Docket #0544 Date Filed: 8/26/2013

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re: HIGHWAY TECHNOLOGIES, INC., *et al.*, Debtors.[1]	Chapter 11 Case No.: 13-11326 (KJC) (Jointly Administered) **Related Docket Nos. 479 and 538**

OMNIBUS REPLY TO THE LIMITED OBJECTIONS TO FIFTH MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO (A) REJECT CERTAIN NON-RESIDENTIAL REAL PROPERTY LEASES PURSUANT TO 11 U.S.C. § 365, (B) ABANDON ANY PERSONAL PROPERTY LOCATED AT SUCH PREMISES, AND (C) FIX A BAR DATE FOR CLAIMS OF COUNTERPARTIES

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") submit this omnibus reply (the "**Reply**") to the limited objections of the Vervoorn Family Trust [Docket No. 538] (the "**Vervoorn Objection**") and Dragoon Properties [Not Docketed] (the "**Dragoon Objection**" and, together with the Vervoorn Objection, the "**Objections**") to the *Fifth Motion for Entry of an Order Authorizing the Debtors to (a) Reject Certain Non-Residential Real Property Leases Pursuant to 11 U.S.C. § 365, (b) Abandon any Personal Property Located at Such Premises, and (c) Fix a Bar Date for Claims of Counterparties* [Docket No. 479] (the "**Motion**").[2] In support of this Reply, the Debtors state as follows:

[1] The Debtors in these proceedings and the last four digits of each Debtor's federal taxpayer identification number are as follows: Highway Technologies, Inc. (6608); and HTS Acquisition, Inc. (9831). The Debtors' mailing address is 6800 Dixie Drive, Houston, Texas 77087.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

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BACKGROUND

A. General Background

1. On May 22, 2013 (the "**Petition Date**"), each of the Debtors filed with this Court a voluntary petition for relief under chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors' chapter 11 cases (the "**Chapter 11 Cases**") are being jointly administered for procedural purposes only. The Debtors are managing their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or an examiner in these Chapter 11 Cases. On May 30, 2013, the Office of the United States Trustee appointed an official committee of unsecured creditors and appointed seven initial members thereto (the "**Committee**").

2. Prior to the Petition Date, the Debtors ceased operating and terminated approximately 740 employees and began the process of securing their assets for sale.

3. The factual background regarding the Debtors, including their current and historical business operations and the events precipitating their chapter 11 filings, are set forth in detail in the *Declaration of Robert Hookstra in Support of First Day Motions* [Docket No. 3] (the "**Hookstra Declaration**") and incorporated herein by reference.

4. On June 27, 2013, the Court approved the sale of the Debtors' Minnesota and Montana branches [Docket Nos. 301 and 304]. On July 12, 2013, the Court approved the sale of the Debtors' Denver branch [Docket No. 363] (together, the "**Branch Sales**"). Each of the Branch Sales closed. Finally, on July 29, 2013, the Court approved the bulk sale (the "**Bulk**

Sale" and together with the Branch Sales, the "**Sales**") of the Debtors' remaining assets to Ritchie Bros. [Docket No. 429], which closed on July 31, 2013.

B. Rejected Leases

5. As a result of the Sales, the Debtors are concentrating on winding down the other aspects of their business. Because the Debtors have no intention of resuming their operations or engaging in any other endeavor that would require the use of the Rejected Leases, the Debtors filed the Motion to effectuate the rejection of the Rejected Leases and avoid incurring any further unnecessary administrative expenses.

6. As set forth in the Motion, the Debtors, in the exercise of their business judgment, do not believe that that there is any remaining economic value in the Rejected Leases. Moreover, the Debtors have determined in the exercise of their business judgment that the Rejected Leases are burdensome to the Debtors and the cost to the Debtors of continuing to perform their obligations under the Rejected Leases will exceed any realistic value that can be realized for the Debtors' estates.

C. Headquarters Lease

7. Furthermore, in the Motion, the Debtors proposed filing a subsequent notice regarding the lease of its headquarters at 6811 Dixie Drive, Houston, Texas 77546 (the "**HQ Lease**"). However, the Debtors have made other arrangements for its remaining three (3) employees and will vacate the headquarters by August 31, 2013. Accordingly, as reflected on **Exhibit A** annexed to the revised proposed order, the Debtors seek the rejection of the HQ Lease

effective as of August 31, 2013. A blackline of changes to the revised proposed order that the Debtors will present to the Court is attached hereto as **Exhibit 1**.

REPLY

A. Dragoon Objection

8. On August 16, 2013, the Debtors received the Dragoon Objection and transmitted it to the Court. For the Court's reference, the Debtors have attached the Dragoon Objection to this Reply as **Exhibit 2**. By the Dragoon Objection, the landlord (the "**Dragoon Landlord**") of the leased premises at 755 West Grant Road, Tucson, Arizona 85705 (the "**Dragoon Premises**") objects to the rejection of the lease of the Dragoon Premises (the "**Dragoon Lease**") to the extent the landlord will be required to "spend additional funds, potentially in the thousands of dollars, to clean up and dispose of the personal property left behind." Dragoon Objection at 1. Although the Debtors are sympathetic to the financial burdens the rejection of the Dragoon Lease will have on a small business such as the Dragoon Landlord, the appropriate remedy is to file a proof of claim in these Chapter 11 Cases. The Debtors submit that they have demonstrated the Dragoon Lease and remaining property to be abandoned is burdensome to the estate and, accordingly, have met their burden under sections 365 and 554 of the Bankruptcy Code. Accordingly, the Dragoon Objection should be overruled.

B. Vervoorn Objection

9. Prior to the Petition Date, the Vervoorn Family Trust as landlord and the Debtors as tenant, entered into a lease (the "**Vervoorn Lease**") of the premises located at 10999

Nardo Street, Ventura, California, 93004 (the "**Ventura Premises**"). By the Motion, the Debtors seek to reject the Vervoorn Lease effective as of August 30, 2013.

10. The Vervoorn Family Trust does not oppose the rejection of the Vervoorn Lease. Vervoorn Objection at ¶ 5. However, by the Vervoorn Objection, the Vervoorn Family Trust wants (a) to know when the Debtors will vacate and fully surrender the Ventura Premises and (b) appropriate language in the proposed order abandoning remaining personal property to the Vervoorn Family Trust free and clear of any and all liens.

11. As reflected in the Motion, the Debtors seek to reject the Vervoorn Lease effective as of August 30, 2013. Accordingly, the Debtors will vacate and fully surrender the Ventura Premises on or before August 30, 2013.

12. The Debtors, however, cannot accommodate the request to abandon remaining personal property to the Vervoorn Family Trust free and clear of any and all liens. Pursuant to section 554(a) of the Bankruptcy Code, "the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Accordingly, the Debtors may abandon the estate's interest in any remaining personal property, but it is not authorized to abandon such property free and clear of others' interest in the property. Furthermore, the Debtors are not authorized and do not seek to abandon the estate's interest to a specific party.

13. Furthermore, nothing in the Motion proposes to affect the Vervoorn Family Trusts' rights to assert any claims, causes of action, or amounts of any nature or priority,

at law or in equity, it may otherwise assert against the Debtors or any other party. Accordingly, the Debtors respectfully submit that the Vervoorn Objection be overruled.

WHEREFORE, the Debtors respectfully request that this Court overrule the Objections in their entirety and grant the relief requested in the Motion.

Dated: August 26, 2013

PACHULSKI STANG ZIEHL & JONES LLP

Richard M. Pachulski (CA Bar No. 90073))
Debra I. Grassgreen (CA Bar No. 169978)
John W. Lucas (NY Bar No. 4288379)
Peter J. Keane (DE Bar No. 5503)
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705
Telephone: 302/652-4100
Facsimile: 302/652-4400
E-mail: rpachulski@pszjw.com
dgrassgreen@pszjlaw.com
jlucas@pszjlaw.com
pkeane@pszjlaw.com

Counsel for the Debtors and Debtors in Possession

Exhibit 1

Blackline of Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re: HIGHWAY TECHNOLOGIES, INC., *et al.*, Debtors.[1]	Chapter 11 Case No.: 13-11326 (KJC) (Jointly Administered) **Related to Docket ~~No~~Nos. ~~479~~ and**

ORDER GRANTING FIFTH MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO (A) REJECT CERTAIN NON-RESIDENTIAL REAL PROPERTY LEASES PURSUANT TO 11 U.S.C. § 365 AND (B), ABANDON ANY PERSONAL PROPERTY LOCATED AT SUCH PREMISES, AND (C) FIX A BAR DATE FOR CLAIMS OF COUNTERPARTIES

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors") having moved (the "Motion")[2] for entry of an order pursuant to section 365 of ~~title~~ Title 11 of the United States Code (the "Bankruptcy Code") authorizing the Debtors to (a) reject certain non-residential ~~executory contracts~~ real property leases (the "Rejected Leases"), each as set forth on **Exhibit A** hereto, effective as of the date listed on **Exhibit A** (the "Rejection Effective Date"), (b) abandon the personal property located at such premises, and (c) fix a bar date for claims, if any, of the counterparties to each Rejected Leases (the "Counterparties"); and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion having been given; and it appearing that no other notice need be given; and upon consideration of the limited objections filed in opposition to the Motion; and after due deliberation and sufficient cause appearing therefor, it is hereby:

1 The Debtors in these proceedings and the last four digits of each Debtor's federal taxpayer identification number are as follows: Highway Technologies, Inc. (6608); and HTS Acquisition, Inc. (9831). The Debtors' mailing address is 6800 Dixie Drive, Houston, Texas 77087.

2 Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Rejected Leases listed on **Exhibit A** attached hereto are deemed rejected effective as of the date indicated on **Exhibit A** attached hereto; and it is further

ORDERED that the Debtors are authorized to abandon any personal property located in the Leased Premises underlying the Rejected Leases pursuant to 11 U.S.C. § 554(a); and it is further

ORDERED that within three (3) business days after entry of this Order the Debtors will serve this Order on the Counterparty to each Rejected Lease; and it is further

ORDERED that thirty (30) days after entry of this Order is hereby fixed as the bar date by which the Counterparty to each Rejected Lease must file a claim under section 502 of the Bankruptcy Code or other claims in connection with such Rejected Lease or the rejection, breach or termination of such Rejected Lease, failing which such claim shall be forever barred; and it is further

~~ORDERED that the Debtors are authorized to reject the lease for the property located at 6811 Dixie Drive, Houston, Texas, 77546 by filing a separate notice that reflects the date and time of the effectiveness of such rejection. The subsequent notice shall reference this Order and the rejection of the lease shall be subject to the terms and conditions of Order. The Debtors shall serve the lessor counterparty of such lease with the subsequent notice of rejection.~~

ORDERED that the Debtors reserve all rights to contest any such rejection damage claim and to contest the characterization of each Rejected Lease, as executory or not, and to contest whether such Rejected Lease may have terminated prior to the Petition Date, or otherwise; and it is further

ORDERED that the Debtors do not waive any claims that they may have against the Counterparty to any Rejected Lease, whether or not such claims are related to such Rejected Lease; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order; and it is further

ORDERED that notwithstanding the possible applicability of Rules 6004(g), 7062, or 9014 of the Federal Rules of Bankruptcy Procedure, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

Dated: _____, 2013

_____
The Honorable Kevin J. Carey
United States Bankruptcy Judge

EXHIBIT A

(Rejected Leases)

Leased Locations	Lessor / Counterparty	Description of Contract or Lease	Rejection Effective Date
403 Cobblestone Dr. Heyworth, IL 61745-8803	Thomas Dalton 410 East Lafayette Street Bloomington, IL 61701	Facility Lease	August 30, 2013
6303 Collins Rd. East St. Louis, IL 62201	Keeley & Sons 9441 Lebanon Road Fairview Heights, IL 62208	Facility Lease	August 30, 2013
8865 Giant City Road Carbondale, IL 62902-5097	L.E. Cecil 701 Industrial Park Rd. Carbondale, IL 62901	Facility Lease	August 30, 2013
2706 Old Rochester Road Springfield, IL 62703	Michael J. & Bonnie Sue Casey 2700 Old Rochester Rd. [portion of Building AA] Springfield, IL 62703	Facility Lease	August 30, 2013
2706 Old Rochester Road Springfield, IL 62703	Casey Development Group 2700 Old Rochester Road Springfield, IL 62703	Facility Lease	August 30, 2013
1981 N. Sanders Valley Road Nixa, MO 65714	M and S Properties of Springfield, LLC 6691 W. Farm Road 140 Springfield, MO 65802	Facility Lease	August 30, 2013
2390 Paradise Drive Tiburon, CA 94920	Buich Jack Newell, LLC 7200 Jack Newell Blvd. Fort Worth, TX 76118	Facility Lease	August 30, 2013
732 N. Grant Street Amarillo, TX 79107	Viola Jennings 3603 W. Amarillo Blvd. Amarillo, TX 79106-7131	Facility Lease	August 30, 2013
6290 Lemon Gulch Drive, Castle Rock, CO 80104	Donald H. Tisdall 2456 East 9th Street Loveland, CO 80537	Facility Lease	August 30, 2013
890 Denver Avenue Loveland, CO 80537	Virgil L. Clinebell 2456 East 9th Street Loveland, CO 80537-5102	Facility Lease	August 30, 2013
1750 South Lane, Suite 1 Mandeville, LA 70471	Corn Products Road, LLC 625B Corn Products Road Corpus Christi, TX 78410	Facility Lease	August 30, 2013
435 County Road 139 Hutto, TX 78634	JDW Partners, LP 12909 Dessau Road Austin, TX 78754	Facility Lease	August 30, 2013
635 Sentry Hill San Antonio, TX 78260	Culpepper Properties, LLC 9993 Doerr Lane Schertz, TX 78154	Facility Lease	August 30, 2013
435 CR 139 Hutto, TX 78634	Bombay Blue Partners, LP 8000 Blue Goose Road Manor, TX 78653	Facility Lease	August 30, 2013
9109 Bachman Road Orlando, FL 32824	Oki Wear, Inc. 9101 Bachman Orlando, FL 32824	Facility Lease	August 30, 2013
P.O. Box 2342 Jupiter, FL 33468	Pinellas, LLC 4151 116th Terrace N. Clearwater, FL 33762	Facility Lease	August 30, 2013

Leased Locations	Lessor / Counterparty	Description of Contract or Lease	Rejection Effective Date
~~95 Valley VistaCamarillo, CA 93010~~10999 Nardo Street Ventura, CA 93004	~~Barend W. Vervorn and Janet J.10999 Nardo StreetVentura, CA 93004~~Vervoorn Family Trust 95 Valley Vista Camarillo, CA 93010	Facility Lease	August 30, 2013
~~800 South Victoria Avenue #1600~~10999 Nardo Street Ventura, CA ~~93009~~93004	County of Ventura ~~10990 Nardo StreetSaticoy~~800 South Victoria Avenue #1600 Ventura, CA ~~93009~~93009	Facility Lease	August 30, 2013
9835 E. Bell Rd, Suite 130-140 Scottsdale, AZ 85260	DA-RO Properties 5301 East Gibson Ave. Flagstaff, AZ 86004	Facility Lease	August 30, 2013
2 Canyon Fairway Newport Beach. CA 92660	Roxie Real Estate Investment, LLC 4535 Copper Sage Las Vegas, NV 89115	Facility Lease	August 30, 2013
14677 Shannon Road Los Gatos, CA 95032	Steve Trolan, Trustee 1277 Old Bayshore Highway San Jose, CA 95112-2800	Facility Lease	August 30, 2013
4624 Soquel Wharf Rd Soquel, CA 95073	Davalle Living Trust Decendent 85 Old Tully Rd San Jose, CA 95111-1910	Facility Lease	August 30, 2013
1666 20th Street, Suite 100 Santa Monica, CA 90404	Tempe Partnership 1888 E. Broadway Tempe, AZ 85281	Facility Lease	August 30, 2013
12500 Jefferson Ave Newport News, VA 23602	Ferguson Enterprises Inc 1720 South Los Feliz Dr. Tempe, AZ 85281	Facility Lease	August 30, 2013
1441 East Alameda Phoenix, AZ 85024	Knochel Family Trust 1441 East Alameda Phoenix, AZ 85024	Facility Lease	August 30, 2013
755 West Grant Road Tucson, AZ 85705	Dragoon Properties, LLC 755 West Grant Road #101 Tucson, AZ 85705	Facility Lease	August 30, 2013
910 SW Viewmont Drive Dundee, OR 97115	LA Hirte Properties 13990 SW Galbreath Sherwood, OR 97140	Facility Lease	August 30, 2013
6811 Dixie Drive Houston, TX 77546	United Rentals, Inc. Five Greenwich Office Park Greenwich, CT 06831	Facility Lease	~~To be determined by subsequent notice.~~August 31, 2013
5294 Huntington Fort Mojave, AZ 86430	Ray & Shirley Rucker PO Box 57 Meadview, AZ 86444	Facility Lease	August 30, 2013
1636 D. East 20th Street Yuma, AZ 85365	Don Peterson 1636 A East 20th Street Yuma, AZ 85364	Facility Lease	August 30, 2013
2275-2295 S. Lipan Street Denver, CO 80223	Donald Tisdall 6290 Lemon Gulch Drive Castle Rock, CO 80104	Facility Lease	August 30, 2013
708 Commerce Way	Jupej LLC	Facility Lease	August 30, 2013

Leased Locations	Lessor / Counterparty	Description of Contract or Lease	Rejection Effective Date
Jupiter, FL 33458	PO Box 2342 Jupiter, FL 33468		
880 N. Addison Road Villa Park, IL 60181	Bone Properties LLC 1950 N. Narragansett Chicago, IL 60639	Facility Lease	August 30, 2013
4535 Copper Sage Las Vegas, NV 89115	Roxie Real Estate Inv LLC 2 Canyon Fairway Newport Beach, CA 92660	Facility Lease	August 30, 2013

Exhibit 2

Dragoon Objection

DRAGOON PROPERTIES LLC
755 W Grant Rd #105
Tucson, AZ 85705
520-838-5404

August 16, 2013

PACHULSKI STANG ZIEHL & JONES LLP
919 N Market Street - 17th Floor
PO Box 8705
Wilmington, DE 19899-8705
Attn: Bruce Grohsgal, Esq

Re: Case 13-11326 (KJC)

Dear Sirs and/Ma'am:

We are writing with our objection to the motion that Highway Technologies, Inc. et al, be allowed to vacate the leased premises and abandon all personal property located within. Vacating the lease, non-payment of 2013 utility payments and abandonment of property has and will cause a hardship to our company. Unpaid lease payments including past and current utility payments alone are in excess of $39,000. We object to having to spend additional funds, potentially in the thousands of dollars, to clean up and dispose of the personal property left behind. We are a small business and can not absorb the expense of the clean up. We could obtain and submit a bid for the clean up if necessary to be reimbursed for the expense.

I can be reached at 520-838-5404 if further information is required. Thank you for your consideration.

Sincerely,

Kathi Roche
Controller

Cc: Pachulski Stang Ziehl & Jones LLP
150 California Street - 15th Floor
San Francisco, CA 94111
Attn: Debra I Grassgreen & John W Lucas

Office of the US Trustee
J. Caleb Boggs Federal Building
844 N King St Suite 2207
Lock Box 35
Wilmington, DE 19801
Attn: Jane M. Leamy, Esq

Counsel of the Official Committee of Unsecured Creditors: Richards, Layton & Finger, PA
One Rodney Square
920 N King St
Wilmington, DE 19801
Attn: Mark D. Collins, Esq and Russell C Silberglied, Esq

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re: HIGHWAY TECHNOLOGIES, INC., *et al.*, Debtors.[1]	Chapter 11 Case No.: 13-11326 (KJC) (Jointly Administered)

AFFIDAVIT OF SERVICE

STATE OF DELAWARE)
) ss:
COUNTY OF NEW CASTLE)

Patricia E. Cuniff, being duly sworn according to law, deposes and says that she is employed by the law firm of Pachulski Stang Ziehl & Jones LLP attorneys for the Debtors in the above-captioned action, and that on the 26th day of August 2013 she caused a copy of the following document(s) to be served upon the parties on the attached service lists in the manner indicated:

Omnibus Reply to the Limited Objections to Fifth Motion for Entry of an Order Authorizing the Debtors to (A) Reject Certain Non-Residential Real Property Leases Pursuant to 11 U.S.C. §365, (B) Abandon Any Personal Property Located at Such Premises, and (C) Fix a Bar Date for Claims of Counterparties

Patricia E. Cuniff

Sworn to and Subscribed before
me this 26th day of August 2013

Notary Public
Commission Exp.:

MONICA ANGELA MOLITOR
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires July 12, 2014

DOCS_DE:189246.1 36024/001

[1] The Debtors in these proceedings and the last four digits of each Debtor's federal taxpayer identification number are as follows: Highway Technologies, Inc. (6608); and HTS Acquisition, Inc. (9831). The Debtors' mailing address is 6800 Dixie Drive, Houston, Texas 77087.

Highway Technologies 2002 (First Class Service List)
Case Number 13-11326 (KJC)
Document No. 187583
03 – Interoffice Mail
26 – Hand Delivery
49 – First Class Mail

(Counsel for the Debtors)
Bruce Grohsgal (DE Bar No. 3583)
Peter J. Keane (DE Bar No. 5503)
Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier 19801)

Interoffice Mail
(Counsel for the Debtors)
Richard M. Pachulski, Esquire
Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, CA 90067

Interoffice Mail
(Counsel for the Debtors)
Debra I. Grassgreen, Esquire
John W. Lucas, Esquire
Pachulski Stang Ziehl & Jones LLP
150 California Street, 15th Floor
San Francisco, CA 94111

Interoffice Mail
(Counsel for the Debtors)
Maria A. Bove, Esquire
Pachulski Stang Ziehl & Jones LLP
780 Third Avenue, 36th Floor
New York, NY 10017

Hand Delivery
(U.S. Trustee)
Jane M. Leamy, Esquire
The Office of the United States
Trustee for the District of Delaware
J. Caleb Boggs Federal Building
844 N. King Street, Suite 2207
Lock Box 35
Wilmington, DE 19801

Hand Delivery
(United States Attorney)
Ellen W. Slights, Esquire
United States Attorney's Office
District of Delaware
1007 N. Orange Street, Suite 700
Wilmington, DE 19801

Hand Delivery
(Counsel for Automotive Rentals, Inc.)
John V. Fiorella, Esquire
Archer & Greiner, P.C.
300 Delaware Ave., Suite 1370
Wilmington, DE 19801

Hand Delivery
(Counsel for Roadsafe Traffic Systems, Inc.)
Michael Busenkell, Esquire
Gellert Scali Busenkell & Brown, LLC
913 N. Market Street, 10th Floor
Wilmington, DE 19801

Hand Delivery
(Counsel for Argonaut Insurance Company, Inc.)
Thomas J. Francella, Jr., Esquire
Whiteford Taylor & Preston LLC
The Renaissance Centre
405 North King Street, Suite 500
Wilmington, DE 19801

Hand Delivery
(Co-Counsel for Oak Hill Special Opportunities Fund, LP, Oak Hill Special Opportunities Fund (Management), LP, Wynnchurch Capital Partners II, LP, the proposed debtor in possession lenders and Ableco Finance LLC, in its capacity as agent for prepetition lenders)
Richard S. Cobb, Esquire
Kerri K. Mumford, Esquire
Landis Rath & Cobb LLP
919 Market Street, Suite 1800
Wilmington, DE 19801

Hand Delivery
(Counsel for 3M Company f/k/a Minnesota Mining and Manufacturing Co.)
Rafael X. Zahralddin-Aravena, Esquire
Eric M. Sutty, Esquire
Elliott Greenleaf
1105 N. Market Street, Suite 1700
Wilmington, DE 19801

Hand Delivery
(Counsel for The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America)
Carl N. Kunz, III, Esquire
Morris James LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19899

Hand Delivery
(Counsel for Safety National Casualty Corp. and Aspen American Insurance Company)
Richard W. Riley, Esquire
Duane Morris LLP
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801

Hand Delivery
(Counsel for Safety National Casualty Corp.)
Sommer L. Ross, Esquire
Duane Morris LLP
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801

Hand Delivery
(Counsel Zurich American Insurance Company and Fidelity and Deposit Company of Maryland)
James S. Yoder, Esquire
White and Williams LLP
824 N. Market Street, Suite 902
Wilmington, DE 19801

Hand Delivery
(Counsel for Taxing Authorities)
Jennifer L. Dering, Esquire
Archer & Greiner, P.C.
300 Delaware Ave., Suite 1370
Wilmington, DE 19801

Hand Delivery
(Counsel for Creditors' Committee)
Mark D. Collins, Esquire
Russell C. Silberglied, Esquire
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801

Hand Delivery
(Counsel for Financial Advisor for Creditors' Committee)
Wayne Weitz
Gavin/Solmonese
919 N. Market Street, Suite 600
Wilmington, DE 19801

Hand Delivery
(Counsel for ACE-USA/ACE Bond Services and Westchester Fire Insurance Company)
Tobey M. Daluz, Esquire
Matthew G. Summers, Esquire
Ballard Spahr LLP
919 N. Market Street, 11th Floor
Wilmington, DE 19801

Hand Delivery
(Counsel SSJS, Inc.)
(Counsel for 4700 Lyndale Partnership)
Brett D. Fallon, Esquire
Morris James LLP
500 Delaware Avenue, Suite 1500
P.O. Box 2306
Wilmington, DE 19899

Hand Delivery
(Counsel for Berkley Surety Group, LLC)
Thomas J. Francella, Jr., Esquire
Whiteford Taylor & Preston LLC
The Renaissance Centre
405 North King Street, Suite 500
Wilmington, DE 19801

Hand Delivery
(Counsel for Nations Fund I)
Chandra J. Williams, Esquire
Rhodunda & Williams
1220 N. Market Street, Suite 700
Wilmington, DE 19801

Hand Delivery
(Counsel for Zumar Industries, Inc.)
William P. Bowden, Esquire
Marie M. Degnan, Esquire
Ashby & Geddes, P.A.
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899-1150

Hand Delivery
(Counsel for Ames Construction, Inc. and Ames/McCrossan JV)
Alan M. Root, Esquire
Blank Rome LLP
1201 Market Street, Suite 800
Wilmington, DE 19801

Hand Delivery
(Counsel for Gelco Corporation d/b/a GE Fleet Services)
Gary D. Bressler, Esquire
David P. Primack, Esquire
McElroy, Deutsch, Mulvaney & Carpenter, LLP
300 Delaware Avenue, Suite 770
Wilmington, DE 19801

Hand Delivery
(Counsel for M.A. DeAtley Construction, Inc.)
Elihu E. Allinson III, Esquire
Sullivan Hazeltine Allinson LLC
901 N. Market Street, Suite 1300
Wilmington, DE 19801

Hand Delivery
(Counsel for Wynne Systems, Inc.)
Scott Leonhardt, Esquire
The Rosner Law Group LLC
824 Market Street, Suite 810
Wilmington, DE 19801

Hand Delivery
(counsel for Mountain West Holding Co.)
Theresa V. Brown-Edwards, Esquire
Darby Brown-Edwards LLC
I.M. Pei Building
1105 N. Market Street, Suite 1600
Wilmington, DE 19801

Hand Delivery
(Counsel for RDP Barricade Company, LLC)
Francis A. Monaco, Jr., Esquire
Kevin J. Mangan, Esquire
Ericka F. Johnson, Esquire
Womble, Carlyle Sandridge & Rice, LLP
222 Delaware Avenue, Suite 1501
Wilmington, DE 19801

Hand Delivery
(Counsel for McShea Contracting, LLC)
William P. Bowden, Esquire
Stacy L. Newman, Esquire
Ashby & Geddes, P.A.
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, DE 19899-1150

First Class Mail
(United States Attorney General)
Eric H. Holder, Jr., Esquire
Office of the Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

First Class Mail
Secretary of State
Division of Corporations
Franchise Tax
P.O. Box 898
Dover, DE 19903

First Class Mail
Secretary of Treasury
15th & Pennsylvania Avenue, N.W.
Washington, DC 20220

First Class Mail
Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 7346
Philadelphia, PA 19101-7346

First Class Mail
Andrew Calamari, Regional Director
Securities & Exchange Commission
New York Regional Office
3 World Financial Center, Suite 400
New York, NY 10281-1022

First Class Mail
Michael A. Berman, Esquire
Securities & Exchange Commission
Office of General Counsel-Bankruptcy
100 F Street, N.E.
Washington, DC 20549

First Class Mail
Matthew Berry, Esquire
Office of General Counsel
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

First Class Mail
Office of the General Counsel
Pension Benefit Guaranty Corp.
1200 K Street, N.W.
Washington, DC 20005-4026

First Class Mail
(Counsel to Agent for Lenders and Co-Counsel for Ableco Finance LLC, in its capacity as agent for prepetition lenders)
David M. Hillman, Esquire
Eliot L. Relles, Esquire
Lucy F. Kweskin, Esquire
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

First Class Mail
(Equity Sponsor)
Ian M. Kirson, Esquire
Wynnchurch Capital, Ltd.
6250 N. River Road, Suite 10-100
Rosemont, IL 60018

First Class Mail
(Financial Advisor and Investment Banker)
Robert Warshauer
Justin Byrne
Imperial Capital LLC
277 Park Avenue
New York, NY 10172

First Class Mail
(Financial Advisor and Investment Banker)
Scott Farnsworth
Erich Hobelmann
Imperial Capital LLC
2000 Avenue of the Stars, 9th Floor South
Los Angeles, CA 90067

First Class Mail
(Financial Advisor and Investment Banker)
Adeel Ahmad
Imperial Capital LLC
60 South Sixth Street, Suite 3720
Minneapolis, MN 55402

First Class Mail
(Debtors)
Mr. Robert Hookstra
Controller
Highway Technologies, Inc.
6800 Dixie Drive
Houston, TX 77807

First Class Mail
(Counsel for StonCor Group, Inc. by and through its Epoplex Division)
Sergio I. Scuteri, Esquire
Capehart & Scatchard, P.A.
8000 Midlantic Drive, Suite 300 S
Mt. Laurel, NJ 08054

First Class Mail
(Counsel for Automotive Rentals, Inc.)
Mr. Richard E. Moyer
Credit & Litigation Supervisor
Automotive Rentals, Inc.
9000 Midlantic Drive
P.O. Box 5039
Mt. Laurel, NJ 08054

First Class Mail
(Counsel for Roadsafe Traffic Systems, Inc.)
Leyza F. Blanco, Esquire
GrayRobinson, P.A.
1221 Brickell Avenue, Suite 1600
Miami, FL 33131

First Class Mail
(Counsel for Ennis-Flint, Inc.)
Martin A. Sosland, Esquire
Charles M. Persons, Esquire
Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
Dallas, TX 75201

First Class Mail
(Counsel for Argonaut Insurance Company, Inc.)
Keith A. Langley, Esquire
Gina D. Shearer, Esquire
Langley Weinstein LLP
901 Main Street, Suite 600
Dallas, TX 75202

First Class Mail
(Co-Counsel for Oak Hill Special Opportunities Fund, LP, Oak Hill Special Opportunities Fund (Mgmt), LP and Wynnchurch Capital Partners II, LP, the proposed debtor in possession lenders)
Rosanne T. Matzat, Esquire
Hahn & Hessen LLP
488 Madison Avenue
New York, NY 10022

First Class Mail
(Counsel for 3M Company f/k/a Minnesota Mining and Manufacturing Co.)
Alan E. Brown, Esquire
Special Counsel to 3M Company
3M Office of General Counsel
Mail Stop 220-9E-02
Office Location 220-10W/27
P.O. Box 33428
St. Paul, MN 55133

First Class Mail
(Counsel for The Hanover Insurance Co, Massachusetts Bay Insurance Co and Citizens Insurance Co of America)
Mike F. Pipkin, Esquire
Melissa L. Gardner, Esquire
Sedgwick LLP
1717 Main Street, Suite 5400
Dallas, TX 75201

First Class Mail
(Counsel for Taxing Authorities
(Counsel for Harris County)
John P. Dillman, Esquire
Linebarger Goggan Blair & Sampson, LLP
P.O. Box 3064
Houston, TX 77253

First Class Mail
(Counsel for Office of Unemployment Compensation Tax Services, Dept of Labor and Industry, Commonwealth of PA)
Timothy Bortz, Esquire
Commonwealth of Pennsylvania
Department of Labor and Industry
Reading Bankrputcy & Compliance Unit
625 Cherry Street, Room 203
Reading, PA 19602-1152

First Class Mail
(Counsel for ACE-USA/ACE Bond Services and Westchester Fire Insurance Company)
James D. Cupples, Esquire
Cupples & Associates, PLLC
1331 Gemini St., Suite 201
Houston, TX 77058

First Class Mail
(Counsel for Caldwell CAD, Nueces County)
Diane W. Sanders, Esquire
Linebarger Goggan Blair & Sampson, LLP
P.O. Box 17428
Austin, TX 78760

First Class Mail
United Rentals, Inc.
Attn: Dale Asplund
100 First Stamford Place
Stamford, CT 06902

First Class Mail
(Counsel for Tarrant County and Dallas County)
Elizabeth Weller, Esquire
Linebarger Goggan Blair & Sampson, LLP
2323 Bryan Street, Suite 1600
Dallas, TX 75201

First Class Mail
(Counsel for Tarrant County and Dallas County)
David S. Oppenheim, A.R.
David S. Oppenheim & Associates, P.C.
1900 West Littleton Blvd.
Littleton, CO 80120

First Class Mail
(Counsel for Wynne Systems, Inc.)
James C. Thoman, Esquire
Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, NY 14202

First Class Mail
(Counsel SSJS, Inc.)
(Counsel for 4700 Lyndale Partnership)
James L. Baillie, Esquire
Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402

First Class Mail
(Counsel for Berkley Surety Group, LLC)
Chad L. Schexnayder, Esquire
Joseph A. Brophy, Esquire
Jennings, Haug & Cunningham, LLP
2800 N. Central Avenue, Suite 1800
Phoenix, AZ 85004

First Class Mail
(Counsel for Nations Fund I)
Craig M. Price, Esquire
Anthony M. DiGiacomo, Esquire
Chapman and Cutler, LLP
1270 Avenue of the Americas, 30th Floor
New York, NY 10020-1708

First Class Mail
(Counsel for Wildish Standard Paving Co.)
Oren B. Haker, Esquire
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204

First Class Mail
(Counsel for City of Union City)
Joel R. Glucksman, Esquire
Scarinci & Hollenbeck, LLC
1100 Valley Brook Avenue,
P.O. Box 790
Lyndhurst, NJ 07071-0790

First Class Mail
(Counsel for Seyfarth Shaw, LLP)
Jason J. DeJonker, Esquire
Bret M. Harper, Esquire
Seyfarth Shaw LLP
131 South Dearborn Street
Chicago, IL 60603

First Class Mail
(Counsel for Ames Construction, Inc. and Ames/McCrossan JV)
Michael B. Schaedle, Esquire
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103

First Class Mail
(Counsel for Gelco Corporation d/b/a GE Fleet Services)
Jeffrey T. Wegner, Esquire
Kutak Rock LLP
1650 Farnam Street
Omaha, NE 98102

First Class Mail
(Counsel for RDP Barricade Company, LLC)
James T. Markus, Esquire
Markus Williams Young & Zimmerman LLC
1700 Lincoln Street, Suite 4000
Denver, CO 80203

First Class Mail
(Counsel for FNF Construction, Inc.)
William Novotny, Esquire
Dickinson Wright/Mariscal Weeks
2901 North Central Avenue, Suite 200
Phoenix, AZ 85012-2705

First Class Mail
(Counsel for City and County of Denver)
Mitch T. Behr, Esquire
Assistant City Attorney
Municipal Operations
201 West Colfax Avenue, Dept. 1207
Denver, CO 80202-5332

First Class Mail
(Counsel for Northern California District Council of Laborers)
Jordon D. Mazur, Esquire
Weinberg, Roger & Rosenfeld
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

First Class Mail
(Aon Risk Solutions)
Lauren M. Jordan
Receivable Management Specialist
Aon Risk Solutions Premium Accounting
Service Center
10461 Mill Run Circle
Owings Mills, MD 21117

First Class Mail
(Agent for Dun & Bradstreet)
Ronald L. Rowland, Agent
Receivable Management Services
307 International Circle, Suite 270
Hunt Valley, MD 21030

First Class Mail
(Counsel for Tennessee Department of
Revenue)
Laura L. McCloud, Esquire
Office of the Attorney General
Bankruptcy Division
PO Box 20207
Nashville, TN 37202-0207

First Class Mail
(Counsel for Texas Sterling)
John J. Sparacino, Esquire
Vorys, Sater, Seymour and Pease LLP
700 Louisiana, Suite 4100
Houston, TX 77002

First Class Mail
(Counsel for Texas Sterling)
Thomas H. Grace, Esquire
Vorys, Sater, Seymour and Pease LLP
700 Louisiana, Suite 4100
Houston, TX 77002

First Class Mail
(Counsel for Texas Sterling)
Joseph M. Schreiber, Esquire
Vorys, Sater, Seymour and Pease LLP
700 Louisiana, Suite 4100
Houston, TX 77002

First Class Mail
(Counsel for City of Fort Worth)
Christopher B. Mosley, Esquire
City Attorney's Office
City of Fort Worth
1000 Throckmorton Street
Fort Worth, TX 76102

Highway Tech Debtors Omnibus Reply re: 5th Motion to Reject Lease
Case No. 13-11326
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First Class Mail
(Counsel for the Vervoorn Family Trust)
Michael D. DeBaecke, Esquire
Alan M. Root, Esquire
Blank Rome LLP
1201 N. Market Street, Suite 800
Wilmington, DE 19801

Overnight Delivery
(Counsel for the Vervoorn Family Trust)
Rennee R. Dehesa, Esquire
Schneiders & Associates, L.L.P.
300 E. Esplanade Drive, Suite 1980
Oxnard, CA 93036

Overnight Delivery
)
Dragoon Properties LLC
Attn: Kathi Roche
755 W. Grant Road, #105
Tucson, AZ 85705