Bankruptcy Code, a class of claims is impaired unless certain conditions are met which will render the class unimpaired.<sup>177</sup> Pursuant to 11 U.S.C. § 1124, there are five conditions that, if satisfied, render the class unimpaired: cure of any default, reinstatement of the maturity of such Claim, compensation to the holder of such Claim for any damages incurred as a result of any reasonable reliance, Claim arising from failure to perform a nonmonetary obligation, and does “not otherwise alter the legal, equitable, or contractual rights to which such Claim or interest entitles the holder of such Claim or interest.”<sup>178</sup> If one of these conditions is not met, the class is considered “impaired.” An impaired class has the right to vote to reject the Second Amended Plan, while an unimpaired class does not have voting rights and is deemed to accept the Second Amended Plan.<sup>179</sup> Here, the Second Amended Plan provides that Classes 1 through 6 and 8 were impaired, while Class 7 was either impaired or unimpaired, and Class 9 was unimpaired. Also, Article III of the Disclosure Statement provides the standard Cramdown provision.<sup>180</sup>

The Glossary of Defined Terms provides that “Allowed” means any Claim or Interest: for which Proof of Claim or Interest was filed (subject to objection); for which Proof of Claim is listed in a Debtors’ Schedules of Assets and Liabilities or Schedule of Equity Security holders and is not listed as contingent, unliquidated, or disputed; or that is deemed Allowed by the Plan.<sup>181</sup> To determine the Allowed amount of a claim, “there shall be deducted therefrom the amount of any

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<sup>175</sup> See [id.](#); [id.](#), Ex. A, at p. 2. (“Ballot means the applicable form or forms of ballot(s) to be distributed to holders of Claims entitled to vote on the Plan and on which the acceptance or rejection of the Plan is to be indicated.”).

<sup>176</sup> See [id.](#); [id.](#), Ex. A, at p. 2 (“Beneficial Holder Ballot means the Ballot applicable to a beneficial holder who holds Existing Second Lien Secured Claims and Existing Second Lien Convenience Claims as a record holder its own name.”).

<sup>177</sup> See [11 U.S. Code § 1124](#). See [Debtors’ Second Amended Disclosure Statement, Doc. No. 382, at p. 11](#).

<sup>178</sup> See [Debtors’ Second Amended Disclosure Statement, Doc. No. 382, at p. 11](#).

<sup>179</sup> See [id.](#)

<sup>180</sup> See [id.](#), at p. 18.

<sup>181</sup> See [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381, Ex. A, at p. 1](#); [id.](#), Ex. A, at p. 16. (“Schedules of Assets and Liabilities means the schedules of assets and liabilities Filed by the Debtors in the Chapter 11 Cases, as may be amended, modified, or supplemented.”) and (“Schedule of Equity Security Holders means the schedule of Interests required to be Filed pursuant to Bankruptcy Rule 1007(a)(3).”).

claim that the Debtors may hold against the Creditor or equity security holder” – in other words, the Debtors will set off mutual debts or obligations against holders’ claims or interests.<sup>182</sup>

Article III.C. provides a summary of classification of Claims and Interests as described below. It should be noted that for the treatment of each Class, each creditor in the class will be able to agree to less favorable treatment in full and final satisfaction of their Claim.<sup>183</sup>

#### Class 1 – Other Priority Unsecured Claims

Class 1 Claims require the consent of the Required Investor Parties.<sup>184</sup> After the Effective Date,<sup>185</sup> these Claims will receive, in full and final satisfaction, payment in full in Cash or treatment consistent with the requirements of Section 1129(a)(9) of the Bankruptcy Code.<sup>186</sup> Class 1 Claims will be Impaired and entitled to vote on the Second Amended Plan.<sup>187</sup>

#### Class 2 – Other Secured Claims

After the Effective Date, Class 2 Claims will receive either Payment in Full in Cash,<sup>188</sup> “collateral securing its Claim; “provided, however, any collateral remaining after satisfaction of such Allowed Class 2 Claim shall revert in the applicable Reorganized Debtor pursuant to the

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<sup>182</sup> See [id.](#), at pp. 5-9.

<sup>183</sup> See [id.](#)

<sup>184</sup> See [id.](#) (Classes 2, 3, and 8 also require consent of the Required Investor Parties.); [id.](#), Ex. A, at p. 15 (“Required Investor Parties means holders of a t least 66.7% of the DIP Term Facility Claims and the commitments under the Backstop Agreement.”).

<sup>185</sup> See [id.](#), Ex. A, at p. 7. (“Effective Date means the date that is the first Business Day after the Confirmation Date, subject to certain conditions.”)

<sup>186</sup> See [id.](#), at p. 6. Section 1129(a)(9) provides alternatives for the holder of the Claim to receive, such as deferred cash payments and installment payments.

<sup>187</sup> See [id.](#)

<sup>188</sup> See [id.](#), Ex. A, at p. 7. (“Paid in Full or Payment in Full means, with respect to the Existing First Lien Credit Facility Claims and the DIP Revolving Facility claims, “payment in full” of such Claim within the meaning of such phrase as used in Section 1.4 of the DIP Revolving Facility Credit Agreement.”).

Plan,” or Reinstatement of its Claim.<sup>189</sup> Class 2 Claims will be Impaired and entitled to vote on the Second Amended Plan.<sup>190</sup>

### Class 3 – Secured Tax Claims

Class 3 Claims will be provided the same treatment as Class 2 Claims above.

### Class 4 – Existing First Lien Credit Facility Claims

Class 4 Claims will be Allowed “in an amount equal to the amount” of the Claims “accrued or incurred as of the Effective Date.”<sup>191</sup> This Class of Claims will pay off the pre-petition amounts owed to the First Lien Credit Facility. Class 4 Claims will receive Payment in Full in Cash; however, there will be no distribution of the Refinancing Accommodation Fee.<sup>192</sup> Further, this Class will be Impaired and entitled to vote on the Plan.<sup>193</sup>

### Class 5 – Existing Second Lien Secured Claims

Class 5 Claims will be Allowed in an aggregate amount which is not defined in the Plan.<sup>194</sup> Under the Plan, the Class received its Pro Rata share of the Second Lien Equity Distribution or Pro Rata share of Rights to participate in the Rights Offering, as applicable.<sup>195</sup> Class 5 Claims were Impaired and entitled to vote on the Plan.<sup>196</sup>

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<sup>189</sup> See [id.](#); [id.](#), Ex. A, at p. 15 (“Reinstate, Reinstated, or Reinstatement means with respect to Claims and Interests, that the Claim or Interest shall be rendered Unimpaired in accordance with Bankruptcy Code section 1124.”).

<sup>190</sup> See [id.](#)

<sup>191</sup> See [id.](#), at p. 7.

<sup>192</sup> See [id.](#); [id.](#), Ex. A, at p. 15 (“Refinancing Accommodation Fee means the Refinancing Accommodation Fee, as defined and set forth in the Amendment Fee Letter, dated as of July 22, 2016, among Erickson, Erickson Helicopters, Inc. and the Existing First Lien Agent.”).

<sup>193</sup> See [id.](#)

<sup>194</sup> See [Debtors’ Chapter 11 Plan, Doc. No. 211, at p. 8.](#) The amount defined by the Plan is [●] which is assumed that the amount will be defined at a later date.

<sup>195</sup> See [Debtors’ Chapter 11 Plan, Doc. No. 211, at p. 8.](#)

<sup>196</sup> See [id.](#)

The Amended and Second Amended Plan provide that the amount equals the value of the Second Lien Equity Distribution<sup>197</sup> based on the Plan Equity Value.<sup>198</sup> They also provide that Class 5 Claims will receive their Pro Rata share of the Second Lien Equity Distribution, unless they vote to reject the Second Amended Plan resulting in their Class 5 Claim being deemed an Allowed Existing Second Lien Deficiency Claim in Class 6.<sup>199</sup>

(Removed) Class 6 – Existing Second Lien Convenience Claims

Class 6 Claims would have received the lesser of “(i) its Pro Rata share of the Convenience Claim Cash Pool and (ii) Cash in an amount equal to [●]% of the outstanding principal amount of such holder’s Allowed Existing Second Lien Convenience Claim.”<sup>200</sup> Further, if the holder of a Claim failed to make an election, then it would not have been entitled to receive Rights in the Rights Offering.<sup>201</sup> The Claims would have been Impaired and entitled to vote on the Plan.<sup>202</sup>

However, as noted above, Class 6 Claims were removed from the Plan and Amended Plan.<sup>203</sup>

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<sup>197</sup> [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381, at p. 7](#); [id., Ex. A, at p. 17](#) (“Second Lien Equity Distribution means 100% of the New Common Stock issued on the Effective Date, subject to dilution for the DIP Equity Distribution, the Rights Offering common Stock and the Management Incentive Plan.” The Second Amended Plan provides the same definition.”).

<sup>198</sup> See [id., Ex. A, at p. 14](#) (“Plan Equity Value means the enterprise value of the Reorganized Debtors on a consolidated basis as of the Effective Date, increased by the proceeds of the Rights Offering and decreased by the amount of indebtedness and capitalized leases after consummation of the Restructuring Transactions.”).

<sup>199</sup> See [id., at p. 7](#).

<sup>200</sup> See [Debtors’ Chapter 11 Plan, Doc. No. 211, at p. 8](#)

<sup>201</sup> See [id.](#)

<sup>202</sup> See [id.](#)

<sup>203</sup> See [Debtors’ Amended Chapter 11 Plan, Doc. No. 332, at p. 5](#); [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381, at p. 5](#).

### Class 6 – General Unsecured Claims

Class 6 Claims will be Allowed in full and not subject to challenge.<sup>204</sup> Class Claims will receive its Pro Rata share of the Litigation Trust Interests.<sup>205</sup> The Litigation Trust is a liquidating grantor trust for the purpose of liquidating and distributing the Litigation Trust Assets pursuant to the Litigation Trust Agreement.<sup>206</sup> The Beneficiaries will be the Grantors of the Trust and are entitled to distributions, on the Effective Date, from the Trust at the discretion of the Litigation Trustee.<sup>207</sup> The Litigation Trustee will be chosen by the Required Investor Parties.<sup>208</sup> These Claims will be Impaired and entitled to vote on the Seconded Amended Plan.<sup>209</sup>

### Class 7 – Intercompany Claims

Class 7 Claims will be “either Reinstated or cancelled and released without any distribution.”<sup>210</sup> Reinstated simply means that the Claims will be rendered Unimpaired.<sup>211</sup> For voting purposes, the Claim may be Unimpaired if it is Reinstated, or Impaired if it is cancelled.<sup>212</sup> Further, Class 7 Claims will not be entitled to vote on the Seconded Amended Plan.<sup>213</sup>

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<sup>204</sup> See [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381, at p. 8.](#)

<sup>205</sup> See [id.; Ex. A, at p. 11](#) (“Litigation Trust Interests means the beneficial interests in the Litigation Trust issued to holders of Allowed General Unsecured Claims pursuant to Article III.D.7 of the Plan.”) and (“Litigation Trust Funding Amount means \$300,000.00 to be distributed by the Debtors to the Litigation Trust on the Effective Date to fund the operation of the Litigation Trust in accordance with the Litigation Trust Agreement.”).

<sup>206</sup> See [id., at p. 18.](#)

<sup>207</sup> See [id., at p. 19.](#)

<sup>208</sup> See [id.](#)

<sup>209</sup> See [id., at p. 8.](#)

<sup>210</sup> See [id., at p. 9.](#)

<sup>211</sup> See [id., Ex. A, at p. 15.](#)

<sup>212</sup> See [id., at p. 9.](#)

<sup>213</sup> See [id.](#)



### Class 8 – Erickson Incorporated Interests

Class 8 Claims “shall be cancelled and released without any distribution.”<sup>214</sup> For voting, Class 8 Claims will be: Impaired, deemed to have rejected the Second Amended Plan, and not entitled to vote on the Second Amended Plan.<sup>215</sup>

### Class 9 – Intercompany Interests

Class 9 Claims “shall receive no distribution and shall be Reinstated for administrative purposes only at the election of the Reorganized Debtors.”<sup>216</sup> The Claims will be Unimpaired and deemed to accept the Second Amended Plan.<sup>217</sup>

## **3. Means for Implementation of the Plan**

After the Effective Date, each Debtor will continue to exist.<sup>218</sup> On the Effective Date, the Debtors will establish the New Board and accept the Management Incentive Plan and the New Organizational Documents.<sup>219</sup> The New Board will consist of 5 to 7 members chosen by the Required Investor Parties.<sup>220</sup> The identities of the New Board members will be identified in the Plan Supplement.<sup>221</sup> The Management Incentive Plan terms “include[d] options providing for an aggregate of up to [5]% pro forma ownership of equity securities in Reorganized Erickson after issuance of all New Common Stock on or as of the Effective Date, including the Rights Offering Common Stock and the DIP Equity Distribution.”<sup>222</sup>

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<sup>214</sup> See [id.](#)

<sup>215</sup> See [id.](#)

<sup>216</sup> See [id.](#)

<sup>217</sup> See [id.](#)

<sup>218</sup> See [id.](#), at p. 11.

<sup>219</sup> See [id.](#) (“New Board means the board of directors of the Reorganized Debtors selected in accordance with Article IV.I of the Plan. The identities and affiliations of the members of the New Board shall be identified in the Plan Supplement on or before the date of the Confirmation Hearing, to the extent known at such time.”).

<sup>220</sup> See [id.](#), at p. 16.

<sup>221</sup> See [id.](#)

<sup>222</sup> See [id.](#), at p. 17.

On the Effective Date, the Debtors will enter into any transaction implementing the Second Amended Plan.<sup>223</sup> These Restructuring Transactions will include the execution and delivery of appropriate agreements, instruments of transfer, filing of appropriate certificates, and all other actions necessary to implement the Second Amended Plan.<sup>224</sup>

Pursuant to the Second Amended Plan,

Distributions under the Plan shall be made with: (1) Cash on hand, including Cash from operations; (2) the New Common Stock; (3) the New First Lien Credit Facility (4) the New Second Lien Credit Facility; (5) the Rights; (6) the proceeds from the Rights Offering; and (7) interests in the Litigation Trust, as applicable.<sup>225</sup>

New Common Stock will be issued for the Management Incentive Plan, as explained below, without any further action by the holders of Claims.<sup>226</sup> All other Claims will be issued, on the Effective Date, pursuant to the Second Amended Plan after the Debtors accept the New Organizational Documents.<sup>227</sup> The Second Amended Plan provides that the Debtors execute the New First Lien Credit Facility Documents upon approval through Confirmation.<sup>228</sup> These Documents will also grant the First Lien Credit Facility a secured interest in the collateral which priority is set out in those documents.<sup>229</sup> The Second Lien Credit Facility will be offered the same treatment as the First Lien Credit Facility.<sup>230</sup> The Liens for both Facilities “shall vest in each respective [] Debtor, free and clear of all liens, Claims, charges, or other encumbrances” as of the Effective Date.<sup>231</sup>

The Rights Offering will be consummated after the Approval Order, which is the Final Order approving the Disclosure Statement and Rights Offering Procedures, “through which Eligible Offerees shall be allocated Rights to acquire Rights Offering Common Stock in

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<sup>223</sup> See [id.](#), at p. 11.

<sup>224</sup> See [id.](#)

<sup>225</sup> See [id.](#), at p. 12.

<sup>226</sup> See [id.](#)

<sup>227</sup> See [id.](#)

<sup>228</sup> See [id.](#)

<sup>229</sup> See [id.](#), at p. 13.

<sup>230</sup> See [id.](#)

<sup>231</sup> See [id.](#), at p. 14.

accordance with the Rights Offering Procedures.”<sup>232</sup> Eligible Offerees will include holders of Class 5 Claims and holders of Class 6 Claims which were deemed Class 5 Claims.<sup>233</sup> The Backstop Agreement, upon approval by the Required Investor Parties, will backstop the Rights Offering and contain the Rights Offering Procedures which are subject to approval by the Bankruptcy Court.<sup>234</sup>

On the Effective Date, the Second Amended Plan will cancel all existing securities and agreements evidencing Claims and all obligations of the Debtor will be satisfied.<sup>235</sup> However, the DIP Term Facility Credit Agreement and the DIP Revolving Facility Credit Agreement will continue to be in full force and effect.<sup>236</sup> Further, the New Board and officers of the Debtors will be granted the authority necessary to implement the plan through any actions necessary.<sup>237</sup>

The Management Incentive Plan will be adopted on the Effective Date.<sup>238</sup> The Management Incentive Plan’s terms provide for 5% of ownership of equity securities in Debtors which will be issued after the New Common Stock.<sup>239</sup> This offer will be only available to officers and directors of the Debtors.<sup>240</sup>

The employee and retiree benefits plans of the Debtor will be assumed by the Reorganized Debtor and “the Reorganized Debtors will continue to honor such agreements.”<sup>241</sup>

#### **4. Treatment of Executory Contracts and Unexpired Leases**

On the Effective Date, all Executory Contracts or Unexpired Leases will be deemed assumed unless rejected by the Debtors pursuant to the Second Amended Plan.<sup>242</sup> The Second Amended Plan will reject executory contracts and unexpired leases through the Schedule of

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<sup>232</sup> See [id.](#), at p. 13.

<sup>233</sup> See [id.](#), Ex. A, at p. 7.

<sup>234</sup> See [id.](#), at pp. 13-14; See [id.](#), Ex. A, at p. 16.

<sup>235</sup> See [id.](#), at p. 14.

<sup>236</sup> See [id.](#), at pp. 14-15.

<sup>237</sup> See [id.](#), at pp. 15-16.

<sup>238</sup> See [id.](#), at pp. 16.

<sup>239</sup> See [id.](#)

<sup>240</sup> See [id.](#), Ex. A, at p. 11.

<sup>241</sup> See [id.](#), at p. 18.

<sup>242</sup> See [id.](#), at p. 20.

Rejected Contracts and Leases, Schedule of Rejected Aircraft Leases, and motions to reject Executory Contracts or Unexpired all of which are subject to confirmation by the Bankruptcy Court.<sup>243</sup> Holders of Claims which are subject to rejection filed Claims of Proof within a certain time period or will be barred forever if it failed to meet the deadline.<sup>244</sup>

For the assumed Executory Contracts or Unexpired Leases, the Debtors will cure all defaults in Cash on the Effective Date.<sup>245</sup> The Debtors provide 10 days' notice of the cure amounts to the Holders who will have 7 days to file their claim and objection to the proposed cure amount.<sup>246</sup> If a Holder fails to file and object, the proposed cure amount will be deemed accepted in Full Satisfaction of the Claim.<sup>247</sup>

## 5. Provisions Governing Distributions

On the Effective Date, holders of Allowed Claims will receive “the full amount of the distribution that the Second Amended Plan provides for Allowed Claims or Allowed Interests in the applicable Class.”<sup>248</sup> The Debtors will select an agent that will manage all distributions under the Second Amended Plan.<sup>249</sup> That Agent will be compensated by the Debtors and will be granted all authority and discretion necessary to carry out the distributions under the Second Amended Plan.<sup>250</sup> Neither fractional shares of New Common Stock will be issued (rounding up and down as applicable), nor cash distributions less than \$50.00 made to the holders of Allowed Claims.<sup>251</sup> If a distribution is undeliverable, the agent will attempted re-delivery to a new address; however, the unclaimed property or interests will reverted to the Debtors after one year.<sup>252</sup> Under the Second Amended Plan, all Existing Second Lien Secured Claims in Class 5 will be made to the Indenture Trustee, Wilmington Trust.<sup>253</sup>

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<sup>243</sup> See [id.](#)

<sup>244</sup> See [id.](#), at p. 21.

<sup>245</sup> See [id.](#), at p. 22.

<sup>246</sup> See [id.](#)

<sup>247</sup> See [id.](#)

<sup>248</sup> See [id.](#), at p. 24.

<sup>249</sup> See [id.](#)

<sup>250</sup> See [id.](#)

<sup>251</sup> See [id.](#)

<sup>252</sup> See [id.](#)

<sup>253</sup> See [id.](#)

There will be six different manners of payment, as follows:

1. All distributions of the New Common Stock to the holders of Allowed Claims under the Plan shall be made by the Debtors' agent.
2. All distributions of the New Second Lien Credit Facility to the holders of Allowed DIP Term Facility Claims under the Plan shall be made by the Debtors' agent.
3. All distributions of the Rights to the holders of Allowed Claims under the Plan shall be made by the Debtors' agent.
4. All distributions of Cash to the holders of Allowed Claims under the Plan shall be made by the Debtors' agent.
5. At the option of the Debtors' agent, cash payments may be made by check or wire transfer or as otherwise required or provided in applicable agreements.
6. All distributions pursuant to Article II.B. and Article III.D.4. shall be made by the Debtors' agent in accordance with the terms of the Payoff Letter(s).<sup>254</sup>

Under the Amended and Second Amended Plan, the DIP financing parties will be included in the first method of payment.<sup>255</sup> Also, the Rights Offering Common Stock, the Rights Offering New Second Lien Loans, and Put Option Premium to the Backstop Parties were added to third method of payment.<sup>256</sup>

Class 7 Claims will be provided different treatment because the funding will come from the Litigation Trust.<sup>257</sup> One hundred and eighty days after the Effective Date, the Debtors' agent "shall distribute to each holder of an Allowed Class 7 General Unsecured Claim its Pro Rata share of the Litigation Trust Interests."<sup>258</sup> By said date, the Claims will be deemed Allowed or

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<sup>254</sup> See [id.](#), at p. 26.

<sup>255</sup> See [id.](#)

<sup>256</sup> See [id.](#)

<sup>257</sup> See [id.](#)

<sup>258</sup> See [id.](#)

Disallowed, provided that Allowed Claims be provided their Pro Rata shares and Disallowed Claims amount be portioned to the Allowed Claims.<sup>259</sup>

Further, all disbursements involving New Common Stock or Rights Offering Common Stock will be exempt from Section 5 of the Securities Act.<sup>260</sup> This includes Class 1, 3, and 5 Claims.

Each of the Debtors will have the ability to set off or recoup “any Plan Distributions to be made on account of any Allowed Claim” subject to one of two conditions.<sup>261</sup> The set off or recoupment may either be (1) agreed to by the Debtors and holder of the Claim or (2) adjudicated by the Court.<sup>262</sup>

## **6. Procedures for Resolving Contingent, Unliquidated, and Disputed Claims**

After the Effective Date, the Debtors will have the authority to litigate or settle any Disputed Claims other than the General Unsecured Claims that will be handled by the Litigation Trustee under the Litigation Trust.<sup>263</sup> The Court, pursuant to Section 502(c) of the Bankruptcy Code, will have the authority to estimate the amount of the Disputed Claims, which amount shall be the maximum amount Allowed under the Second Amended Plan.<sup>264</sup> Holders of Disputed Claims will have 180 days after the Effective Date (the Bar Date)<sup>265</sup> to file their Claims or be

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<sup>259</sup> See [id.](#)

<sup>260</sup> See [id.](#), at p. 27.

<sup>261</sup> See [id.](#), at p. 28.

<sup>262</sup> See [id.](#)

<sup>263</sup> See [id.](#), at p. 29. (“Disputed Claim means a Claim in a particular Class as to which a Proof of Claim has been Filed or is deemed to have been Filed under applicable law or an Administrative Claim as to which an objection has been or is Filed in accordance with the Plan, the Bankruptcy Code or the Bankruptcy Rules, which objection has not been withdrawn or determined by a Final Order. For the purposes of the Plan, a Claim is a Disputed Claim prior to any objection to the extent that (a) the amount of a Claim specified in a Proof of Claim exceeds the amount of any corresponding Claim scheduled by the Debtors in the Schedules of Assets and Liabilities; (b) any corresponding Claim scheduled by the Debtors in the Schedules of Assets and Liabilities has been scheduled as disputed, contingent or unliquidated, irrespective of the amount scheduled; (c) no corresponding Claim has been scheduled by the Debtors in the Schedules of Assets and Liabilities; or (d) the Claim is subject to disallowance pursuant to Bankruptcy Code section 502(d).”)

<sup>264</sup> See [id.](#), at p. 30.

<sup>265</sup> See [id.](#), Ex. A, at p. 2. The Bar Date is March 20, 2017.

barred from receiving distributions.<sup>266</sup> If the Court disallows a Disputed Claim, the holder of that claim will receive no distribution.<sup>267</sup>

## 7. Settlement, Release, Injunction, and Related Provisions

Except as provided in the Second Amended Plan, all claimholders will release their Claims against, Causes of Action against, of Interests in the Debtors as of the Effective Date.<sup>268</sup> The Debtors' distributions, other than the mandatory ones, will be conditioned upon the receipt of such releases, as will the Debtors' release of their claims against any claimholders.<sup>269</sup> On the Effective Date, the claimholders will be deemed to release and discharge the Debtors,<sup>270</sup> and the Debtors will be deemed to release and discharge the claimholders.<sup>271</sup>

## 8. Conditions Precedent to Confirmation and Consummation of the Second Amended Plan

For Confirmation, the Second Amended Disclosure Statement must be approved by the Court and be acceptable to (i) the Debtors, (ii) the Required Investor Parties, and (iii) Wells Fargo and the DIP Revolving Lenders, to the extent required under the DIP Revolving Facility Agreement.<sup>272</sup> Also, the Confirmation Order, the Second Amended Plan, and the supplemental documents must be acceptable to the same parties as above.<sup>273</sup> The Court approved the Second Amended Disclosure Statement on March 6, 2017.

For Effectiveness, the Second Amended Plan provides the following 7 conditions precedent:

1. The Court shall have entered the Confirmation Order, which shall not be reversed or rejected to by any of the parties listed above.<sup>274</sup>

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<sup>266</sup> See [id.](#)

<sup>267</sup> See [id.](#)

<sup>268</sup> See [id.](#), at p. 31 .

<sup>269</sup> See [id.](#) at pp. 32-33

<sup>270</sup> See [id.](#) & Ex. A., at p. 15

<sup>271</sup> See [id.](#)

<sup>272</sup> See [id.](#), at p. 35.

<sup>273</sup> See [id.](#)

<sup>274</sup> See [id.](#), at p. 36.

2. The Second Amended Plan and supplemental documents shall be acceptable to the Required Investor Parties and Wells Fargo.<sup>275</sup>
3. The New Organizational Documents shall have been in place, effective, and filed where required.<sup>276</sup>
4. The Debtors shall have obtained all necessary documents to implement and effectuate the Plan.<sup>277</sup>
5. The Debtors shall have paid in full their advisors to the Backstop Agreement.<sup>278</sup>
6. The Debtors shall have paid in full the Lender Group Expenses under the terms of the Plan and Payoff Letter.<sup>279</sup>
7. The Debtors shall have paid in full the Indenture Trustee Fees.<sup>280</sup>

Failure to satisfy any of the conditions precedent means that the Second Amended Plan shall be null and void in all respects.<sup>281</sup>

#### **9. Modification, Revocation, or Withdrawal of the Plan**

In Article X, the Debtors reserve the right to modify, revoke or withdraw the Second Amended Plan.<sup>282</sup>

#### **10. Retention of Jurisdiction**

Article XI provides that the Court will retain exclusive jurisdiction over all matters arising out of, or relating to, the case and the Second Amended Plan.<sup>283</sup>

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<sup>275</sup> See [id.](#)

<sup>276</sup> See [id.](#)

<sup>277</sup> See [id.](#)

<sup>278</sup> See [id.](#) The Backstop Advisors are Akin Gump Strauss Hauer & Feld LLP and Houlihan Lokey Capital, Inc.

<sup>279</sup> See [id.](#) The Payoff Letter is applicable to the DIP Revolving Facility Claims. [Id., Ex. A, at p. 13.](#)

<sup>280</sup> See [id.](#) The Indenture Trustee is Wilmington Trust, National Association. [Id., Ex. A, at p. 10.](#)

<sup>281</sup> See [id.](#)

<sup>282</sup> See [id.](#)

<sup>283</sup> See [id., at p. 38.](#)



### C. *Objections to the Plan and Disclosure Statement*

On January 31, 2017, Wilmington Trust filed a limited objection as indenture trustee and notes collateral agent for the Second Lien Notes (Class 5 Claims) to the Amended Plan.<sup>284</sup> Wilmington Trust claimed that the Second Lien Notes outstanding was \$355,000,000 and that there was an issue regarding the voting rights of their Claims.<sup>285</sup> Wilmington Trust specifically objected that the “holders of second lien notes must be allowed to separately vote their Claims in Class 5 and Class 6.”<sup>286</sup> They further objected to the fact that under the Amended Plan the vote counted the same way with respect to each Debtor.<sup>287</sup> They also attached a form which they requested be used by the Debtors.<sup>288</sup> The Debtor’s response on February 1st provided a host of cases, which supported their position in the Plan along with numerous examples comparing their voting procedures to others that have been confirmed by the Courts.<sup>289</sup> As was noted above the Second Amended Disclosure Statement was approved by the Court on March 6, 2017, at which point Wilmington prepared another objection which lacked much more substance than their first objection.<sup>290</sup> On March 17, 2017, Wells Fargo provided a response to Wilmington’s repeated objections, which stated that the case had been carefully negotiated through complex financing agreements.<sup>291</sup> Wells Fargo handled Wilmington’s objections by concluding that Wilmington had waived its rights to interfere with the Wells Fargo’s collection of the First Lien Debt and exercise of its secured creditors rights in the chapter 11 cases and pursuant to the consensual plan.<sup>292</sup> The Debtors and Wells Fargo’s responses must have persuaded Judge Hale because the Second Amended Plan was confirmed on March 22, 2017 despite the objection.<sup>293</sup>

On February 1, 2017, Capstone Equities Manager, LLC (“Capstone”) filed an objection to the Plan and the Disclosure Statement, arguing that the Plan should not be confirmed because the

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<sup>284</sup> See [Limited Objection of Wilmington Trust](#).

<sup>285</sup> See [id.](#), at p. 2.

<sup>286</sup> See [id.](#), at p. 3.

<sup>287</sup> See [id.](#), at p. 5.

<sup>288</sup> See [id.](#), at Ex. A.

<sup>289</sup> See [Debtor’s Response to the Limited Objection of Wilmington Trust](#).

<sup>290</sup> See [Objection of Wilmington Trust to Confirmation of the Second Amended Joint Plan](#).

<sup>291</sup> See [Response of Wells Fargo Bank to the Objection of Wilmington Trust](#).

<sup>292</sup> See [id.](#), at p. 8

<sup>293</sup> See [Order Confirming the Second Amended Joint Plan of Reorganization of Erickson Incorporated, ET AL.](#)

Disclosure Statement failed to provide adequate information to creditors and described a plan that is patently un-confirmable.<sup>294</sup> The objection proposed two arguments: (1) reasonable investors would not be able to determine between liquidation and confirmation because the liquidation analysis was inadequate and misleading; and (2) the Plan’s deathtrap was illegal. First, Capstone alleged that the liquidation analysis did not meet the *Metrocraft* factors for evaluating the adequacy of a disclosure statement; specifically that it did not have reliable support for its liquidation analysis.<sup>295</sup> In fact, Capstone placed the Debtors’ liquidation value at \$243 million, while the Debtors placed this value at \$98.1 million, which would “provide significantly more value to investors than reorganization.”<sup>296</sup> Second, Capstone alleged that the Plan’s Deathtrap was illegal and made adequate disclosures impossible.<sup>297</sup> This was the same argument that Wilmington Trust made in relation to their Class 5 and Class 6 Claims. Again, this objection was not persuasive to the Court because the Court confirmed the Second Amended Plan without making the changes proposed by Capstone.<sup>298</sup>

Chubb Companies,<sup>299</sup> a group of insurance companies, filed an objection to the Second Amended Plan on March 13, 2017. The Chubb Companies objected that the Plan improperly assumed the insurance contracts and released their Claims without proper voting rights.<sup>300</sup> Neither the Debtors nor Wells Fargo made a response to this objection and the Second Amended Plan was confirmed by the Court with the proposed changes by Chubb Companies accepted.<sup>301</sup>

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<sup>294</sup> See [Objection of Capstone Equities Manager, LLC, at p. 1.](#)

<sup>295</sup> See [id., at p. 5](#) (*Metrocraft* provided 19 factors for the court to look at when determining the adequacy of a disclosure statement.); See [In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 \(N.D. Ga. 1984\).](#)

<sup>296</sup> See [id., at p. 8.](#)

<sup>297</sup> See [id., at p. 11.](#)

<sup>298</sup> See [Order Confirming the Second Amended Joint Plan of Reorganization of Erickson Incorporated, ET AL.](#)

<sup>299</sup> See [Objection of the Chubb Companies to the Second Amended Plan](#) (Chubb Companies included “Vigilant Insurance Company, Federal Insurance Company, Pacific Indemnity Company, Chubb Custom Insurance Company, ACE American Insurance Company, ACE Fire Underwriters Insurance Company, ACE Property and Casualty Insurance Company, Bankers Standard Insurance Company, Indemnity Insurance Company of North America and Westchester Surplus Lines Insurance Company”).

<sup>300</sup> See [id.](#)

<sup>301</sup> See [Order Confirming the Second Amended Joint Plan of Reorganization of Erickson Incorporated, ET AL.](#)

The United States of America (“United States”), on behalf of the Internal Revenue Service (“IRS”) filed an objection to the Second Amended Plan on February 3, 2017.<sup>302</sup> The United States had total Claims of \$1,428,700.6.<sup>303</sup> The United States stated that the Debtors had failed to file numerous Pre-Petition federal tax filings, which were mandatory for Confirmation under Sections 1106 and 1107.<sup>304</sup> To fix this objection, the United States proposed a Default Provision to be added to the Second Amended Plan.<sup>305</sup> While the Debtors did not add the proposed Default Provision, they added a provision that allowed for the United States to file Claims past the Bar Date, and agreed upon stipulations of adequate protection for the United States.<sup>306</sup>

## V. CONCLUSION

On March 22, 2017, the Court confirmed the Debtors’ Second Amended Plan.<sup>307</sup> Since then, the Debtors have operated in accordance with the Second Amended Plan, attempting to right the ship.

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<sup>302</sup> See [United States of America’s Objection to Debtor’s Second Amended Joint Plan of Reorganization](#).

<sup>303</sup> See [id.](#), at pp. 1-2. Most claims were either general unsecured or priority unsecured claims.

<sup>304</sup> See [id.](#), at pp. 3-5. The United States provided a helpful table classifying the filings.

<sup>305</sup> See [id.](#), at pp. 5-6.

<sup>306</sup> See [Debtors’ Second Amended Chapter 11 Plan, Doc. No. 381, at p. 31](#); [Motion for Approval of Second Stipulation by the Debtors and the United States of America](#); [Order Granting Debtors’ Motion for Approval of Second Stipulation by the Debtors and the United States of America](#).

<sup>307</sup> See [Order Confirming Debtors’ Second Amended Joint Plan of Reorganization, Doc. No. 581](#).