

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
PES HOLDINGS, LLC, <i>et al.</i> , ¹	)	Case No. 19-11626 (KG)
)	
Debtors.	)	(Jointly Administered)
)	

**DEBTORS' MOTION FOR ENTRY OF AN
ORDER (I) APPROVING THE DEBTORS' KEY EMPLOYEE
INCENTIVE PROGRAM AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors")² respectfully state the following in support of this motion (this "Motion").

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"): (a) approving the Debtors' key employee incentive program (the "KEIP") for seven key management members (the "KEIP Participants"), as described more fully herein; and (b) granting related relief. In support of this Motion, the Debtors submit the Declaration of Douglas J. Friske (the "Friske Declaration"), which is attached hereto as **Exhibit B**, and the Declaration of Jeffrey S. Stein (the "Stein Declaration"), which is attached hereto as **Exhibit C**.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors' service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

² A detailed description of the Debtors and their business and the Debtors' chapter 11 cases are set forth in greater detail in the *Declaration of Jeffrey S. Stein, Chief Restructuring Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 32] (the "First Day Declaration"), filed substantially contemporaneously with the Debtors' voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), on July 21, 2019 (the "Petition Date").

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (the “Amended Standing Order”). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 363(c), and 503(c) of the Bankruptcy Code and Bankruptcy Rule 6004.

Background

5. On the Petition Date, each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are procedurally consolidated and jointly administered pursuant to Bankruptcy Rule 1015(b). On August 2, 2019, the United States Trustee appointed an official committee of unsecured creditors in the Debtors’ bankruptcy cases (the “Committee”) [Docket No. 145]. No party has requested the appointment of a trustee or examiner in these chapter 11 cases.

The Proposed KEIP

6. The ultimate success of the Debtors' chapter 11 cases and maximization of value for the Debtors' constituents is heavily reliant on the Debtors' senior management team. The KEIP Participants' responsibilities are unique and far more challenging than that of typical management responsibilities. The management team is responsible not only for guiding the Debtors through chapter 11, but also for: (a) stabilizing the refinery site and ensuring the health and safety of the public and their employees following the catastrophic incident at the Debtors' alkylation unit of the Girard Point refining facility (the "Girard Point Incident"); (b) organizing the shut down and idling of the plant and equipment, removing elevated risk chemicals, and placing the catalyst, equipment, and vessels in a safe state during the idle period; (c) leading the Debtors' efforts to pursue a recovery under property and business interruption insurance policies triggered by the Girard Point Incident; (d) steering the Debtors' sale and marketing process to determine the highest and best purchase price available for some or all of the Debtors' assets and, if prudent, pursue one or more sales; and (e) supervising all human resources, payroll matters, monthly financial reporting, and bankruptcy reporting. Simply put, the Debtors' management team is the driving force behind the restructuring; the level of value in the estate will rise or fall with their efforts. The Debtors are therefore seeking to implement the KEIP to incentivize management to raise estate recoveries as high as they can, to the benefit of all stakeholders.

7. The Debtors historically have incentivized their employees, including the KEIP Participants, to deliver performance in large part through various compensation programs that provide market-based incentive opportunities based on performance (*i.e.*, if the Debtors meet or exceed particular operational and financial metrics). This Motion seeks approval of a key

employee incentive compensation program for the KEIP Participants that is: (a) consistent with the Debtors' historical compensation practices and philosophy (but tailored to the Debtors' unique status as a chapter 11 debtors-in-possession); (b) consistent with industry standards; and (c) designed to continue driving the Debtors' laser-focus on maximizing value in a consistent and uninterrupted fashion for the benefit of all stakeholders.

I. The Debtors' Need for the KEIP.

8. The KEIP Participants are responsible for leading and managing the Debtors' approximately 175 employees. It is their job to guide and implement the Debtors' overall strategy for maximizing the value of their estates. One part of this process is to implement either a going-concern reorganization or one or more sales of some or all of the Debtors' assets. Another part of this process is to realize insurance proceeds arising out of the Girard Point Incident. The KEIP Participants' experience, knowledge, and strategic guidance are necessary for the estate to realize the best financial outcome. The demands placed upon the KEIP Participants to realize results for the Debtors' stakeholders have been, and will no doubt continue to be, significant. Creating incentives for the KEIP Participants to continue to meet these onerous demands—many of which go well beyond the demands of their prepetition day-to-day jobs—is thus an important tool that the Debtors can use to maximize value overall.

9. The Debtors' prepetition management bonus and long-term incentive plan has been rendered obsolete: the Girard Point Incident and the Debtors' resulting operational status have made the metrics thereunder unattainable. *See* Stein Decl. ¶ 9. Because that incentive plan is effectively defunct, the KEIP Participants are now significantly undercompensated: and their total compensation is currently positioned 71 percent below the comparable market's 25th percentile and 80 percent below the comparable market's 50th percentile. *See* Friske Decl. ¶ 17. Accordingly, to properly incentivize the management team to maximize value in these long and

arduous processes that require singular focus, the Debtors must offer incentive compensation to the management team; to reward the KEIP Participants should they achieve exceptional performance through the remainder of these chapter 11 cases.

10. The KEIP Participants not only have continued to perform their pre-existing job functions, but also have taken on additional responsibilities as a result of the chapter 11 process. *See* Stein Decl. ¶¶ 7–8, 11. The KEIP Participants’ responsibilities now include developing and implementing their chapter 11 strategy, participating in court hearings and meetings with stakeholders and other parties, reviewing and addressing court filings, and responding to creditor inquiries, among other things. *See* Stein Decl. ¶¶ 7, 28. They are also leading the Debtors’ exploration of potential sales of some or all of their assets or equity interests including a sale of part or all of the refinery complex or any ancillary assets (each, a “Sale Transaction”) and prosecution of the insurance claims (the “Insurance Claims”) as a means to potentially maximize creditor recoveries under their proposed plan of reorganization (as may be amended, supplemented, or modified from time to time, the “Plan”). These undertakings are even more significant in light of the Debtors’ lean headcount at the executive management level and below. *See id.*

11. As described further herein, the KEIP is reasonable and well within the Debtors’ business judgment. The Debtors focused on ensuring that incentive compensation is awarded to the KEIP Participants only if the Debtors confirm a plan of reorganization within a reasonable time period or the KEIP Participants continue to increase the value of the Debtors’ estates thus increasing value available for the Debtors’ stakeholders. The Debtors respectfully request that the Court approve the KEIP, as it is in the best interests of the Debtors, their estates, and all stakeholders.

A. The KEIP Participants' Role in the Sale Transaction

12. Since commencement of these chapter 11 cases, in addition to dealing with the operational and environmental consequences of the Girard Point Incident, the Debtors have worked diligently towards consummating a standalone restructuring transaction. These efforts have included substantial due diligence and extensive negotiations with their stakeholders regarding, among other things, the corporate structure and profile of the Debtors post-emergence. Ultimately, the Debtors determined they should explore a Sale Transaction. *See* Stein Decl. ¶¶ 19–27. To that end, the Debtors have commenced a dual-track process pursuant to which the Debtors will conduct a formal marketing process for potential Sale Transactions while at the same time retaining the ability to pursue a standalone restructuring as contemplated by the Plan.

13. More specifically, the Debtors, led by the KEIP Participants, have and will continue to, among other things, develop sale and marketing materials for distribution to potentially interested parties, respond to diligence inquiries, engage in discussions and negotiations with their investment bank working on the sale process, PJT Partners LP (“PJT”), and potentially interested parties regarding the sale process, participate in in-person site tours and management presentations with potentially interested parties, coordinate and negotiate a complex transition process with potential acquirers, and communicate with the Debtors’ creditors, employees, customers, trade vendors, and other business partners regarding the sale process and the implications thereof. *See id.* In connection with these efforts, the KEIP Participants have fulfilled countless diligence requests for tens of interested parties regarding the insurance adjustment process and the sale process, requests that required significant time and attention. *See id.* These diligence requests require significant time and attention as there are three potential classifications of purchasers: (a) purchasers interested in the refinery; (b) purchasers interested

in the land; and (c) purchasers for ancillary assets such as such as litigation claims. *See* Stein Decl. ¶ 23.

14. The KEIP Participants' understanding, knowledge, and effort is critical to the Debtors' goals of maximizing a Sale Transaction. *See id.* The KEIP Participants are key leaders of all management presentations to potential buyers and have and will continue to utilize their many years of industry experience throughout the process. *See id.* Specifically, Mr. Smith, Mr. Cox, Ms. Celiberti, Mr. Lagreca, and Mr. McShane are responsible for guiding all potential buyers through the sale process in the hopes of ultimately consummating one or more Sale Transactions. They are also relied upon for their knowledge of the Debtors' business operations and historical results.

15. The KEIP Participants' valuable and unique skill sets also make them indispensable to the Debtors' efforts to confirm a Plan within fifteen months of the Petition Date and to maximize the proceeds from any and all proceeds, property, cash or other consideration that are received by the Debtors' estates that are distributable to holders of claims and interests in the Debtors' estates, including the monetization of the Debtors' assets such as advancement of the Insurance Claims, completing a Sale Transaction, and/or obtaining the Tax Claim Proceeds,³ reduced by the Net Expenses⁴ (the "Net Proceeds").

³ "Tax Claim Proceeds" means the value of the proceeds received on or prior to a Measurement Date by PES Holdings and Philadelphia Energy Solutions Refining and Marketing, LLC or its creditors in connection with the sale of Tax Refund Claims.

"Tax Refund Claims" means any and all claims for, and/or any other rights with respect to (including (without limitation) refunds of, or credits against or with respect to), tax credits arising due to the butane/gasoline mixture and/or the propane/butane mixture Federal excise taxes paid by PES Holdings and Philadelphia Energy Solutions Refining and Marketing, LLC or its subsidiaries, with respect to tax years 2014-2016 (whether paid on a quarterly or annual basis), and any accrued interest in respect thereof as allowed by law.

⁴ "Net Expenses" means, the sum of all the actual expenditures for all line items included in the DIP Budget from the effective date of the KEIP through the Debtors' emergence from these chapter 11 cases less the Cash Adjustment.

16. Messrs. McShane and Lagreca provide valuable business and industry specific legal knowledge that are necessary to successfully consummate a Sale Transaction. *See id.* Additionally, Messrs. McShane and Lagreca are integral to the potential Tax Claim Proceeds. The Debtors also rely on the legal knowledge of Messrs. McShane and LaGreca that is specific to the Debtors' business and operations and ensure the environmental safety and compliance of their facilities, which will further maximize the value of any Sale Transaction, while helping them from incurring additional liabilities. *Id.*

17. Additionally, the KEIP Participants' knowledge of the Debtors' business and operations is also critical to ensuring safe and environmentally compliant operations of the Debtors' facilities, and consequently, educating potential buyers of the same in order to successfully effectuate a Sale Transaction. Specifically, Messrs. McShane and Lagreca lead discussions with interested parties with respect to the legal aspects surrounding the sale and purchase of the Debtors' facility including environmental considerations and other refinery-specific requirements. Messrs. Brandon and Statile have and continue to manage the Debtors' facilities that only come with experience and familiarity of the Debtors' business operations, thus

“Cash Adjustment” means cash held by the Debtors as of the effective date of the KEIP and any cash received by the Debtors from ICBCS pursuant to the Global Resolution Term Sheet or HEEP Term Sheet after the effective date of the KEIP.

“DIP Budget” means the budget included under Exhibit B attached to the *Final Order (I) Authorizing Debtors to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(B), 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) and 364(E) and (B) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(B)* [Docket No. 580] (the “Final DIP Order”).

“Global Resolution Term Sheet” means the global resolution term sheet attached as Exhibit C to the Final DIP Order.

“HEEP Term Sheet” means the hydrocarbon extraction and evacuation plan term sheet attached to the Global Resolution Term Sheet.

proving them vital to any Sale Transaction because they will continue to preserve value to the Debtors' estate. They are responsible for leading onsite tours, satisfying refinery-specific diligence requests, and ensuring safe and environmentally compliant operations for the public and the Debtors' employees. *See* Stein Decl. ¶¶ 23, 25–26.

18. Overall, the KEIP Participants are critical to maximizing the value of any Sale Transaction, which in turn increases value for all stakeholders.

B. The KEIP Participants' Role in Maximizing the Insurance Claims

19. As a result of the Girard Point Incident, the Debtors are in the process of pursuing significant Insurance Claims relating to the substantial property damage and business interruption they have incurred. *See* Stein Decl. ¶ 14. The Insurance Claims process requires the same level of expertise and intimate knowledge of the Debtors' operations from the KEIP Participants—if not more—as does the pursuit of a Sale Transaction. In fact, maximizing the recovery on the Insurance Claims requires even more involvement and work by the KEIP Participants. *Id.* at ¶¶ 14–18. Specifically, the Debtors' business interruption claim involves modeling and diligence that only the KEIP Participants can provide to establish the losses associated with the Debtors' current and future inability to operate as a result of the Girard Point Incident. *Id.* at ¶¶ 16–17. Without the KEIP Participants, the Debtors could be at a disadvantage with respect to the business interruption and property damage claims, given that the KEIP Participants have a nonpareil understanding of the Debtors' operations and facility. *Id.*

20. Additionally, a key portion of the Insurance Claims relies on the firsthand knowledge of the KEIP Participants' knowledge of their business and operations is critical to ensure safe and environmentally compliant operations of the Debtors' facilities, which is a critical step towards the Debtors' pursuit to recover the Insurance Claims. New management members, however, would likely require, among other things, a significant amount of time to

become familiar with the Debtors' business and insurance recovery process, further lengthening the time until the Insurance Claims are realized, thereby reducing the Debtors' present value. For instance, Messrs. McShane and Lagreca provide valuable business and industry specific knowledge to allow the Debtors to pursue a recovery on the Insurance Claims. *See* Stein Decl. ¶ 18. Their legal knowledge that is specific to the Debtors' business and operations is also relied upon while the Debtors continue to ensure the environmental safety and compliance of their facilities, which is critical to the Debtors' recovery on the Insurance Claims. *Id.* Mr. McShane is also working closely with federal and local regulators, advisors, and other constituents with respect to the ongoing investigations. Mr. McShane's knowledge of the Debtors' business and status will ensure an efficient process that would be significantly delayed if conducted by a new management member. Their insight is of the utmost importance because they have years of experience with the Debtors' operations. *Id.* Messrs. Brandon and Statile directly oversee the Debtors' facility operations and are integral to ensuring the environmental safety of the Debtors facility. *See* Stein Decl. ¶ 17. Without their guidance and oversight of the Debtors' operations, further deterioration could have occurred, but instead Messrs. Brandon and Statile have and continue to issue prudent decisions that only come with specific expertise and familiarity of the Debtors' business operations, thus proving them vital to pursuing recovery on the Insurance Claims. *Id.*

21. Therefore, the KEIP Participants are critical to maximizing the value of any recovery on the Insurance Claims, which in turn increases value for all stakeholders.

II. The Development of the Debtors' KEIP.

22. To ensure that the Debtors' management team is properly incentivized to meet the significant challenges presented during the Debtors' chapter 11 proceedings as described above, the Debtors, in consultation with their advisors (including Willis Towers Watson, "WTW"),

evaluated the compensation available for the Debtors' management team, particularly the seven KEIP Participants. As a result of this process, and after consultation with their legal and financial advisors and key constituents in these chapter 11 cases, the Debtors have determined that it is appropriate to implement incentive-based compensation awards to best align incentives with those of the Debtors' creditors and other stakeholders during this critical period in their restructuring and sale efforts.

23. To develop the key terms of the KEIP, the Debtors engaged in a thorough, deliberative process and worked closely with their outside advisors, major constituents, and WTW to ensure that the proposed terms of the KEIP are reasonable and in line with competitive practice for companies in chapter 11 that have undergone or contemplated some form of asset sale and/or tied incentives to value creation for the estate. *See* Friske Decl. ¶¶ 16–19.

24. The KEIP satisfies the requirements and mandates of the Bankruptcy Code. The Debtors consulted with outside advisors, including their independent compensation consultant, WTW, and restructuring counsel, Kirkland & Ellis LLP, to ensure that the KEIP is market-based, consistent with competitive practices, and compliant with the Bankruptcy Code. With the assistance of their outside advisors, the Debtors developed incentive awards based on Performance Goals (as defined herein) that align the KEIP Participants' interests with the Debtors' operational and financial objectives.

III. Description of the KEIP.⁵

25. The Debtors, with assistance from their advisors, structured the KEIP to incentivize management to increase the amount of Net Proceeds.

⁵ This summary of the KEIP is for illustrative purposes only and in the event of any inconsistencies between this Motion and the terms of the KEIP, the KEIP shall control.

26. Thus, the KEIP's two performance goals are challenging: they require the KEIP Participants to (a) maximize the Net Proceeds, and (b) confirm a plan of reorganization within fifteen months of the Petition Date (the "Performance Goals"). The Debtors proposed these metrics because achieving an optimal outcome regarding the plan of reorganization and maximization of Net Proceeds is of the utmost importance to the Debtors and their estates as well within the reasonable control of the KEIP Participants.

27. Executing on a Sale Transaction and recovering on the Insurance Claims are interrelated because the Insurance Claims improve the Debtors' estate, which, in turn, will maximize the value of any Sale Transaction. *See* Stein Decl. ¶ 30. In other words, depending on timing, the Insurance Claims may be purchased by a buyer through the Sale Transaction, or be used to repair the Debtors' facilities in advance of a Sale Transaction, which will increase the ultimate value of a Sale Transaction. Thus, it is important that the KEIP Participants be incentivized to focus on achieving a successful Sale Transaction even with their additional extensive duties, as any value they are able to achieve through a Sale Transaction will directly influence the outcome of these chapter 11 cases.

28. As explained above, the KEIP Participants are leading the Debtors' restructuring efforts and should be appropriately incentivized to operate the business in a way that drives value and ultimately inures to the benefit of all stakeholders. *See* Stein Decl. ¶¶ 9, 11, 27. To that end, the Debtors, in consultation with WTW, tailored the core components of the KEIP to be reasonable, and to tie rewards to objective metrics that are aligned with economic stakeholder value creation—*i.e.*, maximizing the amount of Net Proceeds and incremental increase to stakeholder recoveries.

29. The KEIP Participants earn a premium of \$2.5 million to the budget (the “POR Confirmation Success Fee”) if the Debtors confirm a plan of reorganization within fifteen months of the Petition Date. The POR Confirmation Success Fee further incentivizes the KEIP Participants to work tirelessly and quickly towards confirming a plan of reorganization and maximizing the Net Proceeds. The POR Confirmation Success Fee, coupled with the amount of Net Proceeds realized, contribute to the KEIP budget (the “Budget”).

30. To earn any payment, the Debtors must either: (a) confirm a plan of reorganization within 15 months of the Petition Date and/or (b) realize Net Proceeds that reach a threshold of \$300 million (the “Threshold”). For every additional, incremental dollar of Net Proceeds realized over the Threshold mark, 2.5 percent will be allocated to the Budget. By way of illustration, if the Budget is \$301.0 million, then \$25,000 would be contributed to the Budget. To demonstrate the Budget, the chart (assuming that the POR Confirmation Success Fee is earned) depicts what is allocated at varying levels of Net Proceeds:

Range⁶	\$300.0	\$500.0	\$600.0	\$800.0	\$1,000.0
Threshold	\$300.0	\$300.0	\$300.0	\$300.0	\$300.0
Allocated Value above Threshold	\$0.0	\$200.0	\$300.0	\$500.0	\$700.0
Percentage fee for Net Proceeds above the Threshold	2.5%	2.5%	2.5%	2.5%	2.5%
POR Confirmation Success Fee	\$2.5	\$2.5	\$2.5	\$2.5	\$2.5
Budget Amount	\$2.5	\$7.5	\$10.0	\$15.0	\$20.0

⁶ Amounts listed within this chart are in thousands.

31. The KEIP Participants are separated into six separate ranges based on varying levels of responsibility. Mark Smith, Chief Executive Officer, earns 29 percent of the Budget; Mark Cox, Executive Chair, earns 25 percent of the Budget; Rachel Celiberti, Chief Financial Officer and Treasurer, earns 18 percent of the Budget; Anthony Lagreca, Executive Vice President, General Counsel earns 14 percent of the Budget; John McShane, Executive Vice President, Regulatory Affairs Counsel, earns 6 percent of the Budget; Mark Brandon, Vice President of Strategy and Corporate Development, and Daniel Statile, Vice President and General Manager of the Refining Complex, earn 4 percent of the Budget. The ranges are broken out as follows:

KEIP Participant ⁷	Range	\$300.0	\$500.0	\$600.0	\$800.0	\$1,000.0
	Budget Amount	\$2.5	\$7.5	\$10.0	\$15.0	\$20.0
Mark Smith (29.0% of Budget)		\$0.725	\$2.175	\$2.90	\$4.35	\$5.80
Mark Cox (25.0% of Budget)		\$0.625	\$1.875	\$2.50	\$3.75	\$5.00
Rachel Celiberti (18.0% of Budget)		\$0.45	\$1.35	\$1.80	\$2.70	\$3.60
Anthony Lagreca (14.0% of Budget)		\$0.35	\$1.05	\$1.40	\$2.10	\$2.80

⁷ Amounts listed within this chart are in millions.

John McShane (6.0% of Budget)		\$0.15	\$0.45	\$0.60	\$0.90	\$1.20
Mark Brandon (4.0% of Budget)		\$0.10	\$0.30	\$0.40	\$0.60	\$0.80
Daniel Statile (4.0% of Budget)		\$0.10	\$0.30	\$0.40	\$0.60	\$0.80

32. The KEIP Participants will be entitled to payment based on Net Proceeds received to date at the end of each quarter so long as the KEIP Participant remains employed with (or provide services for) the Debtors, is terminated without cause, or the KEIP Participant resigns for good reason. In the event the Net Proceeds monetization process extends past twelve months, the Debtors may amend the current KEIP to implement enhanced compensation opportunities as necessary to reflect the competitive market rates.

33. Additionally, even if the KEIP is implemented and the Participants achieve \$600 million in Net Proceeds, the KEIP Participants' total compensation would be closer to market—within the 25th and 50th percentiles—but hardly a windfall. Notably, if the Debtors' KEIP is not adopted and approved, each KEIP Participant's compensation will be 71 percent below the 25th percentile and 80 percent below the 50th percentile. *See* Friske Decl. ¶ 25.

34. Pursuing the Insurance Claims, a Sale Transaction to one or more unknown, third-party purchasers, maximizing all other proceeds from the Debtors' estate, and reorganizing a complex asset and capital structure involves significant uncertainty for the KEIP Participants. The KEIP Participants have the potential to drive significant upside, but it will require large

amounts of hard work and dedication. And they must accomplish this all while ensuring their facilities are safe and the environment is protected, in addition to performing other duties related to running the Debtors' limited ongoing business and facilitating other aspects of the restructuring. The Debtors believe that the KEIP will ensure that the Debtors' key leaders can avoid distraction and remain focused on leading this marketing process while also remaining incentivized to continue operational improvements to achieve outcomes that will benefit all of the Debtors' creditors and stakeholders.

35. The Debtors therefore submit this program reflects an appropriate challenge as required by section 503(c)(1) of the Bankruptcy Code.

Basis for Relief

I. Implementing the KEIP is a Valid Exercise of the Debtors' Sound Business Judgment.

36. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that debtors "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Under section 363(b), courts require only that the debtor "show that a sound business purpose justifies such actions." *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted); *see also In re Elpida Memory, Inc.*, No. 12-10947 (CSS), 2012 WL 6090194, at *5 (Bankr. D. Del. Nov. 20, 2012) (noting that it is "well-settled" that a debtor may use its assets outside the ordinary course where such use "represents the sound exercise of business judgment"); *In re Phx. Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval under section 363 of the Bankruptcy Code requires a showing that the proposed action is fair and equitable, in good faith, and supported by a good business reason). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made

arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task").

37. Implementing the KEIP is a proper exercise of the Debtors' business judgment and is in the best interests of the Debtors, their estates, and all of their stakeholders. *See, e.g., In re Glob. Home Prods. LLC*, 369 B.R. 778, 784 (Bankr. D. Del. 2007) ("The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor's business judgment."). As set forth above, the KEIP Participants possess the skills, knowledge, and experience critical to the Debtors' ability to provide environmental safety to the Debtors' facilities and maximize the value for the Debtors' stakeholders. Importantly, the KEIP Participants' familiarity with, and understanding of, the Debtors' operations, vendors, and assets are vital not only to the day-to-day operation of the business and restructuring efforts generally, but also to the Debtors' ability to execute value-maximizing transactions for the benefit of all stakeholders in these chapter 11 cases. *See Stein Decl.* ¶¶ 7–8, 11. It is therefore essential—and in the best interest of the Debtors and all stakeholders—that the KEIP Participants receive competitive incentive compensation and are properly motivated to achieve the Debtors' financial, operational, and restructuring objectives.

38. The KEIP is reasonable and appropriately tailored to achieve the ultimate goals of these cases shared by all creditors. Significantly, the KEIP Participants only earn their awards if the Debtors meet their goals of confirming a plan within 15 months and/or high levels of Net Proceeds. Meeting these goals will require significant effort from the KEIP Participants and,

under the circumstances, are the best binary metrics to measure the KEIP Participants' efforts in a manner that cannot be modified by interested parties prior to the hearing on the Motion. By linking the KEIP Participants' increased compensation to the speedy and value-maximizing conclusion of these chapter 11 cases, the KEIP effectively aligns the interest of the senior management with those of the Debtors' stakeholders. *See* Friske Decl. ¶¶ 17–19. Thus, the KEIP is designed to “achieve the desired performance” to enhance value to all stakeholders. *See In re Glob. Home Products, LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (citing *In re Dana Corp.*, 358 B.R. 567, 576 (Bankr. S.D.N.Y. 2006) (approving incentive plan that required management to achieve superior operating results, particularly “in [a] difficult and rapidly deteriorating” industry). The cost of the KEIP, and the individual compensation opportunities for the KEIP Participants are reasonable. *See* Friske Decl. ¶¶ 19, 26.

39. Courts routinely approve employee incentive programs similar to the KEIP that incentivize management to achieve financial and other performance targets to maximize value for a debtor's estate at a reasonable cost—a win for all stakeholders. *See, e.g., In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Jun. 14, 2019) (approving debtors' key employee incentive plan); *In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. Dec. 15, 2015) (same); *In re Samson Res. Corp.*, No. 15- 11934 (CSS) (Bankr. D. Del. Nov. 17, 2015) (same); *In re Avaya Inc.*, No. 17-10089 (SMB) (Bankr. S.D.N.Y. July 11, 2017) (same); *In re Sabine Oil & Gas Corp.*, No. 15- 11835 (SCC) (Bankr. D. Del. Dec. 4, 2015) (same).⁸

II. The KEIP Satisfies the Requirements of Section 503(c) of the Bankruptcy Code.

40. The KEIP is permissible under section 503(c) of the Bankruptcy Code. Section 503(c)(1) of the Bankruptcy Code restricts payments made to “insiders of the debtor for the

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' counsel.

purpose of inducing such person to remain with the debtor’s business”—*i.e.*, it prohibits insider plans that are essentially “pay to stay” plans. *See, e.g., Glob. Home Prod., LLC*, 369 B.R. at 787 (finding that an incentive-based plan need only satisfy the business judgment and reasonableness standards); *Velo Holdings, Inc.*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012) (quoting *Dana Corp.*, 358 B.R. at 584) (finding that an incentive-based plan alleviated the need for a section 503(c)(1) analysis); *In re Borders Grp., Inc.*, 453 B.R. 459, 471 (Bankr. S.D.N.Y. 2011) (finding that “the Debtors [had] met their burden of establishing that the [compensation program was] incentivizing, thereby alleviating the need for a section 503(c)(1) analysis”).

41. The Debtors recognize that the KEIP Participants are insiders. Because the KEIP is primarily incentivizing, however, section 503(c)(1) of the Bankruptcy Code does not prohibit it. Moreover, consistent with section 503(c)(3) of the Bankruptcy Code, the KEIP is “justified by the facts and circumstances” of these chapter 11 cases and should be approved.

A. The KEIP Is Permissible Under Section 503(c)(1) of the Bankruptcy Code Because it Is Primarily Incentivizing Given the Difficult to Achieve Performance Metrics.

42. The KEIP is primarily incentivizing in nature and is not a retention-based plan subject to section 503(c)(1) of the Bankruptcy Code. Section 503(c)(1) of the Bankruptcy Code imposes limitations solely with respect to insider retention plans. *See* 11 U.S.C. § 503(c)(1). The provision does not apply to performance-based incentive plans. *See, e.g., Glob. Home Prod., LLC*, 369 B.R. at 787 (finding that an incentive-based plan need only satisfy the business judgment and reasonableness standards); *Velo Holdings*, 472 B.R. at 209 (finding that an incentive-based plan alleviated the need for a section 503(c)(1) analysis); *Borders Grp.*, 453 B.R. at 471 (finding that “the Debtors [had] met their burden of establishing that the [compensation program was] incentivizing, thereby alleviating the need for a section 503(c)(1) analysis”); *In re*

Glob. Aviation Holdings Inc., 478 B.R. 142, 150 (Bankr. E.D.N.Y. 2012) (finding that section “503(c)(1) is inapplicable because [plan employees] are not insiders”). In determining whether an employee bonus plan is primarily incentivizing, courts consider whether the plan is “designed to motivate insiders to rise to a challenge or merely report to work.” *In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012).

43. The KEIP is incentive and goal-based: it does not contain retention-based components and KEIP Participants are not paid merely for maintaining their employment. The program provides award opportunities if, and only if, the Debtors satisfy their ultimate objective in these chapter 11 cases—a confirmation of a Plan within fifteen months of the Petition Date and the maximization of Net Proceeds. Nobody involved in these chapter 11 cases believes that a Sale Transaction, recovery on the Insurance Claims, or any proceeds from the Debtors’ estate is a foregone conclusion, but rather a stretch goal that will take the efforts of the entire team to realize. Further, the outcome is subject to considerable uncertainty as the Debtors face a number of risks that might affect operations and profitability, which would impact salability.

44. In addition, and most importantly, the ability of the Debtors to successfully and expeditiously emerge from chapter 11 depends in no small part upon the efforts of the KEIP Participants, who have and will continue to serve as key sources of historical, operational, and financial stability and information regarding the Debtors’ business. Specifically, the KEIP Participants will continue to play a critical role in the Debtors’ reorganization and manage their additional responsibilities in addition to performing their typical responsibilities. Moreover, the KEIP Participants have made, and will continue to make, significant progress in ensuring the safe and environmentally compliant operations of the Debtors’ facilities and maximizing value for stakeholders through the Net Proceeds. Given the above risks, in conjunction with other

potential challenges, the Performance Goals will require the KEIP Participants to achieve optimal performance by balancing various interconnected inputs that affect the Debtors' businesses. Because the KEIP Participants will receive payments under the KEIP only upon the achievement of their challenging, value-maximizing goals, this program is no different in kind than other similar incentive-based compensation programs that bankruptcy courts in this district and others have consistently approved. *See, e.g., In re Charlotte Russe Holding, Inc.*, Case No. 19-10210 (LSS) (Bankr. D. Del. Mar. 3, 2019) (approving debtors' management incentive plan that awards participants using sale-driven metrics to maximize value); *In re GenOn Energy, Inc.* Case No. 17-33695 (DJR) (Bankr. S.D. Tex. Oct. 5, 2017) (approving a management incentive plan that awards participants upon entry into a sale transaction); *In re Prommis Holdings, LLC*, Case No. 13-10551 (BLS) (Bankr. D. Del. Apr. 11, 2013) (approving a management incentive plan designed to maximize value in support of a sale). *See also, e.g., Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Jun. 14, 2019) (approving management incentive plan); *Dana Corp.*, 358 B.R. at 584; *In re Avaya Inc.*, No. 17-10089 (SMB) (Bankr. S.D.N.Y. July 11, 2017) (same); *In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. Dec. 15, 2015) (same); *In re Sabine Oil & Gas Corp.*, No. 15-11835 (SCC) (Bankr. S.D.N.Y. Dec. 4, 2015) (same); *In re Samson Resources Corp.*, No. 15-11934 (CSS) (Bankr. D. Del. Nov. 17, 2015) (same).⁹

B. The KEIP Is Justified By the Facts and Circumstances of These Chapter 11 Cases and Satisfies Section 503(c)(3) of the Bankruptcy Code.

45. As discussed above, the KEIP constitutes an exercise of the Debtors' business judgment. Pursuant to section 503(c)(3) of the Bankruptcy Code, the Debtors only need to show

⁹ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' counsel.

that approval of the program is justified by the facts and circumstances of these chapter 11 cases. *See* 11 U.S.C. § 503(c)(3). This standard is essentially the same as the business judgment standard that is applied under section 363(b) of the Bankruptcy Code. *See Velo Holdings*, 472 B.R. at 212 (“Courts have held that the ‘facts and circumstances’ language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b).”); *Dana Corp.*, 358 B.R. at 576; *Glob. Home Prods.*, 369 B.R. at 783 (“If [the proposed plans are] intended to incentivize management, the analysis utilizes the more liberal business judgment review under § 363.”); *In re Mesa Air Grp.*, No. 10-10018, 2010 WL 3810899, at *4 (Bankr. S.D.N.Y. Sept. 24, 2010); *In re Nobex Corp.*, No. 05-20050, 2006 WL 4063024, at *2 (Bankr. D. Del. Jan. 19, 2006).

46. In determining whether a compensation plan satisfies the justified-by-the-facts standard under section 503(c)(3) of the Bankruptcy Code, courts consider several factors, including: (a) whether the plan is calculated to achieve the desired performance; (b) whether the cost of the plan is reasonable in the context of a debtor’s assets, liabilities, and earning potential; (c) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (d) whether the plan is consistent with industry standards; (e) whether the debtor performed due diligence in investigating the need for the plan; and (f) whether the debtor received independent counsel in performing due diligence, creating, and authorizing the plan. *See Glob. Home Prods.*, 369 B.R. at 786; *Dana Corp.*, 358 B.R. at 576–77 (noting various factors “courts consider . . . in determining if the structure of a compensation proposal and the process for developing the proposal meet the ‘sound business judgment’ test” under section 503(c)(3)). As set for below, each of these factors favors approval of the KEIP in this case:

- **The KEIP is Calculated to Achieve the Desired Performance.** The KEIP incentivizes the Debtors’ KEIP Participants to push the Company to achieve the Performance Goals.

The Performance Goals require substantial outperformance from the KEIP Participants. Payment under the KEIP is directly tied to maximizing the Net Proceeds—an objective that reflects the culmination of the Debtors’ efforts in these chapter 11 cases and which was developed to encourage and reward exceptional performance with compensation that is competitive with the market. This program is calibrated to attain results that will benefit the Debtors’ estates and all stakeholders. *See* Friske Decl. ¶¶ 17–19.

- **The Cost of the KEIP is Reasonable.** The costs of the KEIP are clearly reasonable in the context of the Debtors’ assets, liabilities, and earning potential. *See* Friske Decl. ¶¶ 19, 26. The potential cost of the KEIP is far outweighed by the substantial value to the Debtors’ estates to be achieved through confirming a Plan within fifteen months of the Petition Date and maximizing the Net Proceeds. If the Debtors or the KEIP Participants fail to meet the Performance Goals set forth in the KEIP, they will not be entitled to receive the related awards.
- **The KEIP Provides Incentives That Are Market-Based.** The KEIP participants are currently receiving only their base salaries. Without these incentive opportunities, their compensation will lag their market opportunities by a massive amount. *See* Friske Decl. ¶¶ 23, 28–30.
- **The Scope of the KEIP is Fair and Reasonable.** The only KEIP Participants are senior executives, the very people who are driving the Debtors to achieve the goals of the KEIP: rapid confirmation of a Plan and successful completion of the Debtors’ sale and insurance recovery effort. *See* Friske Decl. ¶¶ 18–20, 24.
- **The KEIP is Consistent with Industry Standards.** A consulting director at WTW, Mr. Friske worked with the Debtors’ other advisors to ensure that the KEIP is similar in structure and scope to those of other companies in similar situations. *See* Friske Decl. ¶ 20. In analyzing the Debtors’ needs and circumstances, Mr. Friske relied on his experience formulating employee incentive plans for comparable organizations, and based on Mr. Friske’s extensive familiarity with corporate restructuring pay practices broadly within the energy industry, the Debtors proposed total compensation is reasonable and within industry averages. *See* Friske Decl. ¶ 20. In addition, sale milestones like those found in the KEIP have successfully been used in incentive programs. *See* Friske Decl. ¶ 22. Mr. Friske thus concluded that the design, structure, and award opportunities available under the KEIP are reasonable and consistent with market standards. *See* Friske Decl. ¶¶ 27–32.
- **The Debtors Performed Due Diligence in Developing the KEIP.** As discussed above, the Debtors actively sought the advice of their advisors, as well as the input of the DIP Lenders, in assessing the KEIP. The Debtors and their advisors reviewed and evaluated the KEIP and its Performance Goals based on the input of the Debtors’ management and advisors. As a result of these efforts, the Debtors concluded that: (a) it was critical to establish the KEIP to ensure the competitiveness of the Debtors’ compensation practices and maximize overall value of the estate; (b) the KEIP is reasonable and consistent with market practice and industry standards; and (c) the KEIP is appropriately tailored to incentivize outperformance of senior executives, thus positioning the Debtors for long-

term success. *See* Friske Decl. ¶¶ 17, 27–33; Stein Decl. ¶¶ 9–10, 34.

- **The Debtors Developed the KEIP Based on Independent Advice and Oversight.** The Debtors received counsel from their advisors and when evaluating the KEIP, including regarding the participation in the program and the pay-out levels available to the KEIP Participants. *See* Friske Decl. ¶¶ 17, 19, 3; Stein Decl. ¶¶ 9–10, 34.

47. For these reasons, the Debtors respectfully submit that the KEIP is a proper exercise of the Debtors’ business judgment, is justified by the facts and circumstances of these chapter 11 cases, and satisfies the requirements of section 503(c)(3) of the Bankruptcy Code. The KEIP will incentivize the KEIP Participants to achieve the financial and operational results needed to successfully steer the Debtors through these chapter 11 cases and maximize value for the benefit the Debtors’ stakeholders. Accordingly, the Debtors respectfully request that the Court issue an order approving and authorizing the Debtors to establish the KEIP.

Waiver of Bankruptcy Rule 6004(h)

48. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

49. The Debtors will provide notice of this Motion to: (a) the U.S. Trustee; (b) the Committee; (c) the administrative agent under the Debtors’ prepetition first lien term loan facility and counsel thereto; (d) the lenders under the Debtors’ prepetition first lien term loan facility and counsel thereto; (e) Merrill Lynch Commodities, Inc. and counsel thereto; (f) NGL Energy Partners LP and counsel thereto; (g) the lenders under the Debtors’ prepetition promissory note and counsel thereto; (h) counsel to ICBC Standard Bank Plc; (i) the lenders under the Debtors’ debtor-in-possession financing facility and counsel thereto; (j) the United

States Attorney's Office for the District of Delaware; (k) the Internal Revenue Service; (l) the state attorneys general for all states in which the Debtors conduct business; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

50. No prior motion for the relief requested herein has been made to this or any other court.

[Remainder of the page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: November 22, 2019
Wilmington, Delaware

/s/ Laura Davis Jones

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Proposed Co-Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
)	
PES HOLDINGS, LLC, <i>et al.</i> , ¹⁰	)	Case No. 19-11626 (KG)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Re: Docket No. ___

**ORDER (I) APPROVING THE DEBTORS' KEY EMPLOYEE
INCENTIVE PROGRAM AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")¹¹ of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") (a) approving the Debtors' KEIP and (b) granting related relief, all as more fully set forth in the Motion; and upon the Friske Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court

¹⁰ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors' service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

¹¹ Capitalized terms used but not defined in the Order have the meanings ascribed to such terms in the Motion.

having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized to take all actions necessary to implement the KEIP on the terms and conditions set forth in the Motion, including making any payments that become due pursuant to the terms of the KEIP.
3. Notwithstanding anything to the contrary in this Order, any payment made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the *Final Order (I) Authorizing Debtors to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507(b)* [Docket No. 580] (as may be amended, supplemented or otherwise modified from time to time, the “Final DIP Order”). In the event of any inconsistency between the terms of this Order and the Final DIP Order, the terms of the Final DIP Order shall govern.
4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.
5. Notice of this Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Friske Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
	)	Chapter 11
PES HOLDINGS, LLC, <i>et al.</i> , ¹²	)	Case No. 19-11626 (KG)
)	
Debtors.	)	(Jointly Administered)
)	

**DECLARATION OF DOUGLAS J. FRISKE
IN SUPPORT OF DEBTORS’ MOTION SEEKING ENTRY OF AN ORDER
(I) APPROVING THE DEBTORS’ KEIP AND (II) GRANTING RELATED RELIEF**

I, Douglas J. Friske, hereby declare under penalty of perjury:

8. I am a Managing Director at Willis Towers Watson US LLC (“WTW”). In June 2019, PES Holdings, LLC (“PES”), one of the above captioned debtors and debtors in possession (the “Debtors”), engaged WTW to provide compensation consulting services both before and after the commencement of these chapter 11 cases, after having previously engaged WTW in August 2017 to provide services as it relates to the Debtors’ prior chapter 11 cases. I am familiar with the prepetition and postpetition structure of the Debtors’ compensation programs, including the KEIP, effective July 21, 2019 (the “KEIP”) as it is set forth in the *Debtors’ Motion for Entry of an Order Authorizing and Approving the Debtors’ KEIP* (the “Motion”),¹³ filed contemporaneously herewith.

9. I submit this declaration on behalf of WTW in support of the Motion. Except as otherwise indicated, I have personal knowledge of all facts in this declaration, based on my

¹² The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

¹³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

review of the Debtors' compensation programs, my research into compensation practices for companies in the energy industry and those that have recently filed for chapter 11 protection, and information supplied to me by members of the Debtors' management team and the Debtors' other advisors. For the reasons described below, it is my opinion that the KEIP is reasonable and generally consistent with market norms for companies in the energy industry and those in chapter 11. If called upon to testify, I could and would testify competently to the facts and opinions set forth in this declaration.

Background and Qualifications

10. I received my Bachelor's degree in finance from the University of Illinois in 1986. After working at Allstate and Chubb Insurance Companies, I returned to school at Northwestern University. I received a Master's degree in Management from Northwestern University's J.L. Kellogg Graduate School of Management in 1990. Since that time, I have been employed by WTW or its predecessor firms.

11. WTW is an international professional services firm that offers a wide variety of services to public and private clients, including expert analysis of executive and management compensation. WTW designs and delivers solutions that manage risk, optimize benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. WTW focuses on four key business segments: corporate risk and broking, human capital and benefits, exchange solutions, and investment, risk, and reinsurance.

12. My responsibilities at WTW have primarily involved consulting to large companies, specifically with regard to executive compensation. I have worked with numerous Fortune 1000 companies, and I have participated in the development and design of hundreds of management and employee incentive plans for companies inside and outside of bankruptcy. I

am frequently retained by large companies to advise them on their employee compensation strategies, programs, and pay levels.

13. I am highly experienced in executive, management, and employee compensation matters with more than 29 years of experience in the field. During this time, I have been the lead or supporting employee compensation expert in approximately 100 bankruptcy cases, and have frequently testified as to the reasonableness of a variety of post-petition compensation arrangements. Specifically, I have been involved in the review and design of key employee incentive plans, management incentive plans, and other similar-type plans in the chapter 11 cases of, among many, American Airlines, Avaya, Breitburn Energy Partners, Claire's Stores, Inc., Energy Future Holdings, GenOn, The Great Atlantic & Pacific Tea Company, Longview Power, Midstates, Orchard Brands, Orexigen, Penn Virginia, Pernix, PG&E, RadioShack, Reader's Digest Association, Round Table Pizza, Sabine Oil & Gas, Samson Resources, Sbarro, Southeastern Grocers, VER Technologies, Sears Holdings Corporation, and Westmoreland Coal.

Willis Towers Watson's Role with the Debtors

14. In 2017, the Debtors originally retained WTW to provide compensation and consulting services as it related to its 2017 compensation programs. In June 2019, and prior to the Petition Date, my team and I further assisted the Debtors in the development of a pre-restructuring retention-based compensation program.

15. In the latter half of 2019, and as it relates to the KEIP as it is set forth in the Motion, my team and I performed the following services: conducted a preliminary review of a straw model KEIP, including an assessment of how the proposed terms compared to market practice in other similarly-situated restructuring cases; performed a market analysis of proposed KEIP Participants' total direct compensation with and without the KEIP; and determined how

the aggregate cost of the KEIP under various performance scenarios compared in aggregate to similarly structured KEIPs in other recent restructuring cases. For purposes of performing the total direct compensation market analysis, WTW gathered relevant market compensation data, including salary, short-term compensation, and long-term compensation offered by similarly sized companies in the energy industry. I have also familiarized myself with the status of the Debtors' restructuring process.

16. WTW worked with the Debtors and their outside advisors to assess and refine the KEIP to align with the Debtors' restructuring objectives, and my team and I worked closely with the Debtors' outside advisors in finalizing the KEIP. My primary goal has been to provide independent advice concerning compensation designs that drew directly upon relevant market data as well as my experience in designing such programs for similarly-situated companies.

KEIP Background

17. During my work with the Debtors, I learned that, prior to the Petition Date, they maintained compensation programs that were designed to provide, in a highly competitive environment, reasonable market-based incentive compensation for their key employees to incentivize the creation of long-term value for stakeholders.

18. Prior to the Petition Date, the Debtors, through their advisors, approached WTW to review proposed designs for the postpetition incentive plan—*i.e.*, the plan that would ultimately become the proposed KEIP. Based upon the diligence and comprehensive market analysis I undertook with my team, I concluded that the general design of the proposed KEIP was consistent with typical market practice in similar restructuring situations. Further, absent implementation of a reasonable incentive plan, the KEIP Participants' total compensation would fall significantly below the 25th percentile of comparable energy industry market practice.

The Proposed KEIP

19. As further described in the Motion, the KEIP is designed to incentivize seven key insider management members to achieve two Performance Goals: (a) to maximize the Net Proceeds, and (b) to confirm a plan of reorganization within fifteen months of the Petition Date. The KEIP provides the KEIP Participants with the opportunity to earn incentive-based cash awards from maximizing Net Proceeds only if the Debtors and/or the KEIP Participants can achieve Net Proceeds in excess of \$300 million. The KEIP Participants are seven of the Debtors' senior management members. It is my understanding that these insiders are essential for the Debtors' successful operations, financial stability and restructuring process. It is also my understanding that the KEIP will not include anyone other than the seven KEIP Participants.

20. If a KEIP Participant is terminated without cause or resigns for good reason prior to a reorganization or sale and has not had the opportunity to fully earn their KEIP awards, he or she would receive any KEIP awards (whether vested or unvested) already earned based on the KEIP Participant's percentage. In addition, KEIP participants will earn cash payments in respect of any proceeds generated following a Qualifying Termination, determined based on the KEIP Participant's percentage, conditioned on the execution of a general release. If, however, a KEIP Participant leaves the Debtors' employment voluntarily without good reason or is terminated with cause, the KEIP Participant forfeits any unpaid portions of his or her KEIP award.

21. My team and I evaluated the estimated cost of the KEIP under a variety of potential performance outcomes. In each case, Net Proceeds must exceed the Threshold (\$300.0 million) to be allocated to the Budget. For every incremental dollar in Net Proceeds realized over \$300.0 million, 2.5 percent will be allocated to the Budget. Additionally, if the Debtors confirm a plan of reorganization within fifteen months of the Petition Date, a flat \$2.5 million will be allocated to the Budget.

22. Further, the KEIP Participants are separated into six separate ranges based on varying levels of responsibility. Mark Smith, Chief Executive Officer, earns 29 percent of the Budget; Mark Cox, Executive Chair, earns 25 percent of the Budget; Rachel Celiberti, Chief Financial Officer and Treasurer, earns 18 percent of the Budget; Anthony Lagreca, Executive Vice President, General Counsel earns 14 percent of the Budget; John McShane, Executive Vice President, Regulatory Affairs Counsel, earns 6 percent of the Budget; Mark Brandon, Vice President of Strategy and Corporate Development, and Daniel Statile, Vice President and General Manager of the Refining Complex, earn 4 percent of the Budget. The ranges are broken out as follows:

KEIP Participant ¹⁴	Range	\$300.0	\$500.0	\$600.0	\$800.0	\$1,000.0
	Budget Amount	\$2.5	\$7.5	\$10.0	\$15.0	\$20.0
Mark Smith (29.0% of Budget)		\$0.725	\$2.175	\$2.90	\$4.35	\$5.80
Mark Cox (25.0% of Budget)		\$0.625	\$1.875	\$2.50	\$3.75	\$5.00
Rachel Celiberti (18.0% of Budget)		\$0.45	\$1.35	\$1.80	\$2.70	\$3.60
Anthony Lagreca (14.0% of Budget)		\$0.35	\$1.05	\$1.40	\$2.10	\$2.80

¹⁴ Amounts listed within this chart are in millions.

John McShane (6.0% of Budget)		\$0.15	\$0.45	\$0.60	\$0.90	\$1.20
Mark Brandon (4.0% of Budget)		\$0.10	\$0.30	\$0.40	\$0.60	\$0.80
Daniel Statile (4.0% of Budget)		\$0.10	\$0.30	\$0.40	\$0.60	\$0.80

I. Analysis of Compensation for KEIP Participants.

23. In assessing the reasonableness of the KEIP, I worked with my team to analyze each KEIP Participant's competitive "target total direct compensation," which is a compensation-industry term that means the sum of base salary, target annual incentives, and long-term incentive grant values. Market compensation data for each KEIP participant was derived from the 2018 WTW Energy Services Industry Survey, reflecting similarly-sized energy services industry companies. This survey includes robust data and large sample sizes to appropriately reflect the size of the Debtors' operations (*i.e.*, approximately \$9.6 billion in revenue). My team and I surveyed standard market compensation benchmarks and discussed the results with the Debtors' management. This methodology for developing market compensation data is consistent with my chapter 11 and ordinary course experience in evaluating compensation programs.

24. I compared the total direct compensation (reflecting base compensation, plus the value of KEIP awards under various performance scenarios) for each KEIP Participant to target total direct compensation data for comparable roles from the above-referenced market data.

Absent Court approval of the KEIP, total direct compensation for the KEIP Participants will comprise of base compensation only, and thus total direct compensation will be 71 percent below the 25th percentile of the market, on average. In my opinion, this could significantly undermine the Debtors' ability to continue to motivate the KEIP Participants to achieve desired business objectives. If, however, the KEIP is approved, the aggregate total direct compensation for the KEIP Participants (reflecting the sum of current base compensation and earned KEIP awards under various performance scenarios) will be positioned be more competitively with energy industry market practices, are summarized as follows:

Total Direct Compensation ("<u>TDC</u>") for KEIP Participants			
TDC Outcome	Relation to the 25th Percentile of Market TDC	Relation to 50th Percentile of Market TDC	Relation to 75th Percentile of Market TDC
Base Compensation Only (No KEIP)	-71%	-80%	-86%
Base Compensation, Plus KEIP Payout (at \$300M in Net Proceeds)	-49%	-64%	-74%
Base Compensation, Plus KEIP Payout (at \$600M in Net Proceeds)	+18%	-16%	-41%
Base Compensation, Plus KEIP Payout (at \$1.0B in Net Proceeds)	+107%	+47%	+4%

25. Based on the results of these benchmarking analyses, and my experience with incentive compensation plans adopted by other companies, both inside and outside the chapter 11 context, I believe the award opportunities provided by the KEIP are reasonable. Critically, the absence of an incentive opportunity for the participants would, in my opinion, significantly undermine the current competitiveness of the Debtors' compensation structure (as it would be comprised of only base compensation, which is significantly below market total compensation).

II. Analysis of the KEIP Structure.

26. I believe the overall design and structure of the KEIP is consistent with market practice in similar restructuring situations, and appropriate in light of the Debtors' particular business and circumstances. I advised that the KEIP metrics should be objectively measured, performance-based metrics with "stretch" goals.

27. To assess the reasonableness of the design of the KEIP, my team and I analyzed the publicly disclosed KEIPs from twelve companies with revenues in excess of \$1 billion that recently adopted court-approved, post-petition KEIPs tied to asset sale value and/or value creation metrics. The companies are: Alpha Natural Resources, Inc., Furniture Brands International, Gander Mountain Company, Inc., GenOn Energy, hhgregg, Inc., Marsh Supermarkets, NII Holdings, Inc., Quiksilver Inc., RadioShack (RS Legacy Corporation), Real Industry, Inc., Sears Holdings Corporation, and SunEdison (collectively, the "Peer Companies"). In conducting this analysis, I also relied upon my significant consulting experience in the analysis and design of incentive plans generally for similarly-situated companies in chapter 11.

28. Based upon my review, the structure of the KEIP comports with the structure of incentive plans of the Peer Companies. Specific aspects of the KEIP design that are aligned with common market practice include:

- Denominated and paid in cash;
- Number of participants;
- Explicit value creation metric; and
- Payouts tied to achieving larger sales proceeds.

29. For these reasons, and based on my experience with incentive-based compensation programs employed by companies in chapter 11, I believe the structure of the KEIP is reasonable and consistent with market practice.

III. Analysis of the KEIP Total Cost.

30. I also compared the cost of the KEIP at “midpoint” performance on both an absolute basis and as a percentage of revenue to the target or equivalent cost of the Peer Companies’ KEIPs. My analysis showed that:

- a. The cost of the KEIP under a \$300 million Net Proceeds scenario (resulting in costs of \$2.5 million), reflected as a percentage of revenue (approximately 0.03 percent) is positioned well below market 25th percentile levels among the Peer Companies;
- b. The cost of the KEIP under a \$600 million Net Proceeds scenario (resulting in costs of \$10.0 million), reflected as a percentage of revenue (approximately 0.10 percent) is positioned near the market 25th percentile levels among the Peer Companies; and
- c. The cost of the KEIP under a \$1.0 billion Net Proceeds scenario (resulting in costs of \$20.0 million), reflected as a percentage of revenue (approximately 0.21 percent) is positioned between the market 25th percentile and 50th percentile levels among the Peer Companies.

31. For these reasons, and based on my experience with incentive-based compensation programs employed by companies in chapter 11, I believe the cost of the KEIP is reasonable and consistent with market practice.

Conclusion

32. Based on my education, experience, and the work I have done in this case, and having consulted and considered the input of the Debtors’ other advisors; and through them the DIP Lenders; it is my opinion that the overall cost of the KEIP is reasonable and consistent with the cost of similar programs in other bankruptcy cases when considering the Debtors’ size and should be approved for the reasons set forth herein.

33. I further believe that but for the KEIP, the KEIP Participants would, on the whole, have significantly below-market compensation and incentive opportunities, which could impact the Debtors’ ability to motivate current staff to achieve desired business objectives. It is also my

opinion that the KEIP provides award levels under various performance scenarios, which if achieved, will provide compensation opportunities that are consistent with market practice and are not excessive when compared with industry benchmarks.

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

Dated: November 22, 2019

/s/ Douglas J. Friske

Douglas J. Friske

Managing Director

Willis Towers Watson US LLC

Exhibit C

Stein Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
In re:	)	Chapter 11
)	
PES HOLDINGS, LLC, <i>et al.</i> , ¹	)	Case No. 19-11626 (KG)
)	
Debtors.	)	(Jointly Administered)
)	

**DECLARATION OF JEFFREY S. STEIN IN
SUPPORT OF DEBTORS’ MOTION FOR ENTRY OF AN
ORDER (I) APPROVING THE DEBTORS’ KEY EMPLOYEE
INCENTIVE PROGRAM AND (II) GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, I, Jeffrey S. Stein, hereby declare as follows under penalty of perjury:

1. I am the Chief Restructuring Officer of the above-captioned debtors and debtors in possession (collectively, the “Debtors”). I am also a member of the board of directors of PES Energy Inc., the indirect parent of PES Holdings, LLC, and have held that position since July 8, 2019. I am a member of the Board’s restructuring committee (the “Restructuring Committee”), which, in light of any potential conflicts of interests amongst other Board members, further vets and ensures all decisions are made in the Debtors’ best interests. In addition, prior to and during the Debtors’ 2018 chapter 11 cases, I was an independent board member of Debtor North Yard GP, LLC. I am generally familiar with the Debtors’ day-to-day operations, business, financial affairs, and books and records. I am above 18 years of age and am competent to testify.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

2. In addition, I am the Managing Partner of Stein Advisors LLC, a financial advisory firm that provides consulting services to institutional investors focused on distressed debt and special situations equity investments. Prior to founding Stein Advisors LLC in 2010, from January 2003 through December 2009, I served as Principal of Durham Asset Management LLC, a global event-driven distressed debt and special situations equity asset management firm that I co-founded. In that capacity, I was responsible for the identification, evaluation and management of investments for various investment portfolios. From July 1997 to December 2002, I served as Co-Director of Research at The Delaware Bay Company, Inc., a boutique research and investment banking firm focused on the distressed debt and special situations equity asset classes. From September 1991 to August 1995, I was an Associate and Assistant Vice President at Shearson Lehman Brothers in the Capital Preservation and Restructuring Group. I received a B.A. in Economics from Brandeis University and an M.B.A. with Honors in Finance and Accounting from New York University.

3. I have over twenty-seven years of experience providing management services to distressed companies, including the development and implementation of employee retention programs. This experience includes working with management teams and boards of directors of large companies facing financial challenges similar to those of the Debtors.

4. I submit this declaration (the "Declaration") in support of the relief requested in the *Debtors' Motion For Entry of an Order (I) Approving the Debtors' Key Employee Incentive Program and (II) Granting Related Relief* (the "Motion"),² filed contemporaneously herewith, to which this Declaration is attached as Exhibit C.

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

5. Except as otherwise indicated herein, all facts set forth in this Declaration are based upon my personal knowledge, discussions with members of the Debtors' management team and the Debtors' advisors, review of relevant documents and information concerning the Debtors' operations, financial affairs, and restructuring initiatives, or represent my opinions and beliefs based upon my professional experience and knowledge of the Debtors and their operations. Additionally, in my professional career, I have been part of the formulation of dozens of compensation programs substantially similar to the one contemplated by the Motion. In addition, I am generally familiar with similar programs approved in other chapter 11 cases as it is relevant to my professional career. If I were called upon to testify, I could and would testify competently to the facts set forth herein on that basis. I am authorized to submit this Declaration on behalf of the Debtors.

6. For the reasons described below, it is my opinion that the Debtors' KEIP is reasonable and consistent with market practice both for peer companies in the Debtors' industry and for companies in chapter 11.

I. The Development of the Key Employee Incentive Plan.

7. Since the Girard Point Incident and Petition Date, the Debtors' KEIP Participants have worked tirelessly to both manage operations and maximize value for the Debtors and their estates. Specifically, the KEIP Participants are responsible for ensuring the safe and environmentally compliant operation of the Debtors' facilities, managing limited ongoing operations, identifying and investigating rebuild options, interfacing with regulators, unions and local political entities, overseeing the investigation as to the cause of the accident, and engaging in intensive negotiations with their lenders, particularly their intermediation lender, ICBC Standard Bank PLC ("ICBCS"), regarding ICBCS's materials that still remain on the Debtors' property as a part of the intermediation process. Ultimately, thanks to the dedication and resolve of the KEIP

Participants, the Debtors and ICBCS have reached a global resolution that has led to the consensual DIP order, which provides an additional \$35.0 million of much-needed liquidity for the Debtors to fund these chapter 11 cases. And, of course, the KEIP Participants also responsible for the Debtors' day-to-day management and leadership for the restructuring process (Mr. Mark Smith, Mr. Mark Cox, and I in particular bear these responsibilities). The restructuring process itself entails considerable additional effort, including participating in court hearings and meetings with stakeholders and other parties, reviewing and addressing court filings, and responding to creditor inquiries and requests from the Office of the United States Trustee. And, since the Debtors are not currently operating and are in chapter 11, the KEIP Participants are doing all of this with a lean staff and limited support at the executive management level and below.

8. It is in addition to these duties that KEIP Participants have dedicated considerable amounts of time to the Insurance Claims and to the Sale Transaction process, which are the two key sources of value available for the Debtors' estates. The Insurance Claims and Sale Transaction processes—two workstreams that did not exist prior to the Petition Date—both require meticulous attention to detail, industry expertise, and unique institutional knowledge regarding the Debtors' business that only the KEIP Participants can provide. Ultimately, the KEIP Participants' efforts are essential to maximize Net Proceeds value for all of the Debtors' stakeholders.

9. However, there is currently no program in place to incentivize the KEIP Participants to maximize Net Proceeds. The Debtors' previous management cash incentive plan was rendered obsolete by the Girard Point Incident—management payouts under that program were dependent on operational results, but since the Debtors' essentially ceased operating (at least temporarily) as a result of the Girard Point Incident, the prior plan's metrics are now unattainable. Thus, the Debtors, along with their advisors (compensation, benefits, and risk consulting firm

Willis Towers Watson Delaware, Inc. (“WTW”), law firm Kirkland & Ellis LLP (“K&E”), and investment banking firm PJT Partners LP (“PJT”), have designed a Key Employee Incentive Plan (a “KEIP”) that incentivizes the KEIP Participants to continue to dedicate significant amounts of time and attention to maximizing Net Proceeds in order to ensure the estates receive the maximum amount of value available. The KEIP is generally consistent with how the Debtors’ management incentive compensation scheme worked prepetition—management only recovers if certain financial targets are met—but is more appropriately tailored to the unique financial goals that the Debtors are pursuing during their chapter 11 cases.

10. The Debtors and their advisors underwent substantial negotiations with their key stakeholders regarding the KEIP, and have ultimately received the support from their DIP Lenders and ICBCS. The Restructuring Committee has been involved throughout these negotiations. The advisors have made several presentations to the Restructuring Committee, and there have been multiple Restructuring Committee meetings and telephone conferences regarding the KEIP. There has also been considerable correspondence between the Restructuring Committee, advisors, and other stakeholders in interest regarding the KEIP. At the conclusion of these negotiations, the Restructuring Committee, on behalf of the Debtors, concluded that the KEIP was a proper exercise of fiduciary duties and business judgment and maximized value. It is key to note that the KEIP Participants who are members of the Restructuring Committee recused themselves from voting on behalf of the KEIP and were not present at the time of the vote for the approval.

II. The KEIP Participants are Necessary to Maximize Value.

11. As noted above, the KEIP Participants already have significant operational and management responsibilities independent of their responsibilities to maximize the value of Net Proceeds. While the KEIP Participants have worked tirelessly and diligently to date in order to balance their other job duties with their efforts to drive maximum Net Proceeds, they currently have no financial incentive to go above-and-beyond in order to drive the maximum possible recovery.

12. The Debtors have endeavored to identify those management individuals whose efforts are especially critical to driving maximum possible Net Proceeds and concluded that, in light of that information and for reasons explained in more detail below, the following management employees are appropriate participants in the KEIP:

- Mark Smith, Chief Executive Officer
- Mark Cox, Executive Chair
- Rachel Celiberti, Chief Financial Officer
- Anthony Lagreca, Executive Vice President, General Counsel
- John McShane, Executive Vice President, Regulatory Affairs Counsel
- Mark Brandon, Vice President of Strategy and Corporate Development
- Daniel Statile, Vice President and General Manager of the Refining Complex

13. The Debtors selected each KEIP Participant based on their ability to directly influence value creation and the recoveries related to the Net Proceeds. This small group of management and directors is critical to the Debtors' efforts to recover the maximum value possible with respect to the Net Proceeds. Each KEIP Participant has irreplaceable knowledge and expertise regarding Debtors' business practices, operations and relationships that makes them crucial to achieving the best possible outcome with respect to the Net Proceeds.

A. The KEIP Participants' Role in Insurance Recoveries.

14. As has been discussed extensively in this case, the Debtors' possess sizable insurance claims related to the Girard Point Incident, including substantial property and business interruption claims (the aggregate limit under these insurance policies is \$1.25 billion). The Debtors have only received an insurance advance of \$50 million to date related to their property damage claim, and have not received any advance on their business interruption claims. The Debtors are currently in negotiations with their insurers regarding when and how much the insurers will pay on the Debtors' Insurance Claims. Because the business interruption claim is intended to provide coverage for losses associated with the Debtors' current and future inability to conduct business as a result of the Girard Point Incident, the Debtors must provide the insurers with extensive modeling and diligence regarding what that "future" business would have entailed in order to substantiate their rights to recover business interruption proceeds.

15. The KEIP Participants have and will continue to contribute to the maximization of the Debtors' Insurance Claims in multiple ways.

16. *First*, the KEIP Participants are necessary to ensure that the Insurance Claims process moves quickly. They have already proven their worth in this respect, and with the KEIP plan, will to continue to do so. Specifically, Mr. Smith, Mr. Cox, and Ms. Celiberti, along with other KEIP Participants, utilized their relationships and expertise to receive thorough estimates of the Insurance Claims from the Debtors' preparation services advisor within 60 days—even though it normally takes six months or longer to receive that kind of estimate. This expedited estimate would not have been possible had the KEIP Participants not swiftly fielded and satisfied countless information requests regarding the Girard Point Incident investigations. And not only did the KEIP Participants drive a swift estimate—they also drove an expedited multi-million dollar advance of property insurance proceeds, despite resistance from the insurance providers. These proceeds were

received at a critical time in the Debtors' reorganization efforts, and supported important operational needs. I believe they would not have been received absent the proactive and aggressive efforts to recover them by the KEIP Participants. And since the Debtors' advisors are still in the process of analyzing any potential Insurance Claim recoveries, the KEIP Participants will need to continue to promptly and thoroughly respond to additional diligence requests related to the Insurance Claims, thus making them invaluable assets to the Debtors' recovery efforts. Ms. Celiberti and Messrs. Brandon and Statile in particular have been essential in responding to near-daily diligence requests related to the Insurance Claims and meeting with insurance adjustors on site in order to address questions. They are also responsible for meeting with the Debtors' claims representative and ensuring the Debtors' interests are being appropriately protected and prosecuted. Any replacement management employee would need a significant amount of time to get up to speed regarding these complexities involved in the Debtors' businesses, and the Insurance Claim recovery process would almost certainly slow down as a consequence.

17. ***Second***, and relatedly, the KEIP Participants' detailed knowledge of the Debtors' business has been essential to constructing, maintaining, and refining the model that forms the foundation of the Debtors' Insurance Claims. A key part of the diligence request process described above has been supplying the Debtors' insurers and advisors with inputs and information necessary to construct this highly detailed, complex model which estimates the value of the parts of the business that were both damaged and undamaged as a result of the Girard Point Incident. Specifically, Messrs. Brandon and Statile's intimate knowledge of the Debtors' operations is required to develop the model. Without the KEIP Participants' institutional knowledge and insight regarding the Debtors' businesses, the Debtors would be unable to properly substantiate the model that shows the Debtors' business would have been viable, and which underlies their Insurance

Claim recovery, and would thus likely achieve a diminished recovery on their Insurance Claims. After all, because the refinery is not currently operating, any management team who comes in to replace any KEIP Participant will be unable to gain the first-hand operational knowledge that the KEIP Participants have.

18. **Third**, KEIP Participants Mr. Lagreca and Mr. McShane are necessary to help the Debtors navigate how to maximize their Insurance Claim recoveries from a legal perspective. The Debtors expect them to continue to provide industry-specific legal knowledge to help the Debtors' outside counsel and management negotiate with the Debtors' insurers and maximize the value of the Insurance Claims. For example, Mr. Lagreca and Mr. McShane continue to work closely with other KEIP Participants in analyzing legal issues that arise throughout the claims adjustment and settlement process, which will aid in maximizing the recovery on the Insurance Claims.

B. The KEIP Participants' Role in Sale Transaction Recoveries.

19. Following substantial due diligence and extensive negotiations with their stakeholders regarding, among other things, the corporate structure and profile of the Debtors post-emergence, the Debtors have determined they should explore potential sales of some or all of their assets or equity interests, including a sale of part or all of the refinery complex and/or ancillary assets. To that end, the Debtors have commenced a dual-track process pursuant to which the Debtors will conduct a formal marketing process for potential Sale Transactions while at the same time identifying and executing their current standalone restructuring contemplated by the Plan.

20. To pursue a potential Sale Transaction, the Debtors have and will continue to, among other things, continue to develop sale and marketing materials for distribution to interested parties, respond to diligence inquiries, engage in discussions and negotiations with PJT (the Debtors' investment bank working on the sale process), and potentially interested parties regarding the sale process, participate in in-person site tours and management presentations with potentially

interested parties, coordinate and negotiate a complex transition process with potential acquirers, and communicate with the Debtors' creditors, employees, customers, trade vendors, and other business partners regarding the sale process and the implications thereof.

21. The KEIP Participants' knowledge and effort is necessary to maximize any Sale Transaction recoveries, both directly and indirectly, because they will necessarily be at the forefront of any Sale Transaction process, and will play an integral role in pursuing any Sale Transaction.

22. From a direct perspective, Mr. Smith and the KEIP Participants have been tasked with leading all potential buyers through the sale process in an effort to reach a Sale Transaction, and their efforts in this respect are critical. Messrs. Smith and Cox in particular are intimately familiar with the Debtors' business and have significant experience in the industry. They have and will continue to lead management presentations and engage with the management teams and principals of potential strategic and financial buyers. Given the substantial complexity of the Debtors' facilities, Messrs. Smith and Cox's efforts will have significant, if not the most significant, influence on the outcome of any Sale Transactions because they are privy to potential solutions that can be bespoke to the potential purchaser's needs. For example, their experience with the Debtors' unique location and design can provide insight to potential buyers that could not have previously been identified without their input. Each other KEIP Participant likewise brings an expertise to the table that will help maximize value under the Sale Transactions and/or recovery of the Insurance Claims.

23. As with the Insurance Claims, the Debtors' Sale Transaction process has involved significant diligence. These diligence requests are quite intensive as there are several types of potential purchasers, including: (a) purchasers interested in the refinery, (b) purchasers interested

in the land, and (c) purchasers interested in ancillary assets such as litigation claims. And, as with the Insurance Claims process, Ms. Celiberti, Mr. Lagreca, Mr. Brandon, and Mr. Statile have been working closely with the Debtors' advisors to provide the requisite information to proceed with the sales process. Importantly, their familiarity with, and understanding of, the Debtors' operations, contract parties, assets, and intimate knowledge of the Debtors' financial systems and books and records are essential to effectuating a value-maximizing sale. The Debtors expect Ms. Celiberti, Mr. Lagreca, and Mr. Brandon, and Mr. Statile will continue to play a critical role regarding the Sale Process, while continuing to make significant progress in maximizing value for stakeholders through operational improvements and asset optimization.

24. Mr. Lagreca and Mr. McShane are also important to the Sale Transaction process. Each provides vital insight regarding industry-specific legal implications to maximize Net Proceeds received from a Sale Transaction. Specifically, their work as the Debtors' Vice President, General Counsel and Executive Vice President, Regulatory Affairs Counsel have armed them with invaluable wherewithal and knowledge that has and will continue to be beneficial to the Debtors' advisors while pursuing a Sale Transaction. Mr. McShane is also working closely with federal and local regulators, advisors, and other constituents with respect to the ongoing investigations. Their insight is of the utmost importance because they have years of experience with the Debtors' operations.

25. The KEIP Participants have also indirectly supported the Sale Process by engaging in efforts to preserve the value of the Debtors' assets, which is in turn essential to preserving the value of any assets that could be sold as part of a Sale Transaction. For instance, the KEIP Participants' proactivity and quick decision-making have prevented environmental deterioration as they, along with retained professionals, have devoted significant energy and efforts to safing

the Debtors' damaged property. Messrs. Brandon and Statile, who have direct oversight of the Debtors' refinery operations, are particularly important to the Debtors' efforts to prevent environmental issues and safe their facilities. Were such efforts to fail, and the Debtors were to experience a negative environmental event, that would obviously damage the Debtors' ability to sell its property, as any reasonable buyer would demand a discounted sale price for an asset that presents an ongoing environmental or safety hazard.

26. The KEIP Participants also support the Sale Transaction Process by helping the Debtors keep their options open regarding a potential rebuild and re-open Sale Transaction. Any buyer interested in rebuilding and reopening the Girard Point and Point Breeze refineries is more likely to be interested in consummating such a transaction if there is a viable management team in place who can help them run the refineries. The Debtors are currently pursuing all options regarding a Sale Transaction—but it would be more difficult to pursue a transaction that involves rebuilding and re-opening the refinery if there is no experienced management team in place to support restarted operations.

27. In sum, each of the above KEIP Participants is directly responsible for, and has the ability to maximize value, Net Proceeds received either through, a Sale Transaction or recovery of the Insurance Claims.

C. The KEIP Is Value-Maximizing and the Payment of the POR Confirmation Success Fee and/or Net Proceeds from a Sale Transaction and/or the Insurance Claims Is Appropriate.

28. I believe that maximizing the value of the Debtors' estates for their stakeholders requires very significant efforts by the KEIP Participants—who are simultaneously supporting the Debtors' restructuring initiatives (*e.g.*, by engaging in stakeholder negotiations regarding recoveries and collateral) and continuing to perform many of their remaining job functions (*e.g.*,

(a) overseeing the shut down and idling of the plant and equipment, removed elevated risk chemicals, and placed the catalyst, equipment, and vessels in a safe state to ensure safety during the idle period and (b) supervising all human resources, payroll matters, monthly financial reporting, and bankruptcy reporting), in addition to performing key roles related to Insurance Claim recoveries and the Sale Process. Indeed, the KEIP Participants' tasks have become significantly more challenging since the commencement of these chapter 11 cases, and it is essential that they be appropriately incentivized at this critical juncture. The KEIP appropriately accomplishes the goal of ensuring those incentives are in place. Specifically, there are five ways in which the KEIP's structure is thoughtfully constructed to both maximize recoveries and protect the interests of the Debtors' stakeholders.

29. **First**, the KEIP is appropriately designed to align the KEIP Participants' interests with the interests of the Debtors' other stakeholders (*i.e.*, ICBCS, the DIP Lenders, other creditors, etc.) because recoveries are contingent upon achieving a certain level of Net Proceeds—*i.e.*, it incentivizes them to maximize estate recoveries through the Sale Transaction, the Insurance Claims recovery process, and/or any proceeds earned by the Debtors' estate. Specifically, KEIP Participants will only realize KEIP recoveries if the Debtors satisfy two conditions: (a) Net Proceed targets either through a Sale Transaction, the Insurance Claims recovery process, and/or any proceeds earned by the Debtors' estate that exceed \$300 million; and (b) the Debtors confirm a Plan within fifteen months of the Petition Date. In other words, if Net Proceeds recoveries are disappointing, the KEIP Participants will not recover.

30. **Second**, the KEIP appropriately ties recoveries to aggregated Insurance Claims and Sale Transaction Net Proceeds because the two recoveries are related. The Insurance Claims are directly related to a Sale Transaction because the Insurance Claims will directly increase the value

of the Debtors' estate, providing the Debtors with the opportunity to market more attractive assets, which will maximize any potential Sale Transaction. Moreover, many of the operational imperatives underlying the Sale Transaction and Insurance Claims processes are the same. For instance, the Debtors need to continue to maintain complete safety and compliance with environmental regulations on their property in order to convince both insurers and potential buyers of the Debtors' business' worth (and, therefore, how much the insurers or buyers should pay on account of such business). It is also further appropriate to tie recoveries to aggregated Insurance Claim and Sale Transaction Net Proceeds because it leaves management optionality to consider *any* overall value maximizing strategy—even if, for example, the transaction that would bring the most value into the estate involves privileging one type of recovery at the expense of another.

31. *Third*, the award structure is further appropriate because any awards to the KEIP Participants will be governed by the discretion of the Restructuring Committee. The Restructuring Committee, in turn, has fiduciary duties to maximize the value of the estate. Therefore, any transaction that is not truly value maximizing will never form the basis for a KEIP Participant award—the Restructuring Committee simply would not approve a Sale Transaction unless consummation would result in value that is above what is already being distributed to creditors under a plan of reorganization.

32. *Fourth*, by no means will it be easy for the KEIP Participants to hit the Net Proceed Threshold set forth in the KEIP. Both the Sale Transaction and Insurance Claim process have and will continue to require intense negotiations and investigations, long hours, thorough review and analysis, and understanding of the terms and specifics of either a Sale Transaction or Insurance Claims. Only if the KEIP Participants succeed by accepting and excelling in their additional responsibilities will they recover under the KEIP. Achieving the Debtors' Performance Goal

requires a substantial “stretch” by the KEIP Participant. While the Debtors have always intended to execute a Sale Transaction, that outcome is not, nor has it ever been, a foregone conclusion. I thus believe that if the KEIP Participants succeed in meeting the Net Proceed Threshold in the KEIP, they will have succeeded in achieving optimum levels of recovery for the estate.

33. In sum, it is essential—and in the best interest of the Debtors and all stakeholders—that the KEIP Participants receive competitive compensation, and that the KEIP Participants are properly incentivized to achieve the Debtors’ financial, operational, and restructuring objectives. I believe the KEIP accomplishes those goals, and is an appropriate tool to accomplish those goals. I believe that the Key Employee Incentive Plan will help the Debtors’ key leaders avoid distraction and remain focused on leading the marketing process while also remaining incentivized to continue operational improvements to achieve outcomes that will benefit all of the Debtors’ creditors and stakeholders.

[Remainder of the page intentionally left blank.]

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

Dated: November 22, 2019

/s/ Jeffrey S. Stein

Jeffrey S. Stein
Chief Restructuring Officer
PES Holdings, LLC