UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-Q

x **Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended September 30, 2012

☐ **Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Commission File Number 1-7615

KIRBY CORPORATION

(Exact name of registrant as specified in its charter)

Nevada	**74-1884980**
(State or other jurisdiction of incorporation or organization)	**(IRS Employer Identification No.)**
55 Waugh Drive, Suite 1000, Houston, TX	**77007**
(Address of principal executive offices)	**(Zip Code)**

(713) 435-1000
(Registrant's telephone number, including area code)

No Change
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "large accelerated filer" and "accelerated filer" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	x	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No x

The number of shares outstanding of the registrant's Common Stock, $.10 par value per share, on November 2, 2012 was 55,904,000.

PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

KIRBY CORPORATION AND CONSOLIDATED SUBSIDIARIES

CONDENSED BALANCE SHEETS
(Unaudited)

ASSETS

	September 30, 2012	December 31, 2011
	($ in thousands)	
Current assets:		
Cash and cash equivalents	$ 5,143	$ 16,249
Accounts receivable:		
Trade – less allowance for doubtful accounts	299,435	303,087
Other	34,966	32,060
Inventories – net	166,605	130,130
Prepaid expenses and other current assets	35,084	33,617
Deferred income taxes	13,800	14,186
Total current assets	555,033	529,329
Property and equipment	2,837,790	2,618,268
Less accumulated depreciation	(873,939)	(796,095)
Property and equipment – net	1,963,851	1,822,173
Goodwill – net	486,153	483,468
Other assets	120,575	125,441
Total assets	$ 3,125,612	$ 2,960,411

See accompanying notes to condensed financial statements.

KIRBY CORPORATION AND CONSOLIDATED SUBSIDIARIES

CONDENSED BALANCE SHEETS
(Unaudited)

LIABILITIES AND STOCKHOLDERS' EQUITY

	September 30, 2012	December 31, 2011
	($ in thousands)	
Current liabilities:		
Current portion of long-term debt	$ 58,500	$ 39,005
Income taxes payable	5,991	4,124
Accounts payable	131,772	158,855
Accrued liabilities	110,648	117,262
Deferred revenues	20,752	39,554
Total current liabilities	327,663	358,800
Long-term debt – less current portion	723,470	763,000
Deferred income taxes	357,351	292,355
Other long-term liabilities	96,417	92,098
Total long-term liabilities	1,177,238	1,147,453
Contingencies and commitments	—	—
Equity:		
Kirby stockholders' equity:		
Common stock, $.10 par value per share. Authorized 120,000,000 shares, issued 59,276,000 shares	5,928	5,928
Additional paid-in capital	364,610	357,294
Accumulated other comprehensive income – net	(51,386)	(56,176)
Retained earnings	1,381,191	1,229,641
Treasury stock – at cost, 3,372,000 at September 30, 2012 and 3,532,000 at December 31, 2011	(91,667)	(94,162)
Total Kirby stockholders' equity	1,608,676	1,442,525
Noncontrolling interests	12,035	11,633
Total equity	1,620,711	1,454,158
Total liabilities and equity	$ 3,125,612	$ 2,960,411

See accompanying notes to condensed financial statements.

KIRBY CORPORATION AND CONSOLIDATED SUBSIDIARIES

CONDENSED STATEMENTS OF EARNINGS
(Unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2012	**2011**	**2012**	**2011**
	($ in thousands, except per share amounts)			
Revenues:				
Marine transportation	$ 349,771	$ 351,206	$ 1,027,923	$ 859,495
Diesel engine services	171,553	212,376	572,184	440,777
Total revenues	521,324	563,582	1,600,107	1,300,272
Costs and expenses:				
Costs of sales and operating expenses	344,990	378,520	1,075,265	858,928
Selling, general and administrative	44,473	52,780	140,772	121,284
Taxes, other than on income	3,455	3,244	11,276	10,468
Depreciation and amortization	35,729	36,827	107,400	90,233
Loss (gain) on disposition of assets	40	(97)	(1)	(71)
Total costs and expenses	428,687	471,274	1,334,712	1,080,842
Operating income	92,637	92,308	265,395	219,430
Other income (expense)	(56)	(6)	123	123
Interest expense	(6,056)	(5,974)	(17,797)	(12,085)
Earnings before taxes on income	86,525	86,328	247,721	207,468
Provision for taxes on income	(32,794)	(32,734)	(93,676)	(78,745)
Net earnings	53,731	53,594	154,045	128,723
Less: Net earnings attributable to noncontrolling interests	(676)	(860)	(2,495)	(1,867)
Net earnings attributable to Kirby	$ 53,055	$ 52,734	$ 151,550	$ 126,856
Net earnings per share attributable to Kirby common stockholders:				
Basic	$ .95	$ .95	$ 2.71	$ 2.33
Diluted	$ .95	$ .94	$ 2.70	$ 2.33

See accompanying notes to condensed financial statements.

KIRBY CORPORATION AND CONSOLIDATED SUBSIDIARIES

CONDENSED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2012	2011	2012	2011
	($ in thousands)			
Net earnings	$ 53,731	$ 53,594	$ 154,045	$ 128,723
Other comprehensive income (loss), net of taxes:				
Pension and postretirement benefits	1,048	350	769	567
Foreign currency translation adjustments	(257)	(2)	190	(2)
Change in fair value of derivative instruments	1,331	1,851	3,831	3,359
Total comprehensive income (loss), net of taxes	2,122	2,199	4,790	3,924
Total comprehensive income, net of taxes	55,853	55,793	158,835	132,647
Net earnings attributable to noncontrolling interests	(676)	(860)	(2,495)	(1,867)
Comprehensive income attributable to Kirby	$ 55,177	$ 54,933	$ 156,340	$ 130,780

See accompanying notes to condensed financial statements.

KIRBY CORPORATION AND CONSOLIDATED SUBSIDIARIES

CONDENSED STATEMENTS OF CASH FLOWS
(Unaudited)

	Nine months ended September 30, 2012	Nine months ended September 30, 2011
	($ in thousands)	
Cash flows from operating activities:		
Net earnings	$ 154,045	$ 128,723
Adjustments to reconcile net earnings to net cash provided by operations:		
Depreciation and amortization	107,400	90,233
Provision for deferred income taxes	59,665	45,383
Amortization of unearned share-based compensation	7,331	7,107
Other	2,784	103
Decrease in cash flows resulting from changes in operating assets and liabilities, net	(84,997)	(56,223)
Net cash provided by operating activities	246,228	215,326
Cash flows from investing activities:		
Capital expenditures	(255,887)	(163,210)
Acquisitions of businesses and marine equipment, net of cash acquired	−	(816,767)
Retirement of interest rate swaps assumed in acquisition	−	(14,803)
Proceeds from disposition of assets	15,165	3,967
Other	−	(10)
Net cash used in investing activities	(240,722)	(990,823)
Cash flows from financing activities:		
Borrowings on bank credit facilities, net	5,970	83,310
Borrowings on long-term debt	−	531,645
Payments on long-term debt	(26,005)	(26,561)
Proceeds from exercise of stock options	3,173	349
Excess tax benefit from equity compensation plans	2,342	789
Other	(2,092)	(1,270)
Net cash provided by (used in) financing activities	(16,612)	588,262
Decrease in cash and cash equivalents	(11,106)	(187,235)
Cash and cash equivalents, beginning of year	16,249	195,600
Cash and cash equivalents, end of period	$ 5,143	$ 8,365
Supplemental disclosures of cash flow information:		
Cash paid during the period:		
Interest	$ 15,928	$ 11,324
Income taxes	$ 29,353	$ 19,156
Noncash investing activity:		
Stock issued in acquisition	$ −	$ 113,019
Cash acquired in acquisition	$ −	$ 4,044

See accompanying notes to condensed financial statements.

NOTES TO CONDENSED FINANCIAL STATEMENTS
(Unaudited)

In the opinion of management, the accompanying unaudited condensed financial statements of Kirby Corporation and consolidated subsidiaries (the "Company") contain all adjustments (consisting of only normal recurring accruals) necessary to present fairly the financial position as of September 30, 2012 and December 31, 2011, and the results of operations for the three months and nine months ended September 30, 2012 and 2011.

(1) BASIS FOR PREPARATION OF THE CONDENSED FINANCIAL STATEMENTS

The condensed financial statements included herein have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Although the Company believes that the disclosures are adequate to make the information presented not misleading, certain information and footnote disclosures, including significant accounting policies normally included in annual financial statements, have been condensed or omitted pursuant to such rules and regulations. It is suggested that these condensed financial statements be read in conjunction with the Company's Annual Report on Form 10-K for the year ended December 31, 2011.

(2) ACCOUNTING STANDARDS ADOPTIONS

In June 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2011-05, "Comprehensive Income (Topic 220): Presentation of Comprehensive Income." ASU 2011-05 requires entities to present components of comprehensive income in either a single continuous statement of comprehensive income or two separate but consecutive statements that would include reclassification adjustments for items that are reclassified from other comprehensive income ("OCI") to net income on the face of the financial statements. This ASU is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. The adoption of ASU 2011-05 in the first quarter of 2012 did not have an impact on the Company's consolidated financial statements except that the Company has applied these provisions to its presentation of consolidated financial statements.

In December 2011, the FASB issued ASU 2011-12, "Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05" ("ASU 2011-12"). The amendments to the Codification in ASU 2011-12 are effective at the same time as the amendments in ASU 2011-05, so that entities will not be required to comply with the presentation requirements in ASU 2011-05 that ASU 2011-12 is deferring. The amendments are being made to allow the FASB time to reevaluate whether to present on the face of the financial statements the effects of reclassifications out of accumulated OCI on the components of net income and OCI for all periods presented. ASU 2011-12 will be effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. The adoption of ASU 2011-12 did not have a material impact on the Company's consolidated financial statements.

(3) ACQUISITIONS

On December 15, 2011, the Company completed the purchase of the coastal tank barge fleet of Seaboats, Inc. and affiliated companies ("Seaboats") consisting of three 80,000 barrel coastal tank barges and tugboats for $42,745,000 in cash. The three coastal tank barges and tugboats currently operate along the United States East Coast and had an average age of five years.

On July 1, 2011, the Company completed the acquisition of K-Sea Transportation Partners L.P. ("K-Sea"), an operator of tank barges and tugboats participating in the coastal transportation primarily of refined petroleum products in the United States. The total value of the transaction was $603,427,000, excluding transaction fees, consisting of $227,617,000 of cash paid to K-Sea common and preferred unit holders and the general partner, $262,791,000 of cash to retire K-Sea's outstanding debt, and $113,019,000 through the issuance of 1,939,234 shares of Company common stock valued at $58.28 per share, the Company's closing share price on July 1, 2011.

On April 17, 2012, the Company changed the name of K-Sea to Kirby Offshore Marine, LLC ("Kirby Offshore Marine") to more fully integrate the Company's coastal operations with the Company's inland marine transportation operations. The acquired company is referred to in this report as either K-Sea or Kirby Offshore Marine, depending on the context.

On the acquisition date, Kirby Offshore Marine's fleet, comprised of 57 coastal tank barges with a capacity of 3.8 million barrels and 63 tugboats, operated along the East Coast, West Coast and Gulf Coast of the United States, as well as in Alaska and Hawaii. Kirby Offshore Marine's tank barge fleet, 54 of which were double hulled and had an average age of approximately nine years, is one of the youngest fleets in the coastal trade. Kirby Offshore Marine's customers include major oil companies and refiners, many of which are current Company customers for inland tank barge services. Kirby Offshore Marine has operating facilities in New York, Philadelphia, Seattle and Honolulu.

On April 15, 2011, the Company purchased United Holdings LLC (“United”), a distributor and service provider of engine and transmission related products for the oil and gas services, power generation and on-highway transportation industries, and manufacturer of oilfield service equipment. The purchase price was $271,192,000 in cash, plus a three-year earnout provision for up to an additional $50,000,000 payable in 2014, dependent on achieving certain financial targets. United, headquartered in Oklahoma City, Oklahoma with 21 locations across seven states, distributes and services equipment and parts for Allison Transmission (“Allison”), MTU Detroit Diesel (“MTU”), Daimler Trucks NA (“Daimler”), and other diesel and natural gas engines. United also manufactures oilfield service equipment, including pressure pumping units. United’s principal customers are oilfield service companies, oil and gas operators and producers, compression companies and on-highway transportation companies.

On February 24, 2011, the Company purchased 21 inland and offshore tank barges and 15 inland towboats and offshore tugboats from Enterprise Marine Services LLC (“Enterprise”) for $53,200,000 in cash. Enterprise provided transportation and delivery services for ship bunkers (engine fuel) to cruise ships, container ships and freighters primarily in the Miami, Port Everglades and Cape Canaveral, Florida area, the three largest cruise ship ports in the United States, as well as Tampa, Florida, Mobile, Alabama and Houston, Texas.

On February 9, 2011, the Company purchased from Kinder Morgan Petcoke, L.P. (“Kinder Morgan”) for $4,050,000 in cash a 51% interest in Kinder Morgan’s shifting operation and fleeting facility for dry cargo barges and tank barges on the Houston Ship Channel. Kinder Morgan retained the remaining 49% interest and the Company will manage the operation. In addition, the Company purchased a towboat from Kinder Morgan for $1,250,000 in cash.

The following unaudited pro forma results present consolidated financial information as if the United and K-Sea acquisitions had been completed as of January 1, 2011. The pro forma results do not include the acquisitions of Seaboats, Enterprise and Kinder Morgan described above as the effect of these acquisitions would not be materially different from the Company’s actual results.

The pro forma results include the amortization associated with the acquired intangible assets, interest expense associated with the debt used to fund a portion of the acquisitions, the impact of the additional shares issued in connection with the K-Sea acquisition, the impact of certain fair value adjustments such as depreciation adjustments related to adjustments to property and equipment and standardization of accounting policies. The pro forma results do not include any cost savings or potential synergies related to the acquisitions nor any integration costs. The pro forma results should not be considered indicative of the results of operations or financial position of the combined companies had the acquisitions been consummated as of January 1, 2011 and are not necessarily indicative of results of future operations of the Company.

The following table sets forth the Company’s pro forma revenues, net earnings attributable to Kirby, basic net earnings per share and fully diluted net earnings per share attributable to Kirby common stockholders (unaudited and in thousands, except per share amounts):

	Nine months ended September 30,	
	2012	**2011 Pro forma**
Revenues	$ 1,600,107	$ 1,555,759
Net earnings attributable to Kirby	$ 151,550	$ 122,317
Net earnings per share attributable to Kirby common stockholders:		
Basic	$ 2.71	$ 2.20
Diluted	$ 2.70	$ 2.19

(4) INVENTORIES

The following table presents the details of inventories as of September 30, 2012 and December 31, 2011 (in thousands):

	September 30, 2012	December 31, 2011
Finished goods	$ 148,583	$ 111,931
Work in process	18,022	18,199
	$ 166,605	$ 130,130

(5) FAIR VALUE MEASUREMENTS

The accounting guidance for using fair value to measure certain assets and liabilities establishes a three tier value hierarchy, which prioritizes the inputs to valuation techniques used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices in active markets for identical assets or liabilities; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little, if any, market data exists, therefore requiring an entity to develop its own assumptions about the assumptions that market participants would use in pricing the asset or liability.

The following table summarizes the assets and liabilities measured at fair value on a recurring basis at September 30, 2012 (in thousands):

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurements
Assets:				
Derivatives	$ —	$ —	$ —	$ —
Liabilities:				
Derivatives	$ —	$ 3,656	$ —	$ 3,656
Contingent earnout liability	—	—	26,500	26,500
	$ —	$ 3,656	$ 26,500	$ 30,156

The following table summarizes the assets and liabilities measured at fair value on a recurring basis at December 31, 2011 (in thousands):

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total Fair Value Measurements
Assets:				
Derivatives	$ —	$ —	$ —	$ —
Liabilities:				
Derivatives	$ —	$ 9,597	$ —	$ 9,597
Contingent earnout liability	—	—	22,600	22,600
	$ —	$ 9,597	$ 22,600	$ 32,197

The fair value of the Company’s derivative instruments is more fully described below in Note 6, Derivative Instruments.

In connection with the acquisition of United on April 15, 2011, United’s former owners are eligible to receive a three-year earnout provision for up to an additional $50,000,000 payable in 2014, dependent on achieving certain financial targets. The fair value of the contingent earnout liability recorded at the acquisition date was $16,300,000. The fair value of the earnout is based on a valuation of the estimated fair value of the liability after probability weighting and discounting various potential payments. The increase (decrease) in the fair value of the earnout liability of $(400,000) and $3,900,000 for the three months and nine months ended September 30, 2012, respectively, was charged to selling, general and administrative expense. As of September 30, 2012, the Company had recorded an earnout liability of $26,500,000.

Cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities have carrying values that approximate fair value due to the short-term maturity of these financial instruments. The Company is of the opinion that amounts included in the consolidated financial statements for outstanding debt materially represent the fair value of such debt due to their variable interest rates.

Certain assets are measured at fair value on a nonrecurring basis and therefore are not included in the table above. These assets are adjusted to fair value when there is evidence of impairment. During the nine months ended September 30, 2012, there was no indication that the Company's long-lived assets were impaired, and accordingly, measurement at fair value was not required.

(6) DERIVATIVE INSTRUMENTS

The Company recognizes all derivative instruments at fair value in the balance sheet as either assets or liabilities. The accounting for changes in the fair value of a derivative instrument depends on the intended use of the derivative and the resulting designation, which is established at the inception date of a derivative. For derivative instruments designated as cash flow hedges, changes in fair value, to the extent the hedge is effective, are recognized in OCI until the hedged item is recognized in earnings. Hedge effectiveness is measured at least quarterly based on the cumulative difference between the fair value of the derivative contract and the hedged item over time. Any change in fair value resulting from ineffectiveness is recognized immediately in earnings.

Interest Rate Risk Management

From time to time, the Company has utilized and expects to continue to utilize derivative financial instruments with respect to a portion of its interest rate risks to achieve a more predictable cash flow by reducing its exposure to interest rate fluctuations. These transactions generally are interest rate swap agreements and are entered into with large multinational banks. Derivative financial instruments related to the Company's interest rate risks are intended to reduce the Company's exposure to increases in the benchmark interest rates underlying the Company's floating rate senior notes, variable rate term loan and variable rate bank revolving credit facility.

From time to time, the Company hedges its exposure to fluctuations in short-term interest rates under its variable rate bank revolving credit facility and floating rate senior notes by entering into interest rate swap agreements. The interest rate swap agreements are designated as cash flow hedges, therefore, the changes in fair value, to the extent the swap agreements are effective, are recognized in OCI until the hedged interest expense is recognized in earnings. The current swap agreements effectively convert the Company's interest rate obligation on the Company's variable rate senior notes from quarterly floating rate payments based on the London Interbank Offered Rate ("LIBOR") to quarterly fixed rate payments. As of September 30, 2012, the Company had a total notional amount of $200,000,000 of interest rate swaps designated as cash flow hedges for its variable rate senior notes as follows (dollars in thousands):

Notional Amount	Effective date	Termination date	Fixed pay rate	Receive rate
$ 100,000	March 2006	February 2013	5.45%	Three-month LIBOR
$ 50,000	November 2008	February 2013	3.50%	Three-month LIBOR
$ 50,000	May 2009	February 2013	3.795%	Three-month LIBOR

Foreign Currency Risk Management

From time to time, the Company has utilized and expects to continue to utilize derivative financial instruments with respect to its forecasted foreign currency transactions to attempt to reduce the risk of its exposure to foreign currency rate fluctuations in its transactions denominated in foreign currency. These transactions, which relate to foreign currency obligations for the purchase of equipment from foreign suppliers or foreign currency receipts from foreign customers, generally are forward contracts or purchased call options and are entered into with large multinational banks.

As of September 30, 2012, the Company had a forward contract with a notional amount of $469,000 to hedge its exposure to foreign currency rate fluctuations in expected foreign currency transactions. This contract expires in the first quarter of 2014. This forward contract is designated as a cash flow hedge, therefore, the changes in fair value, to the extent the forward contract is effective, is recognized in OCI until the forward contract expires and is recognized in costs of sales and operating expenses.

Fair Value of Derivative Instruments

The following table sets forth the fair value of the Company's derivative instruments recorded as liabilities located on the consolidated balance sheet at September 30, 2012 and December 31, 2011 (in thousands):

Liability Derivatives	Balance Sheet Location	September 30, 2012	December 31, 2011
Derivatives designated as hedging instruments under ASC 815:			
Foreign currency contracts	Other accrued liabilities	$ 26	$ 363
Foreign currency contracts	Other long-term liabilities	—	32
Interest rate contracts	Other accrued liabilities	3,630	—
Interest rate contracts	Other long-term liabilities	—	9,202
Total derivatives designated as hedging instruments under ASC 815		$ 3,656	$ 9,597
Total liability derivatives		$ 3,656	$ 9,597

Fair value amounts were derived as of September 30, 2012 and December 31, 2011 utilizing fair value models of the Company and its counterparties on the Company's portfolio of derivative instruments. These fair value models use the income approach that relies on inputs such as yield curves, currency exchange rates and forward prices. The fair value of the Company's derivative instruments is described above in Note 5, Fair Value Measurements.

Cash Flow Hedges

For derivative instruments that are designated and qualify as cash flow hedges, the effective portion of the gain or loss on the derivative is reported as a component of OCI and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. Gains and losses on the derivative representing either hedge ineffectiveness or hedge components excluded from the assessment of effectiveness are recognized in current earnings. Any ineffectiveness related to the Company's hedges was not material for any of the periods presented.

The following table sets forth the location and amount of gains and losses on the Company's derivative instruments in the consolidated statements of earnings for the three months and nine months ended September 30, 2012 and 2011 (in thousands):

		Amount of Gain (Loss) Recognized in OCI on Derivatives (Effective Portion)		Amount of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion)	
		Three months ended September 30,		Three months ended September 30,	
Derivatives in ASC 815 Cash Flow Hedging Relationships:	Location of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion)	2012	2011	2012	2011
Interest rate contracts	Interest expense	$ 1,950	$ 1,994	$ (2,092)	$ (2,183)
Foreign exchange contracts	Cost and sales of operating expenses	110	951	21	30
Total		$ 2,060	$ 2,945	$ (2,071)	$ (2,153)

Derivatives in ASC 815 Cash Flow Hedging Relationships:	Location of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion)	Amount of Gain (Loss) Recognized in OCI on Derivatives (Effective Portion) Nine months ended September 30, 2012	2011	Amount of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion) Nine months ended September 30, 2012	2011
Interest rate contracts	Interest expense	$ 5,573	$ 4,649	$ (6,192)	$ (6,460)
Foreign exchange contracts	Cost and sales of operating expenses	359	400	19	(13)
Total		$ 5,932	$ 5,049	$ (6,173)	$ (6,473)

The Company anticipates $2,359,000 of net losses on interest rate swap agreements included in accumulated OCI will be transferred into earnings over the next year based on current interest rates. Gains or losses on interest rate swap agreements offset increases or decreases in rates of the underlying debt, which results in a fixed rate for the underlying debt. The Company also expects none of its net loss on a foreign currency contract included in accumulated OCI will be transferred into earnings over the next year based on the maturity date of the forward contract.

(7) LONG-TERM DEBT

On August 30, 2012, the Company's unsecured revolving credit facility ("Revolving Credit Facility") with a syndicate of banks, with JPMorgan Chase Bank, N.A. as the administrative agent bank, was increased to $325,000,000 from $250,000,000. The Revolving Credit Facility allowed for the increase in the commitments from the banks subject to the consent of each bank that elected to participate in the increased commitment. The Revolving Credit Facility was used to finance the Allied Transportation Company ("Allied") acquisition on November 1, 2012. The details of the Allied acquisition are described in Note 15, Subsequent Events.

(8) STOCK AWARD PLANS

The Company has share-based compensation plans which are described below. The compensation cost that has been charged against earnings for the Company's stock award plans and the income tax benefit recognized in the statement of earnings for stock awards for the three months and nine months ended September 30, 2012 and 2011 were as follows (in thousands):

	Three months ended September 30, 2012	2011	Nine months ended September 30, 2012	2011
Compensation cost	$ 2,842	$ 2,617	$ 7,331	$ 7,107
Income tax benefit	$ 1,086	$ 1,002	$ 2,801	$ 2,722

The Company has an employee stock award plan for selected officers and other key employees, which provides for the issuance of stock options, restricted stock and performance awards payable in cash or stock. The exercise price for each option equals the fair market value per share of the Company's common stock on the date of grant. The terms of the options granted prior to January 25, 2010 are five years and vest ratably over three years. Options granted on or after January 25, 2010 have terms of seven years and vest ratably over three years. No performance awards payable in stock have been made under the plan. At September 30, 2012, 2,909,069 shares were available for future grants under the employee plan and no outstanding stock options under the employee plan were issued with stock appreciation rights.

On February 15, 2012, the Board of Directors approved amendments to the employee plan, subject to stockholder approval, to (1) increase the number of shares that may be issued under the plan from 3,000,000 shares to 5,000,000 shares and (2) increase the maximum amount of cash that may be paid to any participant pursuant to any performance awards under the plan during any calendar year from $3,000,000 to $5,000,000. The amendments were approved by the stockholders at the Annual Meeting of Stockholders held on April 24, 2012.

The following is a summary of the stock option activity under the employee plan described above for the nine months ended September 30, 2012:

	Outstanding Non-Qualified or Nonincentive Stock Options	Weighted Average Exercise Price
Outstanding at December 31, 2011	445,674	$ 36.81
Granted	99,906	$ 65.80
Exercised	(39,581)	$ 48.57
Forfeited	(2,452)	$ 58.28
Outstanding at September 30, 2012	503,547	$ 41.54

The following table summarizes information about the Company's outstanding and exercisable stock options under the employee plan at September 30, 2012:

	Options Outstanding				Options Exercisable		
Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price	Aggregate Intrinsic Value	Number Exercisable	Weighted Average Exercise Price	Aggregate Intrinsic Value
$23.98 - $32.56	226,450	2.7	$ 27.72		193,115	$ 26.90	
$34.40 - $36.35	24,000	1.7	$ 34.73		22,666	$ 34.63	
$46.74 - $48.65	153,191	3.6	$ 47.20		86,137	$ 47.55	
$65.28 - $66.72	99,906	6.4	$ 65.80		—	$ —	
$23.98 - $66.72	503,547	3.7	$ 41.54	$6,921,000	301,918	$ 35.38	$ 6,613,000

The following is a summary of the restricted stock award activity under the employee plan described above for the nine months ended September 30, 2012:

	Unvested Restricted Stock Award Shares	Weighted Average Grant Date Fair Value Per Share
Nonvested balance at December 31, 2011	475,632	$ 36.43
Granted	121,103	$ 67.85
Vested	(166,266)	$ 35.49
Forfeited	(10,052)	$ 59.05
Nonvested balance at September 30, 2012	420,417	$ 45.32

The Company has a director stock award plan for nonemployee directors of the Company which provides for the issuance of stock options and restricted stock. The director plan provides for the automatic grants of stock options and restricted stock to nonemployee directors on the date of first election as a director and after each annual meeting of stockholders. In addition, the director plan allows for the issuance of stock options or restricted stock in lieu of cash for all or part of the annual director fee at the option of the director. The exercise prices for all options granted under the plan are equal to the fair market value per share of the Company's common stock on the date of grant. The terms of the options are ten years. The options granted to a director when first elected vest immediately. The options granted and restricted stock issued after each annual meeting of stockholders vest six months after the date of grant. Options granted and restricted stock issued in lieu of cash director fees vest in equal quarterly increments during the year to which they relate. At September 30, 2012, 685,535 shares were available for future grants under the director plan. The director stock award plan is intended as an incentive to attract and retain qualified and competent independent directors.

On February 15, 2012, the Board of Directors approved amendments to the director plan, subject to stockholder approval, to increase the number of shares that may be issued under the plan from 1,000,000 shares to 1,500,000 shares. The amendment was approved by the stockholders at the Annual Meeting of Stockholders held on April 24, 2012.

The following is a summary of the stock option activity under the director plan described above for the nine months ended September 30, 2012:

	Outstanding Non-Qualified or Nonincentive Stock Options	Weighted Average Exercise Price
Outstanding at December 31, 2011	353,625	$ 39.05
Granted	56,306	$ 62.48
Exercised	(43,993)	$ 28.41
Outstanding at September 30, 2012	365,938	$ 43.94

The following table summarizes information about the Company's outstanding and exercisable stock options under the director plan at September 30, 2012:

	Options Outstanding				Options Exercisable		
Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price	Aggregate Intrinsic Value	Number Exercisable	Weighted Average Exercise Price	Aggregate Intrinsic Value
$12.69 - $17.88	30,000	1.2	$ 15.81		30,000	$ 15.81	
$20.28 - $29.60	48,000	5.1	$ 26.10		48,000	$ 26.10	
$35.17 - $36.82	74,036	4.0	$ 35.86		74,036	$ 35.86	
$41.24 - $62.48	213,902	7.9	$ 54.68		158,748	$ 51.97	
$12.69 - $62.48	365,938	6.2	$ 43.94	$ 4,151,000	310,784	$ 40.65	$ 4,548,000

The following is a summary of the restricted stock award activity under the director plan described above for the nine months ended September 30, 2012:

	Unvested Restricted Stock Award Shares	Weighted Average Grant Date Fair Value Per Share
Nonvested balance at December 31, 2011	1,748	$ 58.07
Granted	10,383	$ 62.99
Vested	(2,438)	$ 59.46
Nonvested balance at September 30, 2012	9,693	$ 62.99

The total intrinsic value of all stock options exercised under all of the Company's plans was $1,985,000 and $1,477,000 for the nine months ended September 30, 2012 and 2011, respectively. The actual tax benefit realized for tax deductions from stock option exercises was $758,000 and $565,000 for the nine months ended September 30, 2012 and 2011, respectively.

The total intrinsic value of all the restricted stock vestings under all of the Company's plans was $11,214,000 and $7,221,000 for the nine months ended September 30, 2012 and 2011, respectively. The actual tax benefit realized for tax deductions from restricted stock vestings was $4,284,000 and $2,766,000 for the nine months ended September 30, 2012 and 2011, respectively.

As of September 30, 2012, there was $2,796,000 of unrecognized compensation cost related to nonvested stock options and $15,315,000 related to restricted stock. The stock options are expected to be recognized over a weighted average period of approximately 1.2 years and restricted stock over approximately 2.9 years. The total fair value of options vested was $1,339,000 and $1,452,000 during the nine months ended September 30, 2012 and 2011, respectively. The fair value of the restricted stock vested was $11,214,000 and $7,221,000 for the nine months ended September 30, 2012 and 2011, respectively.

The weighted average per share fair value of stock options granted during the nine months ended September 30, 2012 and 2011 was $22.15 and $18.84, respectively. The fair value of the stock options granted during the nine months ended September 30, 2012 and 2011 was $3,461,000 and $3,081,000, respectively. The Company currently uses treasury stock shares for restricted stock grants and stock option exercises. The fair value of each stock option was determined using the Black-Scholes option pricing model. The key input variables used in valuing the options during the nine months ended September 30, 2012 and 2011 were as follows:

	Nine months ended September 30, 2012	Nine months ended September 30, 2011
Dividend yield	None	None
Average risk-free interest rate	1.1%	2.4%
Stock price volatility	33%	33%
Estimated option term	Six years or seven years	Six years or seven years

(9) OTHER COMPREHENSIVE INCOME

The Company's changes in other comprehensive income for the three months and nine months ended September 30, 2012 and 2011 were as follows (in thousands):

	Three months ended September 30, 2012			2011		
	Gross Amount	Income Tax (Provision) Benefit	Net Amount	Gross Amount	Income Tax (Provision) Benefit	Net Amount
Pension and postretirement benefits	$ 1,698	$ (650)	$ 1,048	$ 568	$ (218)	$ 350
Foreign currency translation adjustments	(257)	—	(257)	(2)	—	(2)
Change in fair value of derivative instruments	2,060	(729)	1,331	2,946	(1,095)	1,851
Total	$ 3,501	$ (1,379)	$ 2,122	$ 3,512	$ (1,313)	$ 2,199

	Nine months ended September 30, 2012			2011		
	Gross Amount	Income Tax (Provision) Benefit	Net Amount	Gross Amount	Income Tax (Provision) Benefit	Net Amount
Pension and postretirement benefits	$ 1,242	$ (473)	$ 769	$ 915	$ (348)	$ 567
Foreign currency translation adjustments	190	—	190	(2)	—	(2)
Change in fair value of derivative instruments	5,932	(2,101)	3,831	5,228	(1,869)	3,359
Total	$ 7,364	$ (2,574)	$ 4,790	$ 6,141	$ (2,217)	$ 3,924

(10) SEGMENT DATA

The Company's operations are classified into two reportable business segments as follows:

Marine Transportation — Marine transportation principally by United States flag vessels of liquid cargoes throughout the United States inland waterway system, along all three United States coasts, Alaska and Hawaii and, to a lesser extent, United States coastal transportation of dry-bulk cargoes. The principal products transported include petrochemicals, black oil products, refined petroleum products and agricultural chemicals.

Diesel Engine Services — Provides after-market services for medium-speed and high-speed diesel engines, reduction gears and ancillary products for marine and power generation applications, and distributes and services high-speed diesel engines, transmissions, pumps and compression products, and manufactures and remanufactures oilfield service equipment, including pressure pumping units, for the land-based pressure pumping and oilfield service markets.

The following table sets forth the Company's revenues and profit or loss by reportable segment for the three months and nine months ended September 30, 2012 and 2011 and total assets as of September 30, 2012 and December 31, 2011 (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2012	2011	2012	2011
Revenues:				
Marine transportation	$ 349,771	$ 351,206	$ 1,027,923	$ 859,495
Diesel engine services	171,553	212,376	572,184	440,777
	$ 521,324	$ 563,582	$ 1,600,107	$ 1,300,272
Segment profit (loss):				
Marine transportation	$ 81,695	$ 78,109	$ 221,915	$ 189,168
Diesel engine services	14,603	21,180	53,275	45,397
Other	(9,773)	(12,961)	(27,469)	(27,097)
	$ 86,525	$ 86,328	$ 247,721	$ 207,468

	September 30, 2012	December 31, 2011
Total assets:		
Marine transportation	$ 2,434,920	$ 2,307,821
Diesel engine services	641,117	608,886
Other	49,575	43,704
	$ 3,125,612	$ 2,960,411

The following table presents the details of "Other" segment loss for the three months and nine months ended September 30, 2012 and 2011 (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2012	2011	2012	2011
General corporate expenses	$ (3,621)	$ (7,078)	$ (9,796)	$ (15,206)
Gain (loss) on disposition of assets	(40)	97	1	71
Interest expense	(6,056)	(5,974)	(17,797)	(12,085)
Other income (expense)	(56)	(6)	123	123
	$ (9,773)	$ (12,961)	$ (27,469)	$ (27,097)

The following table presents the details of "Other" total assets as of September 30, 2012 and December 31, 2011 (in thousands):

	September 30, 2012	December 31, 2011
General corporate assets	$ 45,642	$ 40,022
Investment in affiliates	3,933	3,682
	$ 49,575	$ 43,704

(11) TAXES ON INCOME

Earnings before taxes on income and details of the provision for taxes on income for the three months and nine months ended September 30, 2012 and 2011 were as follows (in thousands):

	Three months ended September 30,		Nine months ended September 30,	
	2012	2011	2012	2011
Earnings before taxes on income – United States	$ 86,525	$ 86,328	$ 247,721	$ 207,468
Provision for taxes on income:				
Federal:				
Current	$ 3,125	$ 7,125	$ 23,221	$ 24,110
Deferred	25,891	21,643	59,665	45,383
State and local	3,778	3,966	10,790	9,252
	$ 32,794	$ 32,734	$ 93,676	$ 78,745

(12) EARNINGS PER SHARE

The following table presents the components of basic and diluted earnings per share of common stock for the three months and nine months ended September 30, 2012 and 2011 (in thousands, except per share amounts):

	Three months ended September 30, 2012	Three months ended September 30, 2011	Nine months ended September 30, 2012	Nine months ended September 30, 2011
Net earnings attributable to Kirby	$ 53,055	$ 52,734	$ 151,550	$ 126,856
Undistributed earnings allocated to restricted shares	(409)	(468)	(1,180)	(1,123)
Income available to Kirby common stockholders - basic	52,646	52,266	150,370	125,733
Undistributed earnings allocated to restricted shares	409	468	1,180	1,123
Undistributed earnings reallocated to restricted shares	(407)	(467)	(1,175)	(1,119)
Income available to Kirby common stockholders - diluted	$ 52,648	$ 52,267	$ 150,375	$ 125,737
Shares outstanding:				
Weighted average common stock issued and outstanding	55,875	55,645	55,851	54,334
Weighted average unvested restricted stock	(430)	(494)	(435)	(481)
Weighted average common stock outstanding - basic	55,445	55,151	55,416	53,853
Dilutive effect of stock options	182	220	218	213
Weighted average common stock outstanding - diluted	55,627	55,371	55,634	54,066
Net earnings per share attributable to Kirby common stockholders:				
Basic	$ .95	$ .95	$ 2.71	$ 2.33
Diluted	$ .95	$ .94	$ 2.70	$ 2.33

Certain outstanding options to purchase approximately 156,000 and 154,000 shares of common stock were excluded in the computation of diluted earnings per share as of September 30, 2012 and 2011, respectively, as such stock options would have been antidilutive.

(13) RETIREMENT PLANS

The Company sponsors a defined benefit plan for its inland vessel personnel and shore based tankermen. The plan benefits are based on an employee’s years of service and compensation. The plan assets consist primarily of equity and fixed income securities.

The Company’s pension plan funding strategy has historically been to contribute an amount equal to the greater of the minimum required contribution under ERISA or the amount necessary to fully fund the plan on an accumulated benefit obligation (“ABO”) basis at the end of the fiscal year. The ABO is based on a variety of demographic and economic assumptions, and the pension plan assets’ returns are subject to various risks, including market and interest rate risk, making an accurate prediction of the pension plan contribution difficult. Based on current pension plan assets and market conditions, the Company expects to contribute between $20,000,000 and $25,000,000 to its pension plan prior to December 31, 2012 to fund its 2012 pension plan obligations. As of September 30, 2012, no contributions for the 2012 plan year have been made.

The Company sponsors an unfunded defined benefit health care plan that provides limited postretirement medical benefits to employees who met minimum age and service requirements, and to eligible dependents. The plan limits cost increases in the Company’s contribution to 4% per year. The plan is contributory, with retiree contributions adjusted annually. The plan eliminated coverage for future retirees as of December 31, 2011. The Company also has an unfunded defined benefit supplemental executive retirement plan (“SERP”) that was assumed in an acquisition in 1999. That plan ceased to accrue additional benefits effective January 1, 2000.

The components of net periodic benefit cost for the Company's defined benefit plans for the three months and nine months ended September 30, 2012 and 2011 were as follows (in thousands):

	Pension Benefits			
	Pension Plan		SERP	
	Three months ended September 30,		Three months ended September 30,	
	2012	2011	2012	2011
Components of net periodic benefit cost:				
Service cost	$ 2,552	$ 1,825	$ —	$ —
Interest cost	2,627	2,424	18	20
Expected return on plan assets	(3,219)	(2,821)	—	—
Amortization:				
Actuarial loss	1,850	715	4	1
Prior service credit	—	(10)	—	—
Net periodic benefit cost	$ 3,810	$ 2,133	$ 22	$ 21

	Pension Benefits			
	Pension Plan		SERP	
	Nine months ended September 30,		Nine months ended September 30,	
	2012	2011	2012	2011
Components of net periodic benefit cost:				
Service cost	$ 7,657	$ 5,479	$ —	$ —
Interest cost	7,881	7,273	55	60
Expected return on plan assets	(9,657)	(8,466)	—	—
Amortization:				
Actuarial loss	5,548	2,145	11	5
Prior service credit	—	(29)	—	—
Net periodic benefit cost	$ 11,429	$ 6,402	$ 66	$ 65

The components of net periodic benefit cost for the Company's postretirement benefit plan for the three months and nine months ended September 30, 2012 and 2011 were as follows (in thousands):

	Other Postretirement Benefits Postretirement Welfare Plan		Other Postretirement Benefits Postretirement Welfare Plan	
	Three months ended September 30,		Nine months ended September 30,	
	2012	2011	2012	2011
Components of net periodic benefit cost:				
Service cost	$ —	$ —	$ —	$ —
Interest cost	34	41	101	127
Amortization:				
Actuarial gain	(158)	(148)	(468)	(459)
Prior service cost	—	10	—	31
Net periodic benefit cost	$ (124)	$ (97)	$ (367)	$ (301)

(14) CONTINGENCIES

In June 2011, the Company as well as three other companies received correspondence from United States Environmental Protection Agency ("EPA") concerning ongoing cleanup and restoration activities under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") with respect to a Superfund site, the Gulfco Marine Maintenance Site ("Gulfco"), located in Freeport, Texas. In prior years, various subsidiaries of the Company utilized a successor to Gulfco to perform tank barge cleaning services, sand blasting and repair on certain Company vessels. The EPA continues to investigate activities at the site to assess additional Potentially Responsible Parties ("PRPs"). Since 2005, four named PRPs have participated in the investigation, cleanup and restoration of the site under an administrative order from EPA. Information received to date indicates that approximately $3,500,000 has been incurred in connection with the cleanup effort in addition to EPA's oversight costs of approximately $1,800,000. To date, neither the EPA nor the named PRPs have performed an allocation of potential liability in connection with the site nor have they provided requested supporting documentation for costs and expenses related to the site. The Company is investigating its activities at the site in order to assess what, if any, liability it has in connection with the site.

In 2009, the Company was named a PRP in addition to a group of approximately 250 named PRPs under CERCLA with respect to a Superfund site, the Portland Harbor Superfund site (“Portland Harbor”) in Portland, Oregon. The site was declared a Superfund site in December 2000 as a result of historical heavily industrialized use due to manufacturing, shipbuilding, petroleum storage and distribution, metals salvaging, and electrical power generation activities which led to contamination of Portland Harbor, an urban and industrial reach of the lower Willamette River located immediately downstream of downtown Portland. The Company’s involvement arises from four spills at the site after it was declared a Superfund site, as a result of predecessor entities’ actions in the area. To date, there is no information suggesting the extent of the costs or damages to be claimed from the 250 noticed PRPs. Based on the nature of the involvement at the Portland Harbor site, the Company believes its potential contribution is de minimis; however, to date neither the EPA nor the named PRPs have performed an allocation of potential liability in connection with the site nor have they provided costs and expenses in connection with the site.

In 2000, the Company and a group of approximately 45 other companies were notified that they are PRPs under CERCLA with respect to a Superfund site, the Palmer Barge Line Superfund Site (“Palmer”), located in Port Arthur, Texas. In prior years, Palmer had provided tank barge cleaning services to various subsidiaries of the Company. The Company and three other PRPs entered into an agreement with the EPA to perform a remedial investigation and feasibility study and, subsequently, a limited remediation was performed and is now complete. During the 2007 third quarter, five new PRPs entered into an agreement with the EPA related to the Palmer site. In July 2008, the EPA sent a letter to approximately 30 PRPs for the Palmer site, including the Company, indicating that it intends to pursue recovery of $2,949,000 of costs it incurred in relation to the site. The Company and the other PRPs submitted recommended pro rata allocations of costs among all PRPs to the EPA and the U.S. Department of Justice (“DOJ”) in order to resolve the EPA’s past costs claim which is under consideration by the DOJ.

In 2000, the Company and approximately 50 other companies were notified that they are PRPs under CERCLA with respect to a Superfund site, the State Marine of Port Arthur Superfund Site (“State Marine”), located in Port Arthur, Texas. In the past, State Marine performed tank barge cleaning and services for various subsidiaries of the Company. In March 2010, the DOJ and EPA issued a letter to seven PRPs, which include the former owners/operator of the site and others, including the Company, indicating their intent to pursue reimbursement of its past costs of approximately $2,977,000 in connection with clean-up activities in relation to the site. The Company and the other PRPs are engaged in discussions with the DOJ to negotiate a resolution of this matter.

With respect to the above sites, the Company has recorded reserves, if applicable, for its estimated potential liability for its portion of the EPA’s past costs claim based on information developed to date including various factors such as the Company’s liability in proportion to other responsible parties and the extent to which such costs are recoverable from third parties.

On July 25, 2011, a subsidiary of the Company was named as a defendant in the U.S. District Court for the Southern District of Texas - Galveston Division, in a complaint styled *Figgs. v. Kirby Inland Marine, et al.*, which alleges that the plaintiff individually as a vessel tankerman, and on behalf of other current and former similarly situated vessel tankermen employed with the Company, is entitled to overtime pay under the Fair Labor Standards Act. Plaintiffs assert that vessel tankermen are not seamen who are expressly exempt from overtime pay provisions under the law. The case was conditionally certified as a collective action on December 22, 2011 at which time the Court prescribed a notice period for current and former employees to voluntarily participate as plaintiffs. The notice period closed on February 27, 2012. Plaintiffs seek to maintain a collective action, compensatory damages in the form of back pay, attorneys’ fees, cost and liquidated damages. As this matter is in the initial stage of discovery as to the merits of the case, the Company is unable to assess the liability at this time. Accordingly, the Company is not able to estimate any amount of loss or range of loss.

On January 30, 2012 in the U.S. District Court for the District of New Jersey in a case styled *Rescue Mission of El Paso., Inc., et al. v. John J. Nicola, et al.*, the Company, its subsidiary, K-Sea, and current and former officers and directors of K-Sea were named defendants in a putative class action complaint asserting that during the period of January 30, 2009 to January 27, 2010, K-Sea allegedly failed to disclose certain facts regarding K-Sea’s operations and financial condition, and asserting violations of Sections 10(b)(5) and 20(a) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder. Plaintiff seeks class certification, compensatory damages, attorneys’ fees and costs. The Plaintiffs filed its Amended Consolidated Complaint on behalf of the class on July 9, 2012. The Company is preparing its response to the Complaint. The Company believes that this suit is without merit and intends to vigorously defend itself in this matter based on the information available to the Company at this time. The Company does not expect the outcome of this matter to have a material adverse effect on its consolidated financial statements; however, there can be no assurance as to the ultimate outcome of this matter.

In addition, the Company is involved in various legal and other proceedings which are incidental to the conduct of its business, none of which in the opinion of management will have a material effect on the Company’s financial condition, results of operations or cash flows. Management believes that it has recorded adequate reserves and believes that it has adequate insurance coverage or has meritorious defenses for these other claims and contingencies.

The Company has issued guaranties or obtained standby letters of credit and performance bonds supporting performance by the Company and its subsidiaries of contractual or contingent legal obligations of the Company and its subsidiaries incurred in the ordinary course of business. The aggregate notional value of these instruments is $32,056,000 at September 30, 2012, including $5,918,000 in letters of credit and $26,138,000 in performance bonds. All of these instruments have an expiration date within five years. The Company does not believe demand for payment under these instruments is likely and expects no material cash outlays to occur in connection with these instruments.

(15) SUBSEQUENT EVENTS

On November 1, 2012, the Company purchased from Allied 10 coastal tank barges with a total capacity of 680,000 barrels, three offshore dry-bulk barges with a total capacity of 48,000 deadweight tons and seven coastal tugboats for $116,000,000 in cash, before post-closing adjustments, including $10,000,000 that will be paid contingent on developments with the sugar provisions in the United States Farm Bill. Allied provided coastal transportation of petrochemicals as well as dry sugar products in the Northeast, Atlantic and Gulf Coast regions of the United States.

The Company has signed an agreement to purchase the assets of Flag Service & Maintenance, Inc. (“Flag”) for $5,100,000 in cash, before post-closing adjustments. Flag is an East Coast high-speed diesel engine service provider, operating factory-authorized full service marine dealerships for Caterpillar, Cummins, MTU and John Deere diesel engines. The purchase is expected to close in November 2012.

Item 1A. Risk Factors

The Company continues to be subject to the risk factors previously disclosed in its “Risk Factors” in the Company’s Annual Report on Form 10-K for the year ended December 31, 2011.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

Statements contained in this Form 10-Q that are not historical facts, including, but not limited to, any projections contained herein, are forward-looking statements and involve a number of risks and uncertainties. Such statements can be identified by the use of forward-looking terminology such as “may,” “will,” “expect,” “anticipate,” “estimate” or “continue,” or the negative thereof or other variations thereon or comparable terminology. The actual results of the future events described in such forward-looking statements in this Form 10-Q could differ materially from those stated in such forward-looking statements. Among the factors that could cause actual results to differ materially are: adverse economic conditions, industry competition and other competitive factors, adverse weather conditions such as high water, low water, tropical storms, hurricanes, tsunamis, fog and ice, marine accidents, lock delays, fuel costs, interest rates, construction of new equipment by competitors, government and environmental laws and regulations, and the timing, magnitude and number of acquisitions made by the Company. For a more detailed discussion of factors that could cause actual results to differ from those presented in forward-looking statements, see Item 1A-Risk Factors found in the Company’s Annual Report on Form 10-K for the year ended December 31, 2011. Forward-looking statements are based on currently available information and the Company assumes no obligation to update any such statements.

For purposes of the Management’s Discussion, all net earnings per share attributable to Kirby common stockholders are “diluted earnings per share.” The weighted average number of common shares applicable to diluted earnings per share for the three months and nine months ended September 30, 2012 and 2011 were as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2012	2011	2012	2011
	(in thousands)			
Weighted average number of common stock - diluted	55,627	55,371	55,634	54,066

The increase in the weighted average number of common shares for the 2012 third quarter compared with the 2011 third quarter reflected the issuance of restricted stock and the exercise of stock options, while the increase for the 2012 first nine months compared with the 2011 first nine months reflected the issuance of 1,939,234 shares of Company common stock associated with the July 1, 2011 acquisition of K-Sea, the issuance of restricted stock and the exercise of stock options.

Overview

The Company is the nation’s largest domestic tank barge operator, transporting bulk liquid products throughout the Mississippi River System, on the Gulf Intracoastal Waterway, along all three United States coasts, and in Alaska and Hawaii. The Company transports petrochemicals, black oil products, refined petroleum products and agricultural chemicals by tank barge. As of September 30, 2012, the Company operated a fleet of 853 inland tank barges, including 49 leased barges, with 16.9 million barrels of capacity, and operated an average of 246 inland towboats during the 2012 third quarter, of which an average of 64 were chartered. The Company’s coastal fleet consisted of 53 tank barges, of which 12 are leased and three are single hull, with 3.7 million barrels of capacity, and 63 owned coastal tugboats. The Company also owns four offshore barge and tug units transporting dry-bulk commodities in United States coastal trade. Through its diesel engine services segment the Company provides after-market services for medium-speed and high-speed diesel engines, reduction gears and ancillary products for marine and power generation applications, and distributes and services high-speed diesel engines, transmissions, pumps and compression products, and manufactures and remanufactures oilfield service equipment, including pressure pumping units, for the land-based pressure pumping and oilfield service markets.

For the 2012 third quarter, net earnings attributable to Kirby were $53,055,000, or $.95 per share, on revenues of $521,324,000, compared with 2011 third quarter net earnings attributable to Kirby of $52,734,000, or $.94 per share, on revenues of $563,582,000. For the 2012 first nine months, net earnings attributable to Kirby were $151,550,000, or $2.70 per share, on revenues of $1,600,107,000, compared with 2011 first nine months net earnings attributable to Kirby of $126,856,000, or $2.33 per share, on revenues of $1,300,272,000. The 2012 third quarter results included a $400,000 before taxes credit and the 2012 first nine months results included a $3,900,000 before taxes, or $.04 per share, charge to selling, general and administrative expense, resulting from a net increase in the fair value of the contingent earnout liability associated with the April 2011 acquisition of United. This compares with a charge to selling, general and administrative expenses increasing the fair value of the contingent earnout liability for the 2011 third quarter by $380,000 before taxes and $2,600,000 before taxes, or $.03 per share, for the first nine months of 2011. The 2012 third quarter and first nine months included an estimated $.03 to $.04 per share negative impact from low water throughout the Mississippi River System, net of certain revenue and cost recovery from contracts with terms that provide reimbursements for delays and increased costs, and the impact of Hurricane Isaac which made landfall near the mouth of the Mississippi River on August 28, 2012 as a category 1 storm, impacting both the marine transportation and diesel engine services operations. The 2012 first nine months operating results also included a $2,920,000 before taxes, or $.03 per share, severance charge associated with the integration of Kirby Offshore Marine’s administrative functions into the Company. The 2011 first nine months included an estimated $.07 per share negative impact from high water and flooding throughout the Mississippi River System and along the Gulf Intracoastal Waterway in the Morgan City area during the 2011 second quarter, net of certain revenue and cost recovery from contracts with terms that provide reimbursements for delays and increased costs.

Marine Transportation

For the 2012 third quarter and first nine months, 67% and 64%, respectively, of the Company's revenue was generated by its marine transportation segment. The segment's customers include many of the major petrochemical and refining companies that operate in the United States. Products transported include intermediate materials used to produce many of the end products used widely by businesses and consumers — plastics, fiber, paints, detergents, oil additives and paper, among others, as well as residual fuel oil, ship bunkers, asphalt, gasoline, diesel fuel, heating oil and agricultural chemicals. Consequently, the Company's inland marine transportation business tends to mirror the volumes produced by the Company's petrochemical and refining customer base, while the Company's coastal marine transportation business tends to mirror the general performance of the United States economy. The results include the operations of Kirby Offshore Marine, acquired on July 1, 2011, and described below.

The Company's marine transportation segment's revenue for the 2012 third quarter was relatively consistent with the 2011 third quarter, while the revenue for the 2012 first nine months increased 20% compared with revenue for the 2011 first nine months. The segment's operating income for the 2012 third quarter and first nine months increased 5% and 17%, respectively, when compared with operating income for the 2011 third quarter and first nine months. The higher marine transportation revenues and higher operating income for the 2012 first nine months reflected the acquisition of Kirby Offshore Marine on July 1, 2011. During the 2012 third quarter, demand across all inland markets remained strong. Driven by a low-cost natural gas feedstock advantage afforded to United States petrochemical producers, petrochemical demand remained strong and also benefited from resumed normal levels of production at several major customer plants which had maintenance downtime during the 2012 second quarter. Black oil demand also remained strong, driven by continued stable refinery output, healthy export levels of heavy fuel oil, and the movement of Canadian and Bakken crude oil from the Midwest to the Gulf Coast, as well the movement of South Texas crude oil along the Gulf Intracoastal Waterway and in the Gulf of Mexico. Refined product demand remained positive, benefiting from additional volumes from major customers. Agricultural chemical demand was favorable, as demand returned early for the traditional fall fertilizer season.

The Company's inland petrochemical and black oil products fleets achieved tank barge utilization levels in the 90% to 95% range during the 2012 third quarter and first nine months compared with a low 90% range during the 2011 first quarter and 90% to 95% range during the 2011 second, third and fourth quarters. Diesel fuel prices for the 2012 third quarter decreased 5% compared with the 2011 third quarter thereby negatively impacting marine transportation revenues and increased 5% for the 2012 first nine months thereby positively impacting marine transportation revenue. Fuel is escalated and de-escalated through revenue adjustment clauses in customers' term contracts, or the customer pays for the fuel.

During the 2012 and 2011 third quarters and first nine months, approximately 75% of marine transportation's inland revenues were under term contracts and 25% were spot contract revenues, thereby providing the operations with a predictable revenue stream. Inland operation time charters, which insulate the Company from revenue fluctuations caused by weather and navigational delays and temporary market declines, represented 58% and 57%, respectively, of the revenues under term contracts during the 2012 third quarter and first nine months compared with 54% and 55%, respectively, during the 2011 third quarter and first nine months. Rates on inland operations term contracts renewed in the 2012 first, second and third quarters increased in the 4% to 6% average range compared with term contracts renewed in the corresponding quarters of 2011. Spot contract rates, which include the cost of fuel, increased modestly during the 2012 first, second and third quarters compared with the prior quarters. Effective January 1, 2012, annual escalators for labor and the producer price index on a number of multi-year contracts resulted in rate increases on those contracts in the 2% range, excluding fuel.

The coastal operations, which primarily transport refined petroleum products, experienced typical market conditions during the 2012 third quarter with overall equipment utilization levels in the 75% to 80% range compared with 75% equipment utilization for the 2012 first six months. During the 2012 third quarter, the Atlantic, Pacific, Alaska and Hawaii markets reported higher utilization levels, while the New York Harbor market saw continued softness and excess capacity that resulted in lower equipment utilization levels and competitive bidding for available movements.

During the 2012 third quarter and first nine months, approximately 60% of the marine transportation coastal revenues were under term contracts and 40% were spot contract revenues. Coastal time charters represented approximately 90% of the revenues under term contracts during the 2012 third quarter and first nine months. For the coastal operations, no term contracts were renewed in the 2012 third quarter. For the 2012 first six months, term contracts renewals were relatively stable compared with term contracts renewed in the 2011 first six months, and spot contract rates during the 2012 third quarter were up in the 4% to 6% average range compared with the 2012 second quarter. Spot contract rates for the 2012 first and second quarters were relatively stable compared with the corresponding prior quarter.

The marine transportation operating margin for the 2012 third quarter was 23.4% compared with 22.2% for the 2011 third quarter, and 21.6% for the 2012 first nine months compared with 22.0% for the 2011 first nine months. This reflected strong inland tank barge utilization levels and higher term and spot contract pricing, partially offset by the impact of unfavorable weather conditions. Also, the coastal operations had a high single digit operating margin for the 2012 third quarter and mid single digit operating margin for the first nine months, including the 2012 first nine months' severance charge of $2,920,000 discussed above.

Diesel Engine Services

For the 2012 third quarter and first nine months, 33% and 36%, respectively, of the Company's revenue was generated by its diesel engine services segment, of which 21% and 30% was generated from manufacturing, 60% and 51% from overhauls and service, and 19% and 19% from direct parts sales, respectively. The results of the diesel engine services segment are largely influenced by the economic cycles of the marine and power generation markets and the land-based pressure pumping and oilfield services industries. The results include the operations of United, acquired on April 15, 2011.

The Company's diesel engine services segment's 2012 third quarter and first nine months revenue decreased 19% and increased 30%, respectively, and operating income decreased 31% and increased 17%, respectively, when compared with the third quarter and first nine months of 2011. The increase in revenue and operating income for the 2012 first nine months reflected the acquisition of United on April 15, 2011. During the 2012 third quarter and first nine months, low natural gas prices led to a decline in drilling for natural gas in North American shale formations, resulting in lower demand for the manufacturing of land-based pressure pumping units, as well as a decline in the service of land-based diesel engines and sales of engines, transmissions and parts. Partially offsetting the decline in the manufacturing of pressure pumping units was the demand for manufacturing of blenders, double-pumpers, cementers and fire pumps, as well as an increase in the number of pressure pumping units to be remanufactured. The 2012 third quarter results included a $400,000 credit and the 2012 first nine months results included a $3,900,000 charge to selling, general and administrative expense, resulting from a net increase in the fair value of the contingent earnout liability associated with the April 2011 acquisition of United. This compares with a charge to selling, general and administrative expenses increasing the fair value of the contingent earnout liability for the 2011 third quarter and first nine months by $380,000 and $2,600,000, respectively.

During the 2012 third quarter and first nine months, the marine diesel engine services market reflected signs of strengthening and benefited from large overhaul projects for major domestic and international customers, as well as higher service work for oil service customers as Gulf of Mexico oil and gas drilling activity increased during the 2012 first nine months. However, the Gulf Coast and Midwest markets were negatively impacted by the low water conditions on the Mississippi River System and Hurricane Isaac, with certain overhaul projects deferred into the fourth quarter or into 2013. The power generation market benefited from major engine-generator set upgrades and parts sales for both domestic and international customers.

The diesel engine services segment's operating margin for the 2012 third quarter was 8.5% compared with 10.0% for the 2011 third quarter. For the 2012 first nine months, the operating margin was 9.3% compared with 10.3% for the first nine months of 2011. The decline in the operating margin for both periods reflected the 2012 second and third quarter curtailment in the manufacturing of pressure pumping units and softer land-based diesel engines and transmissions sales and service, as well as lower margins on the remanufacturing of pressure pumping units during the startup phase. Partially offsetting these declines were favorable operating margins earned in the power generation market.

Cash Flow and Capital Expenditures

The Company continued to generate strong operating cash flow during the 2012 first nine months, with net cash provided by operating activities of $246,228,000 compared with $215,326,000 of net cash provided by operating activities for the 2011 first nine months. The 14% increase was primarily from higher net earnings attributable to Kirby, higher depreciation and amortization and a higher deferred tax provision in the 2012 first nine months versus the 2011 first nine months, partially offset by a $28,774,000 greater net decrease in cash flows from changes in operating assets and liabilities. In addition, during the 2012 and 2011 first nine months, the Company generated cash of $3,173,000 and $349,000, respectively, from the exercise of stock options and $15,165,000 and $3,967,000, respectively, from proceeds from the disposition of assets.

For the 2012 first nine months, cash generated and borrowings under the Company's revolving credit facility were used for capital expenditures totaling $255,887,000, including $123,154,000 for new inland tank barge and towboat construction, $44,295,000 for progress payments on the construction of two offshore dry-bulk barge and tugboat units scheduled for completion in the 2012 fourth quarter, and $88,438,000 primarily for upgrading the existing marine transportation inland and coastal fleets and diesel engine services facilities. The Company's debt-to-capitalization ratio decreased to 32.5% at September 30, 2012 from 35.5% at December 31, 2011, primarily due to the increase in total equity from net earnings attributable to Kirby for the 2012 first nine months of $151,550,000, the exercise of stock options, the amortization of unearned equity compensation and a reduction of $20,035,000 of debt outstanding. As of September 30, 2012, the Company had $91,970,000 outstanding under its revolving credit facility, $481,000,000 outstanding under its term loan, of which $58,500,000 was classified as current portion of long-term debt, $200,000,000 outstanding under its senior notes and $9,000,000 outstanding under its short-term line of credit.

The Company projects that capital expenditures for 2012 will be in the $305,000,000 to $315,000,000 range, including approximately $130,000,000 for the construction of 55 inland tank barges and five inland towboats and approximately $70,000,000 in progress payments on the construction of two offshore dry-bulk barge and tugboat units for delivery in the 2012 fourth quarter with an estimated total cost of $52,000,000 for each unit. During the 2012 first nine months, the Company's inland operation took delivery of 53 new inland tank barges, increasing capacity by 972,000 barrels, added 17 inland tank barges from Lyondell that the Company previously operated for Lyondell, increasing capacity by 243,000 barrels, received four tank barges from the coastal fleet, increasing capacity by 91,000 barrels, and retired 37 inland tank barges and returned three chartered inland tank barges, reducing its capacity by 635,000 barrels. The Company's inland operation also took delivery of three inland towboats during the 2012 first nine months.

Based on current commitments, steel prices and projected delivery schedules, the Company’s 2013 new construction capital expenditures will consist of 56 inland tank barges with a total capacity of approximately 1,200,000 barrels and three inland towboats for delivery throughout 2013. The cost is approximately $130,000,000, the majority of which will be expended in 2013.

Outlook

Petrochemical and black oil products inland tank barge utilization levels remained strong during the 2012 first nine months in the 90% to 95% range. While the United States economy remains sluggish, with consistently high unemployment levels and weak consumer confidence, the United States petrochemical industry continues to see strong production levels for both domestic consumption and exports. Low-priced domestic natural gas, a basic feedstock for the United States petrochemical industry, provides the industry with a competitive advantage against foreign petrochemical producers. As a result, United States petrochemical production improved during 2011 and has remained strong during the 2012 first nine months, thereby producing increased marine transportation volumes for basic petrochemicals to both domestic consumers and terminals for foreign destinations. The black oil products market also continued to improve during 2011 and the 2012 first nine months, primarily due to a continued stable United States refinery utilization level aided by the export of diesel fuel and heavy fuel oil, and demand for the transportation of crude oil from shale formations in South Texas, as well as the movement of Canadian and Bakken crude oil from the Midwest to the Gulf Coast. The coastal tank barge trade, moving primarily refined products, is more reflective of the weaker United States economy with volumes well below peak levels reached in 2007.

The United States petrochemical industry is globally competitive based on a number of factors, including a highly integrated and efficient transportation system of pipelines, tank barges, railroads and trucks, largely depreciated yet well maintained and operated facilities, and a low cost feedstock slate, which includes natural gas. Certain United States producers have announced plans for plant capacity expansions and the reopening of idled petrochemical facilities. The current production volumes from the Company’s petrochemical customers have resulted in the Company’s inland tank barge utilization levels in the low to mid 90% range and any increased production from current facilities, plant expansions or the reopening of idled facilities should drive feedstock and production volumes higher, in turn leading to higher tank barge utilization levels and higher term and contract pricing, which could be mitigated by additional tank barge capacity.

During 2009 and 2010, the marine transportation segment was negatively impacted by excess industry inland tank barge capacity. At the end of 2011, the Company estimated there were approximately 3,100 inland tank barges in the industry fleet, of which approximately 500 were over 35 years old and approximately 300 of those over 40 years old. Given the age profile of the industry inland tank barge fleet, the expectation is that older tank barges will continue to be removed from service and replaced by new tank barges that will enter the fleet. During 2011 and early 2012, with the improved demand for inland petrochemical and black oil product tank barges and federal tax incentives on new equipment, the Company estimates that approximately 265 inland tank barges were ordered industry-wide for delivery throughout 2012. Many older tank barges will be retired, but the extent of the retirements is dependent on 2012 petrochemical and refinery production levels, crude oil movements and industry-wide tank barge utilization levels.

During 2011 and the first nine months of 2012, the marine transportation segment was negatively impacted by excess coastal tank barge capacity. At the end of 2011, the Company estimated there were approximately 275 tank barges operating in the 185,000 barrel or less coastal industry fleet. The Company estimates that approximately 8% of the approximate 275 coastal tank barges are single hull and will be removed from service between 2012 and the mandatory retirement date for single hull tank barges of December 31, 2014. The Company presently operates three single hull tank barges in the coastal trade, less than 1% of its barrel capacity.

In the diesel engine services segment, with the recent increase in drilling rigs operating in the Gulf of Mexico during late 2011 and the first nine months of 2012, service activity levels have reflected a modest improvement and should continue to modestly improve as drilling activity increases. The land-based diesel engine services market consists of manufacturing and remanufacturing of oilfield service equipment, including pressure pumping units, and servicing their components, which include high-speed diesel engines, transmissions and pumps, many of the same components used by marine customers. Currently, an estimated 16.5 million horsepower is employed in the North American pressure pumping business. With the current low price of natural gas, the exploration of United States natural gas shale formations declined, resulting in excess pressure pumping horsepower. However, with the current high price of crude oil, the exploration of United States crude oil shale formations has remained positive. As a result of the excess pressure pumping horsepower, new orders for pressure pumping units has essentially stopped and the supply and distribution portion of the land-based market has slowed. While the Company expects its land-based diesel engine business to remain profitable, it does not expect any significant improvement in this market until late 2013 or early 2014. The focus of the Company, currently as well as into the future, will be on the remanufacturing and servicing of existing pressure pumping equipment.

Acquisitions

On November 1, 2012, the Company purchased from Allied 10 coastal tank barges with a total capacity of 680,000 barrels, three offshore dry-bulk barges with a total capacity of 48,000 deadweight tons and seven coastal tugboats for $116,000,000 in cash, before post-closing adjustments, including $10,000,000 that will be paid contingent on developments with the sugar provisions in the United States Farm Bill. Allied provided coastal transportation of petrochemicals as well as dry sugar products in the Northeast, Atlantic and Gulf Coast regions of the United States. Financing of the equipment acquisition was through the Company’s revolving credit facility.

On December 15, 2011, the Company completed the purchase of the coastal tank barge fleet of Seaboats, consisting of three 80,000 barrel coastal tank barges and tugboats for $42,745,000 in cash. The three coastal tank barges and tugboats currently operate along the United States East Coast and had an average age of five years. Financing of the equipment acquisition was through the Company’s revolving credit facility.

On July 1, 2011, the Company completed the acquisition of K-Sea, now named Kirby Offshore Marine, an operator of tank barges and tugboats participating in the coastal transportation primarily of refined petroleum products in the United States. The total value of the transaction was $603,427,000, excluding transaction fees, consisting of $227,617,000 of cash paid to K-Sea common and preferred unit holders and the general partner, $262,791,000 of cash to retire K-Sea’s outstanding debt, and $113,019,000 through the issuance of 1,939,234 shares of Company common stock valued at $58.28 per share, the Company’s closing share price on July 1, 2011. The transaction was financed through a combination of the new $540,000,000 term loan and the issuance of Company common stock.

On the acquisition date, Kirby Offshore Marine’s fleet, comprised of 57 coastal tank barges with a capacity of 3.8 million barrels and 63 tugboats, operated along the East Coast, West Coast and Gulf Coast of the United States, as well as in Alaska and Hawaii. Kirby Offshore Marine’s tank barge fleet, 54 of which were double hulled and had an average age of approximately nine years, is one of the youngest fleets in the coastal trade. Kirby Offshore Marine’s customers include major oil companies and refiners, many of which are current Company customers for inland tank barge services. Kirby Offshore Marine has operating facilities in New York, Philadelphia, Seattle and Honolulu.

On April 15, 2011, the Company purchased United, a distributor and service provider of engine and transmission related products for the oil and gas services, power generation and transportation industries, and manufacturer of oilfield service equipment. The purchase price was $271,192,000 in cash, plus a three-year earnout provision for up to an additional $50,000,000 payable in 2014, dependent on achieving certain financial targets. United, headquartered in Oklahoma City, Oklahoma with 21 locations across seven states, distributes and services equipment and parts for Allison, MTU, Daimler, and other diesel and natural gas engines. United also manufactures oilfield service equipment, including pressure pumping units. United’s principal customers are oilfield service companies, oil and gas operators and producers, compression companies and on-highway transportation companies. Financing of the acquisition was through the Company’s operating cash flows and borrowings under the Company’s revolving credit facility.

On February 24, 2011, the Company purchased 21 inland and offshore tank barges and 15 inland towboats and offshore tugboats from Enterprise for $53,200,000 in cash. Enterprise provided transportation and delivery services for ship bunkers (engine fuel) to cruise ships, container ships and freighters primarily in the Miami, Port Everglades and Cape Canaveral, Florida area, the three largest cruise ship ports in the United States, as well as Tampa, Florida, Mobile, Alabama and Houston, Texas. Financing of the acquisition was through the Company’s operating cash flows.

On February 9, 2011, the Company purchased from Kinder Morgan for $4,050,000 in cash a 51% interest in Kinder Morgan's shifting operation and fleeting facility for dry cargo barges and tank barges on the Houston Ship Channel. Kinder Morgan retained the remaining 49% interest and the Company will manage the operation. In addition, the Company purchased a towboat from Kinder Morgan for $1,250,000 in cash. Financing of the acquisition was through the Company's operating cash flows.

Results of Operations

The Company reported 2012 third quarter net earnings attributable to Kirby of $53,055,000, or $.95 per share, on revenues of $521,324,000, compared with 2011 third quarter net earnings attributable to Kirby of $52,734,000, or $.94 per share, on revenues of $563,582,000. Net earnings attributable to Kirby for the 2012 first nine months were $151,550,000, or $2.70 per share, on revenues of $1,600,107,000 compared with $126,856,000, or $2.33 per share, on revenues of $1,300,272,000 for the 2011 first nine months. The 2012 third quarter and first nine months included an estimated $.03 to $.04 per share negative impact from low water throughout the Mississippi River System, net of certain revenue and cost recovery from contracts with terms that provide reimbursements for delays and increased costs, and the impact of Hurricane Isaac. The 2012 third quarter results included a $400,000 before taxes credit and the 2012 first nine months results included a $3,900,000 before taxes, or $.04 per share, charge to selling, general and administrative expense, resulting from a net increase in the fair value of the contingent earnout liability associated with the April 2011 acquisition of United. This compares with a charge to selling, general and administrative expenses increasing the fair value of the contingent earnout liability for the 2011 third quarter by $380,000 before taxes and $2,600,000 before taxes, or $.03 per share, for the first nine months of 2011. The 2012 first nine months results also included a $2,920,000 before taxes, or $.03 per share, severance charge associated with the integration of Kirby Offshore Marine's administrative functions into the Company.

The following table sets forth the Company's marine transportation and diesel engine services revenues for the 2012 third quarter compared with the third quarter of 2011, the first nine months of 2012 compared with the first nine months of 2011 and the percentage of each to total revenues for the comparable periods (dollars in thousands):

	Three months ended September 30,				Nine months ended September 30,			
	2012	%	2011	%	2012	%	2011	%
Marine transportation	$ 349,771	67%	$ 351,206	62%	$ 1,027,923	64%	$ 859,495	66%
Diesel engine services	171,553	33	212,376	38	572,184	36	440,777	34
	$ 521,324	100%	$ 563,582	100%	$ 1,600,107	100%	$ 1,300,272	100%

Marine Transportation

The Company, through its marine transportation segment, is a provider of marine transportation services, operating tank barges and towing vessels, transporting bulk liquid products throughout the Mississippi River System, on the Gulf Intracoastal Waterway, and along all three United States coasts and in Alaska and Hawaii. The Company transports petrochemical, black oil products, refined petroleum products and agricultural chemicals by tank barge. As of September 30, 2012, the Company operated 853 inland tank barges, with a total capacity of 16.9 million barrels, compared with 827 inland tank barges at September 30, 2011, with a total capacity of 16.3 million barrels. The Company operated an average of 246 inland towboats during the 2012 third quarter compared with 244 during the 2011 third quarter. The Company's coastal fleet as of September 30, 2012 consisted of 53 tank barges, three of which are single hull, with 3.7 million barrels of capacity, and 63 tugboats, compared with 57 tank barges, with 3.8 million barrels of capacity, and 63 tugboats as of September 30, 2011. The Company owns four offshore dry-bulk barge and tugboats engaged in the coastal transportation of dry-bulk cargoes. The Company also owns a two-thirds interest in Osprey Line, L.L.C., which transports project cargoes and cargo containers by barge, as well as a 51% interest in a shifting operation and fleeting facility for dry cargo barges and tank barges on the Houston Ship Channel.

The following table sets forth the Company's marine transportation segment's revenues, costs and expenses, operating income and operating margins for the three months and nine months ended September 30, 2012 compared with the three months and nine months ended September 30, 2011 (dollars in thousands):

	Three months ended September 30,			Nine months ended September 30,		
	2012	2011	% Change	2012	2011	% Change
Marine transportation revenues	$ 349,771	$ 351,206	—%	$ 1,027,923	$ 859,495	20%
Costs and expenses:						
Costs of sales and operating expenses	208,165	210,810	(1)	622,038	515,250	21
Selling, general and administrative	24,759	27,052	(8)	78,164	65,856	19
Taxes, other than on income	2,992	2,786	7	9,877	9,352	6
Depreciation and amortization	32,160	32,449	(1)	95,929	79,869	20
	268,076	273,097	(2)	806,008	670,327	20
Operating income	$ 81,695	$ 78,109	5%	$ 221,915	$ 189,168	17%
Operating margins	23.4%	22.2%		21.6%	22.0%	

Marine Transportation Revenues

The following table shows the marine transportation markets serviced by the Company, the marine transportation revenue distribution for the 2012 third quarter and first nine months, products moved and the drivers of the demand for the products the Company transports:

Markets Serviced	2012 Third Quarter Revenue Distribution	2012 Nine Months Revenue Distribution	Products Moved	Drivers
Petrochemicals	52%	52%	Benzene, Styrene, Methanol, Acrylonitrile, Xylene, Caustic Soda, Butadiene, Propylene	Consumer non-durables – 70%, Consumer durables – 30%
Refined Petroleum Products	27%	26%	Gasoline, No. 2 Oil, Jet Fuel, Heating Oil, Naphtha, Diesel Fuel, Ethanol	Vehicle Usage, Air Travel, Weather Conditions, Refinery Utilization
Black Oil Products	17%	18%	Residual Fuel Oil, Coker Feedstock, Vacuum Gas Oil, Asphalt, Carbon Black Feedstock, Crude Oil, Ship Bunkers	Fuel for Power Plants and Ships, Feedstock for Refineries, Road Construction
Agricultural Chemicals	4%	4%	Anhydrous Ammonia, Nitrogen – Based Liquid Fertilizer, Industrial Ammonia	Corn, Cotton and Wheat Production, Chemical Feedstock Usage

Marine transportation revenues for the 2012 third quarter decreased less than 1% when compared with the 2011 third quarter, reflecting a continued strong inland tank barge market with favorable pricing trends, offset by low water conditions throughout the Mississippi River System, operating disruptions caused by Hurricane Isaac and a continued weak but slightly improving coastal tank barge market. For the first nine months of 2012, marine transportation revenues increased 20% compared with the 2011 first nine months, reflecting the expansion into the coastal transportation business with the acquisition of Kirby Offshore Marine on July 1, 2011. The coastal tank barge fleet contributed approximately 20% of 2012 third quarter and first nine months marine transportation revenues. The increase also reflected strong United States petrochemical production levels and stable refinery production levels, resulting in equipment utilization levels in the low-to-mid 90% range for the inland petrochemical and black oil products fleets, as well as favorable term and spot contract pricing. In addition, average diesel fuel prices for the 2012 third quarter decreased 5% compared with the 2011 third quarter thereby negatively impacting marine transportation revenues and increased 5% for the 2012 first nine months thereby positively impacting marine transportation revenues. Fuel is escalated and de-escalated through revenue adjustment clauses in customers' term contracts, or the customer pays for the fuel.

During the entire 2012 third quarter the inland operations experienced low water conditions throughout the Mississippi River System requiring a reduction in tow sizes, slower transit times and draft reductions on tank barges with destinations on the Mississippi River System to 9 feet, and in some cases 8.9 feet, versus normal drafts of 9.5 to 10 feet, resulting in lower revenues. Water levels along the Gulf Intracoastal Waterway remained at normal levels and were not impacted by the low water levels on the Mississippi River System. The 2012 third quarter was also negatively impacted by Hurricane Isaac that made landfall near the mouth of the Mississippi River on August 28, 2012 as a category 1 storm, impacting both inland and coastal transportation operations and Gulf Coast diesel engine services operations. The Company estimates that the low water and Hurricane Isaac negatively impacted the 2012 third quarter by an estimated $.03 to $.04 per share.

The petrochemical market, the Company's largest market, contributed 52% of the marine transportation revenues for the 2012 third quarter and first nine months, reflecting continued strong business levels. Low-priced natural gas, a basic feedstock for the United States petrochemical industry, provided the industry with a competitive advantage against foreign petrochemical producers. As a result, United States petrochemical production remained strong during the 2012 third quarter and first nine months, producing stable marine transportation volumes for the movement of basic petrochemicals for both domestic consumers and terminals for foreign destinations. Temporarily lower volumes during the 2012 second quarter from one major petrochemical customer, due to scheduled and unscheduled maintenance at multiple facilities, returned to normal levels during the 2012 third quarter.

The refined petroleum products market, which contributed 27% and 26% of marine transportation revenues for the 2012 third quarter and first nine months, respectively, reflected higher demand for the movements of products in the inland market, benefiting from additional volumes from major customers. The coastal operations, which primarily transports refined petroleum products, saw overall equipment utilization levels in the 75% to 80% range for the 2012 third quarter compared with 75% equipment utilization for the 2012 first six months. The Atlantic, Pacific and Hawaii markets experienced higher seasonal third quarter utilization levels; however, the New York Harbor market continued to experience low equipment utilization levels and corresponding competitive bidding for available movements.

The black oil products market, which contributed 17% and 18% of marine transportation revenues for the 2012 third quarter and first nine months, respectively, saw strong demand driven by steady refinery production levels, the export of heavy fuel oil, demand for crude oil transportation from the Eagle Ford shale formations in South Texas both along the Gulf Intracoastal Waterway and in the Gulf of Mexico, and for the movement of Canadian and Bakken crude oil downriver from the Midwest to the Gulf Coast.

The agricultural chemical market, which contributed 4% of 2012 third quarter and first nine months marine transportation revenues, saw the traditional spring fill start early in the first quarter and continue through April and May. The traditional fall fill started early in July and continued through September with the movement of both domestically produced and imported product, driven by warmer than normal Midwest and Gulf Coast weather, low fertilizer inventories and high corn prices.

For the third quarter of 2012, the inland operations of the marine transportation segment incurred 1,244 delay days, 12% more than the 1,111 delay days that occurred during the 2011 third quarter. For the first nine months of 2012, 4,879 delay days occurred, 4% less than the 5,056 delay days that occurred in the 2011 first nine months. Delay days measure the lost time incurred by a tow (towboat and one or more tank barges) during transit when the tow is stopped due to weather, lock conditions or other navigational factors. Low water conditions on the Mississippi River System, starting in mid-May 2012, and continuing throughout the third quarter, created delays. Hurricane Isaac also created delays in the 2012 third quarter. For the 2012 first quarter, weather and water conditions in the Midwest were better compared with the first quarter of 2011, but fog and high winds along the Gulf Coast during the 2012 first quarter created delay days in excess of the 2011 first quarter. Lock repairs on the Gulf Intracoastal Waterway and the Ohio River during the 2012 first and second quarters also created delays. The 2011 second quarter experienced record high water and flooding throughout the Mississippi River System and a portion of the Gulf Intracoastal Waterway near Morgan City.

During the 2012 and 2011 third quarters and first nine months, approximately 75% of the marine transportation's inland operations revenues were under term contracts and 25% were spot contract revenues. The 75% term contract and 25% spot contract mix provides the marine transportation's inland operations with a more predictable revenue stream. Inland operations time charters, which insulate the Company from revenue fluctuations caused by weather and navigational delays and temporary market declines, represented 58% and 54%, respectively, of the revenues under term contracts during the 2012 and 2011 third quarters, and 57% and 55%, respectively, for the 2012 and 2011 first nine months.

During the 2012 third quarter and first nine months, approximately 60% of the coastal operations marine transportation revenues were under term contracts and 40% were spot contract revenues. Coastal time charters represented approximately 90% of the revenues under term contracts during 2012 third quarter and first nine months.

Rates on inland operations term contracts renewed in the 2012 first, second and third quarters increased in the 4% to 6% average range compared with term contracts renewed in the first, second and third quarters of 2011. Rates on spot contracts in the 2012 first, second and third quarters, which include the cost of fuel, increased modestly compared with the corresponding prior quarter. Effective January 1, 2012, annual escalators for labor and the producer price index on a number of inland operations multi-year contracts resulted in rate increases on those contracts in the 2% range, excluding fuel.

For the coastal operations no term contracts were renewed in the 2012 third quarter. For the 2012 first six months, term contracts renewals were relatively stable compared with term contract renewed in the 2011 first six months, and spot contract rates during the 2012 third quarter were up in the 4% to 6% average range compared with the 2012 second quarter. Spot contract rates for the 2012 first and second quarters were relatively stable compared with the corresponding prior quarter.

Marine Transportation Costs and Expenses

Costs of sales and operating expenses for the 2012 third quarter and first nine months decreased 1% and increased 21%, respectively, compared with the 2011 third quarter and first nine months. The 1% decrease for the 2012 third quarter reflected lower diesel fuel prices as noted below, primarily offset by higher costs and expenses associated with increased inland marine transportation demand. During the 2012 first quarter, Gulf Coast winter winds, fog conditions and lock delays created more delay days as noted above, and during the 2012 second and third quarters low water conditions on the Mississippi River increased operating expenses. The 21% increase for the 2012 first nine months primarily reflected the Kirby Offshore Marine acquisition effective July 1, 2011, as well as higher costs and expenses associated with increased inland marine transportation demand and higher diesel fuel prices.

The inland operations of the marine transportation segment operated an average of 246 towboats during the 2012 third quarter, of which an average of 64 were chartered, compared with 244 during the 2011 third quarter, of which an average of 60 were chartered. During the 2012 first nine months, the inland operations operated an average of 242 towboats of which an average of 60 were chartered, compared with 241 towboats operated during the 2011 first nine months, of which an average of 62 were chartered. As demand increases or decreases, or as weather or water conditions dictate, the Company charters-in or releases chartered towboats in an effort to balance horsepower needs with current requirements. The Company has historically used chartered towboats for approximately one-third of its horsepower requirements.

During the 2012 third quarter, the inland operations of the marine transportation segment consumed 10.7 million gallons of diesel fuel compared with 11.3 million gallons consumed during the 2011 third quarter. The average price per gallon of diesel fuel consumed during the 2012 third quarter was $3.10, a decrease of 5% compared with $3.27 per gallon for the 2011 third quarter. For the 2012 first nine months, the inland operations of the marine transportation segment consumed 32.4 million gallons of diesel fuel compared with 33.7 million consumed during the 2011 first nine months. The average price per gallon of diesel fuel consumed during the 2012 first nine months was $3.20, an increase of 5% compared with $3.06 per gallon for the 2011 first nine months. The fuel escalation and de-escalation clauses are designed to rebate fuel costs when prices decline and recover additional fuel costs when fuel prices rise; however, there is generally a 30 to 90 day delay before the contracts are adjusted. Spot contracts do not have escalators for fuel.

Selling, general and administrative expenses for the 2012 third quarter decreased 8% compared with the 2011 third quarter, reflecting the costs savings from the integration of Kirby Offshore Marine’s administrative functions into the Company and lower incentive compensation accruals. Selling, general and administrative expenses for the 2012 first nine months increased 19% when compared with the 2011 first nine months, primarily reflecting the acquisition of Kirby Offshore Marine effective July 1, 2011 and a $2,421,000 first quarter and $499,000 second quarter severance charge associated with the integration of Kirby Offshore Marine’s administrative functions into the Company.

Depreciation and amortization for the 2012 third quarter and first nine months decreased 1% and increased 20%, respectively, compared with the 2011 third quarter and first nine months. The 20% increase for the 2012 first nine months compared with the prior year period was primarily attributable to the acquisitions of Kirby Offshore Marine and the Seaboats fleet.

Marine Transportation Operating Income and Operating Margins

The marine transportation operating income for the 2012 third quarter and first nine months increased 5% and 17%, respectively, compared with the 2011 third quarter and first nine months. The operating margin was 23.4% for the 2012 third quarter compared with 22.2% for the 2011 third quarter. The operating margin for the 2012 first nine months was 21.6% compared with 22.0% for the 2011 first nine months. The higher operating income and higher or relatively similar operating margin were primarily a reflection of higher inland tank barge utilization, higher inland term and spot contract rates negotiated throughout the 2012 first nine months, and the operating income from Kirby Offshore Marine acquired in July 2011, partially offset by the negative impact of low water conditions and Hurricane Isaac as noted above and a high single digit operating margin for Kirby Offshore Marine.

Diesel Engine Services

The Company, through its diesel engine services segment, sells genuine replacement parts, provides service mechanics to overhaul and repair medium-speed and high-speed diesel engines, transmissions, reduction gears, pumps and compression products, maintains facilities to rebuild component parts or entire medium-speed and high-speed diesel engines, transmissions and entire reduction gears, and manufactures and remanufactures oilfield service equipment, including pressure pumping units. The Company primarily services the marine, power generation and land-based oil and gas operator and producer markets.

The following table sets forth the Company's diesel engine services segment's revenues, costs and expenses, operating income and operating margins for the three months and nine months ended September 30, 2012 compared with the three months and nine months ended September 30, 2011 (dollars in thousands):

	Three months ended September 30,			Nine months ended September 30,		
	2012	2011	% Change	2012	2011	% Change
Diesel engine services revenues	$ 171,553	$ 212,376	(19)%	$ 572,184	$ 440,777	30%
Costs and expenses:						
Costs of sales and operating expenses	136,825	167,710	(18)	453,227	343,678	32
Selling, general and administrative	16,880	19,405	(13)	55,134	42,435	30
Taxes, other than on income	453	448	1	1,365	1,082	26
Depreciation and amortization	2,792	3,633	(23)	9,183	8,185	12
	156,950	191,196	(18)	518,909	395,380	31
Operating income	$ 14,603	$ 21,180	(31) %	$ 53,275	$ 45,397	17%
Operating margins	8.5%	10.0%		9.3%	10.3%	

Diesel Engine Services Revenues

The following table shows the markets serviced by the Company's diesel engine services segment, the revenue distribution for the 2012 third quarter and first nine months and the customers for each market:

Markets Serviced	2012 Third Quarter Revenue Distribution	2012 Nine Months Revenue Distribution	Customers
Land-Based	72%	73%	Land-Based Oilfield Services, Oil and Gas Operators and Producers, Compression, On-Highway Transportation
Marine	20%	20%	Inland River Carriers – Dry and Liquid, Offshore Towing – Dry and Liquid, Offshore Oilfield Services – Drilling Rigs & Supply Boats, Harbor Towing, Dredging, Great Lake Ore Carriers
Power Generation	8%	7%	Standby Power Generation, Pumping Stations

Diesel engine services revenues for the 2012 third quarter decreased 19% compared with the 2011 third quarter, while revenues for the first nine months of 2012 increased 30% compared with the 2011 first nine months. The 19% decrease for the third quarter reflected the curtailment in land-based demand for the manufacturing of pressure pumping units, as well as a decline in service of land-based diesel engines and sales of engines, transmissions and parts, primarily associated with the current low price of natural gas and resulting decline in drilling for natural gas in North American shale formations. The 2012 third quarter also saw weakness during September in the Midwest and Gulf Coast marine markets with the deferral of large engine overhaul projects driven by the low water issues on the Mississippi River and Hurricane Isaac. Partially offsetting the decline in manufacturing of pressure pumping units was the demand for manufacturing of blenders, pumpers, cementers and fire pumps, as well as an increase in the number of pressure pumping units to be remanufactured, and higher revenues from the power generation market, associated with higher parts sales and continued demand for engine-generator set upgrades for both domestic and international customers. The 30% increase for the 2012 first nine months reflected the United acquisition on April 15, 2011, a strong 2012 first quarter land-based market that benefited from the manufacture of oil service equipment during the quarter and the increase in the remanufacture of pressure pumping units, as well as favorable sales and service of transmissions and diesel engines. The 30% increase for the 2012 first nine months also included a stronger marine market during the 2012 first half, benefiting from large overhaul projects for major domestic and international customers, as well as higher service work for oil service customers as the Gulf of Mexico oil and gas drilling activity increased.

Diesel Engine Services Costs and Expenses

Costs and expenses for the 2012 third quarter decreased 18% compared with the 2011 third quarter and increased 32% for the first nine months of 2012 compared with the 2011 first nine months, following the increases and decreases in revenues noted above.   The 2012 third quarter costs and expenses also included additional operating expenses related to the start-up associated with a new marine power distribution agreement and a new engine certification in the power generation market. Costs and expenses for the 2012 third quarter also included a $400,000 credit and the 2012 first nine months results included a $3,900,000 charge to selling, general and administrative expenses, resulting from a net increase in the fair value of the contingent earnout liability associated with the April 2011 acquisition of United. This compares with a charge to selling, general and administrative expenses increasing the fair value of the contingent earnout liability for the 2011 third quarter and first nine months by $380,000 and $2,600,000, respectively.

Diesel Engine Services Operating Income and Operating Margins

Operating income for the diesel engine services segment for the 2012 third quarter decreased 31% compared with the 2011 third quarter. For the 2012 first nine months, operating income for the diesel engine services segment increased 17% compared with the 2011 first nine months. The 31% decrease for the 2012 third quarter primarily reflected the significant reduction in the number of pressure pumping units manufactured by United, partially offset by an increase in the remanufacturing of older pressure pumping units, the manufacturing of other land-based equipment and higher operating results from the power generation market. The 17% increase in operating income for the 2012 first nine months primarily reflected the operating income from United, acquired on April 15, 2011. The operating margin for the 2012 third quarter was 8.5% compared with 10.0% for the 2011 third quarter and 9.3% for the 2012 first nine months compared with 10.3% for the 2011 first nine months. The lower operating margins for both periods reflected the weaker land-based oil services market, partially offset by higher operating margins for the power generation market.

General Corporate Expenses

General corporate expenses for the 2012 third quarter were $3,621,000, a 49% decrease compared with $7,078,000 for the third quarter of 2011. For the first nine months of 2012, general corporate expenses were $9,796,000, a 36% decrease compared with $15,206,000 for the first nine months of 2011. The 2011 third quarter and first nine months included legal and professional fees and other costs associated with the 2011 acquisitions discussed above, including expenditures for the K-Sea acquisition completed on July 1, 2011.

Loss/Gain on Disposition of Assets

The Company reported a net loss on disposition of assets of $40,000 for the 2012 third quarter compared with a net gain on disposition of assets of $97,000 for the 2011 third quarter. For the 2012 first nine months, the Company reported a net gain on disposition of assets of $1,000 compared with a net gain on disposition of assets of $71,000 for the first nine months of 2011. The net gains and losses were predominantly from the sale or retirement of marine equipment.

Other Income (Expense)

The following table sets forth other income, noncontrolling interests and interest expense for the three months and nine months ended September 30, 2012 compared with the three months and nine months ended September 30, 2011 (dollars in thousands):

	Three months ended September 30,			Nine months ended September 30,		
	2012	2011	% Change	2012	2011	% Change
Other income (expense)	$ (56)	$ (6)	833%	$ 123	$ 123	— %
Noncontrolling interests	$ (676)	$ (860)	(21)%	$ (2,495)	$ (1,867)	34%
Interest expense	$ (6,056)	$ (5,974)	1%	$ (17,797)	$ (12,085)	47%

Noncontrolling Interests

Noncontrolling interests for the 2012 third quarter decreased 21% and for the first nine months increased 34%, compared with the 2011 third quarter and first nine months, respectively, primarily the result of the purchase in February 2011 of a 51% interest in Kinder Morgan's shifting operation and fleeting facility for dry cargo barges and tank barges on the Houston Ship Channel and the increase in the demand for the facility since the date of acquisition. Kinder Morgan retained the remaining 49% interest.

Interest Expense

Interest expense for the 2012 third quarter and first nine months increased 1% and 47%, respectively, compared with the 2011 third quarter and first nine months. The 47% increase for the 2012 first nine months was primarily the result of borrowings under the revolving credit facility to finance the United acquisition and the $540,000,000 term loan to finance the acquisition of Kirby Offshore Marine. During the 2012 and 2011 third quarters, the average debt and average interest rate, including the effect of interest rate swaps, were $783,403,000 and 3.1%, and $826,960,000 and 2.9%, respectively. For the first nine months of 2012 and 2011, the average debt and average interest rate, including the effect of interest rate swaps, were $778,668,000 and 3.1%, and $439,268,000 and 3.7%, respectively.

Financial Condition, Capital Resources and Liquidity

Balance Sheet

Total assets as of September 30, 2012 were $3,125,612,000 compared with $2,960,411,000 as of December 31, 2011. The following table sets forth the significant components of the balance sheet as of September 30, 2012 compared with December 31, 2011 (dollars in thousands):

	September 30, 2012	December 31, 2011	% Change
Assets:			
Current assets	$ 555,033	$ 529,329	5%
Property and equipment, net	1,963,851	1,822,173	8
Goodwill, net	486,153	483,468	1
Other assets	120,575	125,441	(4)
	$ 3,125,612	$ 2,960,411	6%
Liabilities and stockholders' equity:			
Current liabilities	$ 327,663	$ 358,800	(9)%
Long-term debt – less current portion	723,470	763,000	(5)
Deferred income taxes	357,351	292,355	22
Other long-term liabilities	96,417	92,098	5
Total equity	1,620,711	1,454,158	11
	$ 3,125,612	$ 2,960,411	6%

Current assets as of September 30, 2012 increased 6% compared with December 31, 2011. Cash and cash equivalents decreased 68%. Inventory increased 28%, primarily reflecting the decrease in land-based diesel engine services activity levels during the 2012 first nine months, as well as the purchase of engines and transmissions to be sold to specific customers in the 2012 fourth quarter and in 2013.

Property and equipment, net of accumulated depreciation, at September 30, 2012 increased 8% compared with December 31, 2011. The increase primarily reflected $255,887,000 of capital expenditures for the 2012 first nine months, more fully described under Capital Expenditures below, less $101,007,000 of depreciation expense for the first nine months of 2012 and $14,524,000 of property disposals during the 2012 first nine months.

Current liabilities as of September 30, 2012 decreased 9% compared with December 31, 2011. The current portion of long-term debt at September 30, 2012 reflected the reclassification of $58,500,000 of the term loan as current. Accounts payable decreased 17%, primarily from the decrease in business activity levels in the land-based diesel engine services market. Accrued liabilities decreased 6%, primarily from the payments during the 2012 first nine months of employee incentive compensation accrued during 2011. Deferred revenues decreased 48%, primarily reflecting reduced deposits received for construction of new oilfield equipment in the land-based diesel engine services market.

Long-term debt, less current portion, as of September 30, 2012 decreased 5% compared with December 31, 2011, reflecting payments on the term loan during the 2012 first nine months.

Deferred income taxes as of September 30, 2012 increased 22% compared with December 31, 2011. The increase was primarily due to the 2012 first nine months deferred tax provision of $59,665,000. The deferred tax provision was primarily due to bonus tax depreciation on qualifying expenditures due to the Tax Relief Act that provides 50% bonus tax depreciation for capital investments placed in service through December 31, 2012.

Other long-term liabilities as of September 30, 2012 increased 5% compared with December 31, 2011. The increase was primarily due to pension plan accruals and an increase in the fair value of the United contingent earnout liability, partially offset by the reclassification of $9,200,000 of the long-term portion of the value of derivatives to short-term due to their February 2013 maturity. As of September 30, 2012, the Company had recorded a contingent earnout liability of $26,500,000.

Total equity as of September 30, 2012 increased 11% compared with December 31, 2011. The increase was primarily the result of $151,550,000 of net earnings attributable to Kirby for the first nine months of 2012 and a $4,790,000 increase in accumulated OCI. The increase in accumulated OCI primarily resulted from the net change in fair value of interest rate swap agreements, net of taxes, more fully described under Fair Value of Derivative Instruments below.

Long-Term Financing

The Company has a credit agreement (“Term Loan”) with a group of commercial banks, with Wells Fargo Bank, National Association as the administrative agent bank, with a maturity date of July 1, 2016. The Term Loan was funded on July 1, 2011 to provide financing for the acquisition of Kirby Offshore Marine. The Term Loan provided for a $540,000,000 five-year unsecured term loan facility with a variable interest rate based on LIBOR or an Alternate Base Rate calculated with reference to the agent bank’s prime rate, among other factors. The interest rate spread varies with the Company’s senior debt rating and is currently 1.5% over LIBOR or 0.5% over the Alternate Base Rate. The outstanding balance of the Term Loan is subject to quarterly amortization in increasing amounts and is prepayable, in whole or in part, without penalty. The Term Loan contains certain restrictive financial covenants including an interest coverage ratio and a debt-to-capitalization ratio. In addition to financial covenants, the Term Loan contains covenants that, subject to exceptions, restrict debt incurrence, mergers and acquisitions, sales of assets, dividends and investments, liquidations and dissolutions, capital leases, transactions with affiliates and changes in lines of business. As of September 30, 2012, the Company was in compliance with all Term Loan covenants and had $481,000,000 outstanding under the Term Loan, $58,500,000 of which was classified as current portion of long-term debt.

The Company has a $325,000,000 unsecured revolving credit facility (“Revolving Credit Facility”) with a syndicate of banks, with JPMorgan Chase Bank, N.A. as the administrative agent bank, with a maturity date of November 9, 2015. On August 30, 2012, the Revolving Credit Facility was increased to $325,000,000 from $250,000,000. The variable interest rate spread is currently 1.5% over LIBOR or 0.5% over the Alternate Base Rate. The commitment fee is currently 0.3%. The Revolving Credit Facility contains certain restrictive financial covenants including an interest coverage ratio and a debt-to-capitalization ratio. In addition to financial covenants, the Revolving Credit Facility contains covenants that, subject to exceptions, restrict debt incurrence, mergers and acquisitions, sales of assets, dividends and investments, liquidations and dissolutions, capital leases, transactions with affiliates and changes in lines of business. Borrowings under the Revolving Credit Facility may be used for general corporate purposes, the purchase of existing or new equipment, the purchase of the Company’s common stock, or for business acquisitions. As of September 30, 2012, the Company was in compliance with all Revolving Credit Facility covenants and had $91,970,000 outstanding under the Revolving Credit Facility. The Revolving Credit Facility includes a $25,000,000 commitment which may be used for standby letters of credit. Outstanding letters of credit under the Revolving Credit Facility were $3,566,000 as of September 30, 2012.

The Company has $200,000,000 of unsecured floating rate senior notes (“Senior Notes”) due February 28, 2013. The Senior Notes pay interest quarterly at a rate equal to LIBOR plus a margin of 0.5%. The Senior Notes are callable, at the Company’s option, at par. No principal payments are required until maturity in February 2013. The Company was in compliance with all Senior Notes covenants at September 30, 2012. As of September 30, 2012, all $200,000,000 of the Senior Notes were classified as long-term debt as the Company has the ability and the intent to refinance the Senior Notes on a long-term basis through the Revolving Credit Facility.

The Company has a $10,000,000 line of credit (“Credit Line”) with Bank of America for short-term liquidity needs and letters of credit, with a maturity date of June 30, 2013. The Credit Line allows the Company to borrow at an interest rate agreed to by Bank of America and the Company at the time each borrowing is made or continued. The Company had $9,000,000 of borrowings outstanding under the Credit Line as of September 30, 2012. Outstanding letters of credit under the Credit Line were $974,000 as of September 30, 2012.

Interest Rate Risk Management

From time to time, the Company has utilized and expects to continue to utilize derivative financial instruments with respect to a portion of its interest rate risks to achieve a more predictable cash flow by reducing its exposure to interest rate fluctuations. These transactions generally are interest rate swap agreements and are entered into with large multinational banks. Derivative financial instruments related to the Company’s interest rate risks are intended to reduce the Company’s exposure to increases in the benchmark interest rates underlying the Company’s floating rate senior note, variable rate term loan and variable rate bank credit facility.

From time to time, the Company hedges its exposure to fluctuations in short-term interest rates under its variable rate bank credit facility and floating rate senior notes by entering into interest rate swap agreements. The interest rate swap agreements are designated as cash flow hedges, therefore, the changes in fair value, to the extent the swap agreements are effective, are recognized in OCI until the hedged interest expense is recognized in earnings. The current swap agreements effectively convert the Company’s interest rate obligation on the Company’s variable rate senior notes from quarterly floating rate payments based on the LIBOR to quarterly fixed rate payments. As of September 30, 2012, the Company had a total notional amount of $200,000,000 of interest rate swaps designated as cash flow hedges for its variable rate senior notes as follows (dollars in thousands):

Notional Amount	Effective date	Termination date	Fixed pay rate	Receive rate
$ 100,000	March 2006	February 2013	5.45%	Three-month LIBOR
$ 50,000	November 2008	February 2013	3.50%	Three-month LIBOR
$ 50,000	May 2009	February 2013	3.795%	Three-month LIBOR

Foreign Currency Risk Management

From time to time, the Company has utilized and expects to continue to utilize derivative financial instruments with respect to its forecasted foreign currency transactions to attempt to reduce the risk of its exposure to foreign currency rate fluctuations in its transactions denominated in foreign currency. These transactions, which relate to foreign currency obligations for the purchase of equipment from foreign suppliers or foreign currency receipts from foreign customers, generally are forward contracts or purchased call options and are entered into with large multinational banks.

As of September 30, 2012, the Company had a forward contract with a notional amount of $469,000 to hedge its exposure to foreign currency rate fluctuations in expected foreign currency transactions. This contract expires in the first quarter of 2014. This forward contract is designated as a cash flow hedge, therefore, the changes in fair value, to the extent the forward contract is effective, is recognized in OCI until the forward contract expires and is recognized in costs of sales and operating expenses.

Fair Value of Derivative Instruments

The following table sets forth the fair value of the Company's derivative instruments recorded as liabilities located on the consolidated balance sheet at September 30, 2012 and December 31, 2011 (in thousands):

Liability Derivatives	Balance Sheet Location	September 30, 2012	December 31, 2011
Derivatives designated as hedging instruments under ASC 815:			
Foreign currency contracts	Other accrued liabilities	$ 26	$ 363
Foreign currency contracts	Other long-term liabilities	–	32
Interest rate contracts	Other accrued liabilities	3,630	—
Interest rate contracts	Other long-term liabilities	—	9,202
Total derivatives designated as hedging instruments under ASC 815		$ 3,656	$ 9,597
Total liability derivatives		$ 3,656	$ 9,597

Fair value amounts were derived as of September 30, 2012 and December 31, 2011 utilizing fair value models of the Company and its counterparties on the Company's portfolio of derivative instruments. These fair value models use the income approach that relies on inputs such as yield curves, currency exchange rates and forward prices. The fair value of the Company's derivative instruments is described above in Note 5, Fair Value Measurements.

Cash Flow Hedges

For derivative instruments that are designated and qualify as cash flow hedges, the effective portion of the gain or loss on the derivative is reported as a component of OCI and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. Gains and losses on the derivative representing either hedge ineffectiveness or hedge components excluded from the assessment of effectiveness are recognized in current earnings. Any ineffectiveness related to the Company's hedges was not material for any of the periods presented.

The following table sets forth the location and amount of gains and losses on the Company's derivative instruments in the consolidated statements of earnings for the three months and nine months ended September 30, 2012 and 2011 (in thousands):

Derivatives in ASC 815 Cash Flow Hedging Relationships:	Location of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion)	Amount of Gain (Loss) Recognized in OCI on Derivatives (Effective Portion) Three months ended September 30, 2012	2011	Amount of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion) Three months ended September 30, 2012	2011
Interest rate contracts	Interest expense	$ 1,950	$ 1,994	$ (2,092)	$ (2,183)
Foreign exchange contracts	Cost and sales of operating expenses	110	951	21	30
Total		$ 2,060	$ 2,945	$ (2,071)	$ (2,153)

Derivatives in ASC 815 Cash Flow Hedging Relationships:	Location of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion)	Amount of Gain (Loss) Recognized in OCI on Derivatives (Effective Portion) Nine months ended September 30, 2012	2011	Amount of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion) Nine months ended September 30, 2012	2011
Interest rate contracts	Interest expense	$ 5,573	$ 4,649	$ (6,192)	$ (6,460)
Foreign exchange contracts	Cost and sales of operating expenses	359	400	19	(13)
Total		$ 5,932	$ 5,049	$ (6,173)	$ (6,473)

The Company anticipates $2,359,000 of net losses on interest rate swap agreements included in accumulated OCI will be transferred into earnings over the next year based on current interest rates. Gains or losses on interest rate swap agreements offset increases or decreases in rates of the underlying debt, which results in a fixed rate for the underlying debt. The Company also expects none of its net loss on a foreign currency contract included in accumulated OCI will be transferred into earnings over the next year based on the maturity date of the forward contract.

Capital Expenditures

Capital expenditures for the 2012 first nine months were $255,887,000, of which $123,154,000 was for construction of new inland tank barges and towboats, $44,295,000 for progress payments on the construction of two offshore dry-bulk barge and tugboat units scheduled for completion in the fourth quarter of 2012, and $88,438,000 primarily for upgrading of the existing inland and coastal marine transportation equipment and diesel engine services facilities. Capital expenditures for the 2011 first nine months were $163,210,000, of which $94,403,000 was for construction of new tank barges and towboats, $15,701,000 for progress payments on the construction of the two offshore dry-bulk barge and tugboat units, and $53,106,000 was primarily for upgrading of the existing marine transportation fleet. Financing of the construction of the inland tank barges and towboats and dry-bulk barges and tugboats was through operating cash flows and available credit under the Company's Revolving Credit Facility.

During the 2012 first nine months, the Company's inland operation took delivery of 53 new inland tank barges, added 17 inland tank barges from Lyondell that the Company previously operated for Lyondell, and transferred in four tank barges from the coastal operation, increasing capacity by approximately 1,306,000 barrels, and retired 37 inland tank barges and returned three charter inland tank barges, reducing capacity by approximately 635,000 barrels. The Company's inland operation also took delivery of three inland towboats.

The Company projects that capital expenditures for 2012 will be in the range of $305,000,000 to $315,000,000. Based on current commitments, steel prices and projected delivery schedules, the Company's 2012 new construction capital expenditures of approximately $130,000,000 will consist of 55 new inland tank barges with a total capacity of 1,000,000 barrels, five inland towboats, and approximately $70,000,000 in progress payments on the construction of two offshore dry-bulk barge and tugboat units for delivery in the 2012 fourth quarter with an estimated total cost of $52,000,000 for each unit. The balance of approximately $105,000,000 to $115,000,000 is primarily capital upgrades and improvements to existing marine equipment fleets and diesel engine services facilities.

Based on current commitments, steel prices and projected delivery schedules, the Company's 2013 new construction capital expenditures will consist of 56 inland tank barges with a total capacity of approximately 1,200,000 barrels and three inland towboats for delivery throughout 2013. The cost is approximately $130,000,000, the majority of which will be expended in 2013.

Funding for future capital expenditures is expected to be provided through operating cash flows and available credit under the Company's Revolving Credit Facility.

Treasury Stock Purchases

The Company did not purchase any treasury stock during the 2012 first nine months. As of November 2, 2012, the Company had 2,685,000 shares available under its existing repurchase authorization. Historically, treasury stock purchases have been financed through operating cash flows and borrowing under the Company's Revolving Credit Facility. The Company is authorized to purchase its common stock on the New York Stock Exchange and in privately negotiated transactions. When purchasing its common stock, the Company is subject to price, trading volume and other market considerations. Shares purchased may be used for reissuance upon the exercise of stock options or the granting of other forms of incentive compensation, in future acquisitions for stock or for other appropriate corporate purposes.

Liquidity

The Company generated net cash provided by operating activities of $246,228,000 during the nine months ended September 30, 2012 compared with $215,326,000 generated during the nine months ended September 30, 2011. The 2012 first nine months experienced a net decrease in cash flows from changes in operating assets and liabilities of $84,997,000 compared with a net decrease in the 2011 first nine months of $56,223,000, primarily due to a decrease in accounts payable during 2012 due to lower business activity levels at United and the timing of payments for inventory received at United, compared to an increase in accounts payable during 2011 due to increased business activity levels at United. In addition, inventory at United increased by a larger amount during 2012 when compared to the increase in 2011. These increases were partially offset by a small decrease in trade accounts receivable in 2012 due to reduced business activity levels at United versus a larger increase during 2011 due to increased business activity levels at United.

Funds generated are available for acquisitions, capital expenditure projects, common stock repurchases, repayments of borrowings, and for other corporate and operating requirements. In addition to net cash flow provided by operating activities, the Company also had available as of November 2, 2012, $159,259,000 under its Revolving Credit Facility and $9,142,000 available under its Credit Line.

Neither the Company, nor any of its subsidiaries, is obligated on any debt instrument, swap agreement, or any other financial instrument or commercial contract which has a rating trigger, except for pricing grids on its Revolving Credit Facility and Term Loan.

The Company expects to continue to fund expenditures for acquisitions, capital construction projects, common stock repurchases, repayment of borrowings, and for other operating requirements from a combination of available cash and cash equivalents, funds generated from operating activities and available financing arrangements.

The Revolving Credit Facility's commitment is in the amount of $325,000,000 and expires November 9, 2015. As of September 30, 2012, the Company had $229,464,000 available under the Revolving Credit Facility. The Senior Notes do not mature until February 2013 and require no prepayments. The outstanding balance of the Term Loan is subject to quarterly amortization in increasing amounts and is prepayable, in whole or in part, without penalty. If the Company should decide to access the private placement bond market in the near term, the terms, size and cost of a new debt issue could be less favorable than our current debt agreements.

Current market conditions also elevate the concern over counterparty risks related to the Company's interest rate swap agreements used to hedge the Company's exposure to fluctuating interest rates and the Company's forward contracts used to hedge the Company's exposure to fluctuating foreign currency rates. The counterparties to these contracts are large multinational banks. The Company may not realize the benefit of some of its hedges should one of these financial counterparties not perform.

There are numerous factors that may negatively impact the Company's cash flow in 2012. For a list of significant risks and uncertainties that could impact cash flows, see Note 14, Contingencies in the financial statements, and Item 1A — Risk Factors, in the Company's Annual Report on Form 10-K for the year ended December 31, 2011. Amounts available under the Company's existing financial arrangements are subject to the Company continuing to meet the covenants of the credit facilities as described in Note 6, Long-Term Debt, in the Company's annual report on Form 10-K for the year ended December 31, 2011.

The Company has issued guaranties or obtained standby letters of credit and performance bonds supporting performance by the Company and its subsidiaries of contractual or contingent legal obligations of the Company and its subsidiaries incurred in the ordinary course of business. The aggregate notional value of these instruments is $32,056,000 at September 30, 2012, including $5,918,000 in letters of credit and $26,138,000 in performance bonds. All of these instruments have an expiration date within five years. The Company does not believe demand for payment under these instruments is likely and expects no material cash outlays to occur in connection with these instruments.

All marine transportation term contracts contain fuel escalation clauses or the customer pays for the fuel. However, there is generally a 30 to 90 day delay before contracts are adjusted depending on the specific contract. In general, the fuel escalation clauses are effective over the long-term in allowing the Company to recover changes in fuel costs due to fuel price changes. However, the short-term effectiveness of the fuel escalation clauses can be affected by a number of factors including, but not limited to, specific terms of the fuel escalation formulas, fuel price volatility, navigating conditions, tow sizes, trip routing, and the location of loading and discharge ports that may result in the Company over or under recovering its fuel costs. Spot contract rates generally reflect current fuel prices at the time the contract is signed but do not have escalators for fuel.

During the last three years, inflation has had a relatively minor effect on the financial results of the Company. The marine transportation segment has long-term contracts which generally contain cost escalation clauses whereby certain costs, including fuel as noted above, can be passed through to its customers. Spot contract rates include the cost of fuel and are subject to market volatility. The repair portion of the diesel engine services segment is based on prevailing current market rates.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

The Company is exposed to risk from changes in interest rates on certain of its outstanding debt. The outstanding loan balances under the Company's bank credit facilities bear interest at variable rates based on prevailing short-term interest rates in the United States and Europe. A 10% change in variable interest rates would impact the 2012 interest expense by $180,000 based on balances outstanding at December 31, 2011, and would change the fair value of the Company's debt by less than 1%.

Interest Rate Risk Management

From time to time, the Company has utilized and expects to continue to utilize derivative financial instruments with respect to a portion of its interest rate risks to achieve a more predictable cash flow by reducing its exposure to interest rate fluctuations. These transactions generally are interest rate swap agreements and are entered into with large multinational banks. Derivative financial instruments related to the Company's interest rate risks are intended to reduce the Company's exposure to increases in the benchmark interest rates underlying the Company's floating rate senior notes, variable rate term loan and variable rate bank credit facility.

From time to time, the Company hedges its exposure to fluctuations in short-term interest rates under its variable rate bank credit facility and floating rate senior notes by entering into interest rate swap agreements. The interest rate swap agreements are designated as cash flow hedges, therefore, the changes in fair value, to the extent the swap agreements are effective, are recognized in other OCI until the hedged interest expense is recognized in earnings. The current swap agreements effectively convert the Company's interest rate obligation on the Company's variable rate senior notes from quarterly floating rate payments based on the LIBOR to quarterly fixed rate payments. As of September 30, 2012, the Company had a total notional amount of $200,000,000 of interest rate swaps designated as cash flow hedges for its variable rate senior notes as follows (dollars in thousands):

Notional Amount	Effective date	Termination date	Fixed pay rate	Receive rate
$ 100,000	March 2006	February 2013	5.45%	Three-month LIBOR
$ 50,000	November 2008	February 2013	3.50%	Three-month LIBOR
$ 50,000	May 2009	February 2013	3.795%	Three-month LIBOR

Foreign Currency Risk Management

From time to time, the Company has utilized and expects to continue to utilize derivative financial instruments with respect to its forecasted foreign currency transactions to attempt to reduce the risk of its exposure to foreign currency rate fluctuations in its transactions denominated in foreign currency. These transactions, which relate to foreign currency obligations for the purchase of equipment from foreign suppliers or foreign currency receipts from foreign customers, generally are forward contracts or purchased call options and are entered into with large multinational banks.

As of September 30, 2012, the Company had a forward contract with a notional amount of $469,000 to hedge its exposure to foreign currency rate fluctuations in expected foreign currency transactions. This contract expires in the first quarter of 2014. This forward contract is designated as a cash flow hedge, therefore, the changes in fair value, to the extent the forward contract is effective, is recognized in OCI until the forward contract expires and is recognized in costs of sales and operating expenses.

Fair Value of Derivative Instruments

The following table sets forth the fair value of the Company's derivative instruments recorded as liabilities located on the consolidated balance sheet at September 30, 2012 and December 31, 2011 (in thousands):

Liability Derivatives	Balance Sheet Location	September 30, 2012	December 31, 2011
Derivatives designated as hedging instruments under ASC 815:			
Foreign currency contracts	Other accrued liabilities	$ 26	$ 363
Foreign currency contracts	Other long-term liabilities	–	32
Interest rate contracts	Other accrued liabilities	3,630	—
Interest rate contracts	Other long-term liabilities	—	9,202
Total derivatives designated as hedging instruments under ASC 815		$ 3,656	$ 9,597
Total liability derivatives		$ 3,656	$ 9,597

Fair value amounts were derived as of September 30, 2012 and December 31, 2011 utilizing fair value models of the Company and its counterparties on the Company's portfolio of derivative instruments. These fair value models use the income approach that relies on inputs such as yield curves, currency exchange rates and forward prices. The fair value of the Company's derivative instruments is described above in Note 5, Fair Value Measurements.

Cash Flow Hedges

For derivative instruments that are designated and qualify as cash flow hedges, the effective portion of the gain or loss on the derivative is reported as a component of OCI and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. Gains and losses on the derivative representing either hedge ineffectiveness or hedge components excluded from the assessment of effectiveness are recognized in current earnings. Any ineffectiveness related to the Company's hedges was not material for any of the periods presented.

The following table sets forth the location and amount of gains and losses on the Company's derivative instruments in the consolidated statements of earnings for the three months and nine months ended September 30, 2012 and 2011 (in thousands):

Derivatives in ASC 815 Cash Flow Hedging Relationships:	Location of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion)	Amount of Gain (Loss) Recognized in OCI on Derivatives (Effective Portion) Three months ended September 30, 2012	2011	Amount of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion) Three months ended September 30, 2012	2011
Interest rate contracts	Interest expense	$ 1,950	$ 1,994	$ (2,092)	$ (2,183)
Foreign exchange contracts	Cost and sales of operating expenses	110	951	21	30
Total		$ 2,060	$ 2,945	$ (2,071)	$ (2,153)

Derivatives in ASC 815 Cash Flow Hedging Relationships:	Location of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion)	Amount of Gain (Loss) Recognized in OCI on Derivatives (Effective Portion) Nine months ended September 30, 2012	2011	Amount of Gain (Loss) Reclassified from Accumulated OCI into Income (Effective Portion) Nine months ended September 30, 2012	2011
Interest rate contracts	Interest expense	$ 5,573	$ 4,649	$ (6,192)	$ (6,460)
Foreign exchange contracts	Cost and sales of operating expenses	359	400	19	(13)
Total		$ 5,932	$ 5,049	$ (6,173)	$ (6,473)

The Company anticipates $2,359,000 of net losses on interest rate swap agreements included in accumulated OCI will be transferred into earnings over the next year based on current interest rates. Gains or losses on interest rate swap agreements offset increases or decreases in rates of the underlying debt, which results in a fixed rate for the underlying debt. The Company also expects none of its net loss on a foreign currency contract included in accumulated OCI will be transferred into earnings over the next year based on the maturity date of the forward contract.

Item 4. Controls and Procedures

The Company's management, with the participation of the Chief Executive Officer and the Chief Financial Officer, has evaluated the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the "Exchange Act") as of September 30, 2012. Based on that evaluation, the Chief Executive Officer and the Chief Financial Officer concluded that, as of September 30, 2012, the disclosure controls and procedures were effective to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. There were no changes in the Company's internal control over financial reporting during the quarter ended September 30, 2012 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II – OTHER INFORMATION

Item 6. Exhibits

10.1	–	Commitment Increase Agreements dated as of August 30, 2012 among Kirby Corporation, JP Morgan Chase Bank, N.A., as Administrative Agent, and each of the Increasing Banks named therein.
10.2	–	Asset Purchase Agreement dated as of September 4, 2012 between Allied Marine Industries, Inc., Allied Transportation Company, Transerve Marine, Inc., Osprey Associates, Gregory H. Law, Kelly Law, W. Bruce Law, Michael E. Law, Kirk J. Woodruff and Kirby Corporation.
31.1	–	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a)
31.2	–	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a)
32	–	Certification Pursuant to 18 U.S.C. Section 1350
101.INS*	–	XBRL Instance Document
101.SCH*	–	XBRL Taxonomy Extension Schema Document
101.CAL*	–	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	–	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	–	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	–	XBRL Taxonomy Extension Presentation Linkbase Document

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* These exhibits are furnished herewith. In accordance with Rule 406T of Regulation S-T, these exhibits are not deemed to be filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, as amended, are not deemed to be filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise are not subject to liability under those sections.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

KIRBY CORPORATION
(Registrant)

By: /s/ DAVID W. GRZEBINSKI
David W. Grzebinski
Executive Vice President and
Chief Financial Officer

Dated: November 5, 2012

EXHIBIT 10.1

COMMITMENT INCREASE AGREEMENT

This Commitment Increase Agreement dated as of August 30, 2012 (this "Agreement") is among (i) KIRBY CORPORATION (the "Borrower"), (ii) JPMORGAN CHASE BANK, N.A., in its capacity as Administrative Agent (the "Agent") under the Second Amended and Restated Credit Agreement dated as of November 9, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Banks party thereto, JPMorgan Chase Bank, N.A. as Administrative Agent, Wells Fargo Bank, N.A. and Bank of America, N.A., as Syndication Agents, and The Bank of Tokyo Mitsubishi UFJ, Ltd. and The Northern Trust Company, as Documentation Agents, and (iii) JPMORGAN CHASE BANK, N.A. (the "Increasing Bank"). Capitalized terms that are defined in the Credit Agreement and not defined herein are used herein as therein defined.

PRELIMINARY STATEMENTS

A. Pursuant to Section 2.17 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the total Commitments under the Credit Agreement by agreeing with a Bank to increase that Bank's Commitment.

B. The Borrower has given notice to the Agent of its intention to increase the total Commitments pursuant to such Section 2.17 by increasing the Commitment of the Increasing Bank from $45,000,000 to $60,000,000, and the Agent is willing to consent thereto.

Accordingly, the parties hereto agree as follows:

SECTION 1. Increase of Commitment. Pursuant to Section 2.17 of the Credit Agreement, the Commitment of the Increasing Bank is hereby increased from $45,000,000 to $60,000,000.

SECTION 2. Consent. The Agent hereby consents to the increase in the Commitment of the Increasing Bank effectuated hereby.

SECTION 3. Increasing Bank Credit Decision. The Increasing Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank and based on the financial statements referred to in Section 5.01 of the Credit Agreement and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and to agree to the various matters set forth herein. The Increasing Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement.

SECTION 4. Representation and Warranties of the Borrower. The Borrower represents and warrants as follows:

(a) The execution, delivery and performance by the Borrower of this Agreement are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action and do not contravene (i) the Borrower's articles of incorporation or by-laws or (ii) any indenture, loan agreement or other similar agreement or instrument binding on the Borrower, except for such contraventions that will not have a Material Adverse Effect on either the Borrower individually or the Borrower and its Subsidiaries, taken as a whole.

(b) No authorization, consent or approval any Governmental Authority is required for the valid execution, delivery and performance by the Borrower of this Agreement other than those the failure to obtain will not have a Material Adverse Effect on either the Borrower or the Borrower and its Subsidiaries, taken as a whole.

(c) This Agreement constitutes a valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and equitable principles of general applicability.

(d) The aggregate amount of the Commitments under the Credit Agreement, including any increases pursuant to Section 2.17 thereof, does not exceed $325,000,000.

(e) No Default, Event of Default or Material Adverse Effect has occurred and is continuing.

SECTION 5. Expenses. The Borrower agrees to pay on demand all reasonable costs and expenses of the Agent in connection with the preparation, negotiation, execution and delivery of this Agreement, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent with respect thereto.

SECTION 6. Effectiveness. This Agreement shall become effective upon the receipt by the Agent of the following:

(a) counterparts of, or telecopied signature pages of, this Agreement executed by the Borrower, the Agent and the Increasing Bank;

(b) if requested by the Agent, a certified copy of the resolutions of the Board of Directors of the Borrower approving the increase in the Commitment in a form reasonably acceptable to the Agent; and

(c) if requested by the Agent, a legal opinion from counsel to the Borrower in a form reasonably acceptable to the Agent.

SECTION 7. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.

SECTION 8. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which may be delivered in original or facsimile form and when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunder duly authorized, as of the date first above written.

BORROWER:

KIRBY CORPORATION

By: /s/ Renato Castro
Name: Renato Castro
Title: Treasurer

AGENT:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: /s/ Robert L. Mendoza
Name: Robert L. Mendoza
Title: Senior Vice President

INCREASING BANK:

JPMORGAN CHASE BANK, N.A.

By: /s/ Robert L. Mendoza
Name: Robert L. Mendoza
Title: Senior Vice President

COMMITMENT INCREASE AGREEMENT

This Commitment Increase Agreement dated as of August 30, 2012 (this "Agreement") is among (i) KIRBY CORPORATION (the "Borrower"), (ii) JPMORGAN CHASE BANK, N.A., in its capacity as Administrative Agent (the "Agent") under the Second Amended and Restated Credit Agreement dated as of November 9, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Banks party thereto, JPMorgan Chase Bank, N.A. as Administrative Agent, Wells Fargo Bank, N.A. and Bank of America, N.A., as Syndication Agents, and The Bank of Tokyo Mitsubishi UFJ, Ltd. and The Northern Trust Company, as Documentation Agents, and (iii) BANK OF AMERICA, N.A. (the "Increasing Bank"). Capitalized terms that are defined in the Credit Agreement and not defined herein are used herein as therein defined.

PRELIMINARY STATEMENTS

A. Pursuant to Section 2.17 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the total Commitments under the Credit Agreement by agreeing with a Bank to increase that Bank's Commitment.

B. The Borrower has given notice to the Agent of its intention to increase the total Commitments pursuant to such Section 2.17 by increasing the Commitment of the Increasing Bank from $45,000,000 to $60,000,000, and the Agent is willing to consent thereto.

Accordingly, the parties hereto agree as follows:

SECTION 1. Increase of Commitment. Pursuant to Section 2.17 of the Credit Agreement, the Commitment of the Increasing Bank is hereby increased from $45,000,000 to $60,000,000.

SECTION 2. Consent. The Agent hereby consents to the increase in the Commitment of the Increasing Bank effectuated hereby.

SECTION 3. Increasing Bank Credit Decision. The Increasing Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank and based on the financial statements referred to in Section 5.01 of the Credit Agreement and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and to agree to the various matters set forth herein. The Increasing Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement.

SECTION 4. Representation and Warranties of the Borrower. The Borrower represents and warrants as follows:

(a) The execution, delivery and performance by the Borrower of this Agreement are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action and do not contravene (i) the Borrower's articles of incorporation or by-laws or (ii) any indenture, loan agreement or other similar agreement or instrument binding on the Borrower, except for such contraventions that will not have a Material Adverse Effect on either the Borrower individually or the Borrower and its Subsidiaries, taken as a whole.

(b) No authorization, consent or approval any Governmental Authority is required for the valid execution, delivery and performance by the Borrower of this Agreement other than those the failure to obtain will not have a Material Adverse Effect on either the Borrower or the Borrower and its Subsidiaries, taken as a whole.

(c) This Agreement constitutes a valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and equitable principles of general applicability.

(d) The aggregate amount of the Commitments under the Credit Agreement, including any increases pursuant to Section 2.17 thereof, does not exceed $325,000,000.

(e) No Default, Event of Default or Material Adverse Effect has occurred and is continuing.

SECTION 5. Expenses. The Borrower agrees to pay on demand all reasonable costs and expenses of the Agent in connection with the preparation, negotiation, execution and delivery of this Agreement, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent with respect thereto.

SECTION 6. Effectiveness. This Agreement shall become effective upon the receipt by the Agent of the following:

(a) counterparts of, or telecopied signature pages of, this Agreement executed by the Borrower, the Agent and the Increasing Bank;

(b) if requested by the Agent, a certified copy of the resolutions of the Board of Directors of the Borrower approving the increase in the Commitment in a form reasonably acceptable to the Agent; and

(c) if requested by the Agent, a legal opinion from counsel to the Borrower in a form reasonably acceptable to the Agent.

SECTION 7. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State ofTexas.

SECTION 8. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which may be delivered in original or facsimile form and when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunder duly authorized, as of the date first above written.

BORROWER:

KIRBY CORPORATION

By: /s/ Renato Castro
Name: Renato Castro
Title: Treasurer

AGENT:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: /s/ Robert L. Mendoza
Name: Robert L. Mendoza
Title: Senior Vice President

INCREASING BANK:

BANK OF AMERICA, N.A.

By: /s/ David L. McCauley
Name: David L. McCauley
Title: Senior Vice President

COMMITMENT INCREASE AGREEMENT

This Commitment Increase Agreement dated as of August 30, 2012 (this "Agreement") is among (i) KIRBY CORPORATION (the "Borrower"), (ii) JPMORGAN CHASE BANK, N.A., in its capacity as Administrative Agent (the "Agent") under the Second Amended and Restated Credit Agreement dated as of November 9, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Banks party thereto, JPMorgan Chase Bank, N.A. as Administrative Agent, Wells Fargo Bank, N.A. and Bank of America, N.A., as Syndication Agents, and The Bank of Tokyo Mitsubishi UFJ, Ltd. and The Northern Trust Company, as Documentation Agents, and (iii) WELLS FARGO BANK, N.A. (the "Increasing Bank"). Capitalized terms that are defined in the Credit Agreement and not defined herein are used herein as therein defined.

PRELIMINARY STATEMENTS

A. Pursuant to Section 2.17 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the total Commitments under the Credit Agreement by agreeing with a Bank to increase that Bank's Commitment.

B. The Borrower has given notice to the Agent of its intention to increase the total Commitments pursuant to such Section 2.17 by increasing the Commitment of the Increasing Bank from $35,000,000 to $47,000,000, and the Agent is willing to consent thereto.

Accordingly, the parties hereto agree as follows:

SECTION 1. Increase of Commitment. Pursuant to Section 2.17 of the Credit Agreement, the Commitment of the Increasing Bank is hereby increased from $35,000,000 to $47,000,000.

SECTION 2. Consent. The Agent hereby consents to the increase in the Commitment of the Increasing Bank effectuated hereby.

SECTION 3. Increasing Bank Credit Decision. The Increasing Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank and based on the financial statements referred to in Section 5.01 of the Credit Agreement and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and to agree to the various matters set forth herein. The Increasing Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement.

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(d) The aggregate amount of the Commitments under the Credit Agreement, including any increases pursuant to Section 2.17 thereof, does not exceed $325,000,000.

(e) No Default, Event of Default or Material Adverse Effect has occurred and is continuing.

SECTION 5. Expenses. The Borrower agrees to pay on demand all reasonable costs and expenses of the Agent in connection with the preparation, negotiation, execution and delivery of this Agreement, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent with respect thereto.

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Title: Treasurer

AGENT:

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as Administrative Agent

By: /s/ Robert L. Mendoza
Name: Robert L. Mendoza
Title: Senior Vice President

INCREASING BANK:

WELLS FARGO BANK, N.A.

By: /s/ Warren R. Robs
Name: Warren R. Robs
Title: Vice President

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PRELIMINARY STATEMENTS

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(b) No authorization, consent or approval any Governmental Authority is required for the valid execution, delivery and performance by the Borrower of this Agreement other than those the failure to obtain will not have a Material Adverse Effect on either the Borrower or the Borrower and its Subsidiaries, taken as a whole.

(c) This Agreement constitutes a valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and equitable principles of general applicability.

(d) The aggregate amount of the Commitments under the Credit Agreement, including any increases pursuant to Section 2.17 thereof, does not exceed $325,000,000.

(e) No Default, Event of Default or Material Adverse Effect has occurred and is continuing.

SECTION 5. Expenses. The Borrower agrees to pay on demand all reasonable costs and expenses of the Agent in connection with the preparation, negotiation, execution and delivery of this Agreement, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent with respect thereto.

SECTION 6. Effectiveness. This Agreement shall become effective upon the receipt by the Agent of the following:

(a) counterparts of, or telecopied signature pages of, this Agreement executed by the Borrower, the Agent and the Increasing Bank;

(b) if requested by the Agent, a certified copy of the resolutions of the Board of Directors of the Borrower approving the increase in the Commitment in a form reasonably acceptable to the Agent; and

(c) if requested by the Agent, a legal opinion from counsel to the Borrower in a form reasonably acceptable to the Agent.

SECTION 7. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.

SECTION 8. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which may be delivered in original or facsimile form and when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[Signatures on following page]

IN WITNESS WHEREOF. the parties hereto have caused this Agreement to be executed by their respective officers thereunder duly authorized. as of the date first above written.

BORROWER:

KIRBY CORPORATION

By: /s/ Renato Castro
Name: Renato Castro
Title: Treasurer

AGENT:

JPMORGAN CHASE BANK. N.A.,
as Administrative Agent

By: /s/ Robert L. Mendoza
Name: Robert L. Mendoza
Title: Senior Vice President

INCREASING BANK:

THE BANK OF TOKYO-MITSUBISHI UFJ, LTD.

By: /s/ Lawerence Elkins
Name: Lawerence Elkins
Title: Vice President

COMMITMENT INCREASE AGREEMENT

This Commitment Increase Agreement dated as of August 30, 2012 (this "Agreement") is among (i) KIRBY CORPORATION (the "Borrower"), (ii) JPMORGAN CHASE BANK, N.A., in its capacity as Administrative Agent (the "Agent") under the Second Amended and Restated Credit Agreement dated as of November 9, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Banks party thereto, JPMorgan Chase Bank, N.A. as Administrative Agent, Wells Fargo Bank, N.A. and Bank of America, N.A., as Syndication Agents, and The Bank of Tokyo Mitsubishi UFJ, Ltd. and The Northern Trust Company, as Documentation Agents, and (iii) THE NORTHERN TRUST COMPANY (the "Increasing Bank"). Capitalized terms that are defined in the Credit Agreement and not defined herein are used herein as therein defined.

PRELIMINARY STATEMENTS

A. Pursuant to Section 2.17 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the total Commitments under the Credit Agreement by agreeing with a Bank to increase that Bank's Commitment.

B. The Borrower has given notice to the Agent of its intention to increase the total Commitments pursuant to such Section 2.17 by increasing the Commitment of the Increasing Bank from $35,000,000 to $45,500,000, and the Agent is willing to consent thereto.

Accordingly, the parties hereto agree as follows:

SECTION 1. Increase of Commitment. Pursuant to Section 2.17 of the Credit Agreement, the Commitment of the Increasing Bank is hereby increased from $35,000,000 to $45,500,000.

SECTION 2. Consent. The Agent hereby consents to the increase in the Commitment of the Increasing Bank effectuated hereby.

SECTION 3. Increasing Bank Credit Decision. The Increasing Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank and based on the financial statements referred to in Section 5.01 of the Credit Agreement and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and to agree to the various matters set forth herein. The Increasing Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement.

SECTION 4. Representation and Warranties of the Borrower. The Borrower represents and warrants as follows:

(a) The execution, delivery and performance by the Borrower of this Agreement are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action and do not contravene (i) the Borrower's articles of incorporation or by-laws or (ii) any indenture, loan agreement or other similar agreement or instrument binding on the Borrower, except for such contraventions that will not have a Material Adverse Effect on either the Borrower individually or the Borrower and its Subsidiaries, taken as a whole.

(b) No authorization, consent or approval any Governmental Authority is required for the valid execution, delivery and performance by the Borrower of this Agreement other than those the failure to obtain will not have a Material Adverse Effect on either the Borrower or the Borrower and its Subsidiaries, taken as a whole.

(c) This Agreement constitutes a valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and equitable principles of general applicability.

(d) The aggregate amount of the Commitments under the Credit Agreement, including any increases pursuant to Section 2.17 thereof, does not exceed $325,000,000.

(e) No Default, Event of Default or Material Adverse Effect has occurred and is continuing.

SECTION 5. Expenses. The Borrower agrees to pay on demand all reasonable costs and expenses of the Agent in connection with the preparation, negotiation, execution and delivery of this Agreement, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent with respect thereto.

SECTION 6. Effectiveness. This Agreement shall become effective upon the receipt by the Agent of the following:

(a) counterparts of, or telecopied signature pages of, this Agreement executed by the Borrower, the Agent and the Increasing Bank;

(b) if requested by the Agent, a certified copy of the resolutions of the Board of Directors of the Borrower approving the increase in the Commitment in a form reasonably acceptable to the Agent; and

(c) if requested by the Agent, a legal opinion from counsel to the Borrower in a form reasonably acceptable to the Agent.

SECTION 7. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.

SECTION 8. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which may be delivered in original or facsimile form and when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunder duly authorized. as of the date first above written.

BORROWER:

KIRBY CORPORATION

By: /s/ Renato Castro
Name: Renato Castro
Title: Treasurer

AGENT:

JPMORGAN CHASE BANK, N.A.
as Administrative Agent

By: /s/ Robert L. Mendoza
Name: Robert L. Mendoza
Title: Senior Vice President

INCREASING BANK:

THE NORTHERN TRUST COMPANY

By: /s/ Keith L. Burson
Name: Keith L. Burson
Title: Vice President

COMMITMENT INCREASE AGREEMENT

This Commitment Increase Agreement dated as of August 30, 2012 (this "Agreement") is among (i) KIRBY CORPORATION (the "Borrower"), (ii) JPMORGAN CHASE BANK, N.A., in its capacity as Administrative Agent (the "Agent") under the Second Amended and Restated Credit Agreement dated as of November 9, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Banks party thereto, JPMorgan Chase Bank, N.A. as Administrative Agent, Wells Fargo Bank, N.A. and Bank of America, N.A., as Syndication Agents, and The Bank of Tokyo Mitsubishi UFJ, Ltd. and The Northern Trust Company, as Documentation Agents, and (iii) BRANCH BANKING AND TRUST COMPANY (the "Increasing Bank"). Capitalized terms that are defined in the Credit Agreement and not defined herein are used herein as therein defined.

PRELIMINARY STATEMENTS

A. Pursuant to Section 2.17 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the total Commitments under the Credit Agreement by agreeing with a Bank to increase that Bank's Commitment.

B. The Borrower has given notice to the Agent of its intention to increase the total Commitments pursuant to such Section 2.17 by increasing the Commitment of the Increasing Bank from $20,000,000 to $26,000,000, and the Agent is willing to consent thereto.

Accordingly, the parties hereto agree as follows:

SECTION 1. Increase of Commitment. Pursuant to Section 2.17 of the Credit Agreement, the Commitment of the Increasing Bank is hereby increased from $20,000,000 to $26,000,000.

SECTION 2. Consent. The Agent hereby consents to the increase m the Commitment of the Increasing Bank effectuated hereby.

SECTION 3. Increasing Bank Credit Decision. The Increasing Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank and based on the financial statements referred to in Section 5.01 of the Credit Agreement and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and to agree to the various matters set forth herein. The Increasing Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement.

SECTION 4. Representation and Warranties of the Borrower. The Borrower represents and warrants as follows:

(a) The execution, delivery and performance by the Borrower of this Agreement are within the Borrower's corporate powers, have been duly authorized by all necessary corporate action and do not contravene (i) the Borrower's articles of incorporation or by-laws or (ii) any indenture, loan agreement or other similar agreement or instrument binding on the Borrower, except for such contraventions that will not have a Material Adverse Effect on either the Borrower individually or the Borrower and its Subsidiaries, taken as a whole.

(b) No authorization, consent or approval any Governmental Authority is required for the valid execution, delivery and performance by the Borrower of this Agreement other than those the failure to obtain will not have a Material Adverse Effect on either the Borrower or the Borrower and its Subsidiaries, taken as a whole.

(c) This Agreement constitutes a valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and equitable principles of general applicability.

(d) The aggregate amount of the Commitments under the Credit Agreement, including any increases pursuant to Section 2.17 thereof, does not exceed $325,000,000.

(e) No Default, Event of Default or Material Adverse Effect has occurred and is continuing.

SECTION 5. Expenses. The Borrower agrees to pay on demand all reasonable costs and expenses of the Agent in connection with the preparation, negotiation, execution and delivery of this Agreement, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent with respect thereto.

SECTION 6. Effectiveness. This Agreement shall become effective upon the receipt by the Agent of the following:

(a) counterparts of, or telecopied signature pages of, this Agreement executed by the Borrower, the Agent and the Increasing Bank;

(b) if requested by the Agent, a certified copy of the resolutions of the Board of Directors of the Borrower approving the increase in the Commitment in a form reasonably acceptable to the Agent; and

(c) if requested by the Agent, a legal opinion from counsel to the Borrower in a form reasonably acceptable to the Agent.

SECTION 7. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.

SECTION 8. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which may be delivered in original or facsimile form and when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

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BORROWER:

KIRBY CORPORATION

By: /s/ Renato Castro
Name: Renato Castro
Title: Treasurer

AGENT:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: /s/ Robert L. Mendoza
Name: Robert L. Mendoza
Title: Senior Vice President

INCREASING BANK:

BRANCH BANKING AND TRUST COMPANY

By: /s/ Brian R. Jones
Name: Brian R. Jones
Title: Vice President

COMMITMENT INCREASE AGREEMENT

This Commitment Increase Agreement dated as of August 30, 2012 (this "Agreement") is among (i) KIRBY CORPORATION (the "Borrower"), (ii) JPMORGAN CHASE BANK, N.A., in its capacity as Administrative Agent (the "Agent") under the Second Amended and Restated Credit Agreement dated as of November 9, 2010 (as amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Banks party thereto, JPMorgan Chase Bank, N.A. as Administrative Agent, Wells Fargo Bank, N.A. and Bank of America, N.A., as Syndication Agents, and The Bank of Tokyo Mitsubishi UFJ, Ltd. and The Northern Trust Company, as Documentation Agents, and (iii) AMEGY BANK NATIONAL ASSOCIATION (the "Increasing Bank"). Capitalized terms that are defined in the Credit Agreement and not defined herein are used herein as therein defined.

PRELIMINARY STATEMENTS

A. Pursuant to Section 2.17 of the Credit Agreement, the Borrower has the right, subject to the terms and conditions thereof, to effectuate from time to time an increase in the total Commitments under the Credit Agreement by agreeing with a Bank to increase that Bank's Commitment.

B. The Borrower has given notice to the Agent of its intention to increase the total Commitments pursuant to such Section 2.17 by increasing the Commitment of the Increasing Bank from $15,000,000 to $19,500,000, and the Agent is willing to consent thereto.

Accordingly, the parties hereto agree as follows:

SECTION I. Increase of Commitment. Pursuant to Section 2.17 of the Credit Agreement, the Commitment of the Increasing Bank is hereby increased from $15,000,000 to $19,500,000.

SECTION 2. Consent. The Agent hereby consents to the increase in the Commitment of the Increasing Bank effectuated hereby.

SECTION 3. Increasing Bank Credit Decision. The Increasing Bank acknowledges that it has, independently and without reliance upon the Agent or any other Bank and based on the financial statements referred to in Section 5.01 of the Credit Agreement and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and to agree to the various matters set forth herein. The Increasing Bank also acknowledges that it will, independently and without reliance upon the Agent or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Agreement.

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(c) This Agreement constitutes a valid and binding agreement of the Borrower enforceable against the Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and equitable principles of general applicability.

(d) The aggregate amount of the Commitments under the Credit Agreement, including any increases pursuant to Section 2.17 thereof, does not exceed $325,000,000.

(e) No Default, Event of Default or Material Adverse Effect has occurred and is continuing.

SECTION 5. Expenses. The Borrower agrees to pay on demand all reasonable costs and expenses of the Agent in connection with the preparation, negotiation, execution and delivery of this Agreement, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent with respect thereto.

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BORROWER:

KIRBY CORPORATION

By: /s/ Renato Castro
Name: Renato Castro
Title: Treasurer

AGENT:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent

By: /s/ Robert L. Mendoza
Name: Robert L. Mendoza
Title: Senior Vice President

INCREASING BANK:

AMEGY BANK NATIONAL ASSOCIATION

By: /s/ Mark L. Wayne
Name: Mark L. Wayne
Title: Senior Vice President

EXHIBIT 10.2

ASSET PURCHASE AGREEMENT

between

ALLIED MARINE INDUSTRIES, INC.

ALLIED TRANSPORTATION COMPANY

TRANSERVE MARINE, INC.

OSPREY ASSOCIATES

GREGORY H. LAW

KELLY LAW

W. BRUCE LAW

MICHAEL E. LAW

KIRK J. WOODRUFF

and

KIRBY CORPORATION
dated as of

September 4, 2012

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LIST OF DISCLOSURE SCHEDULES

LIST OF EXHIBITS

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of September 4, 2012, is entered into between Allied Transportation Company, a Virginia corporation (“**ATC**”), Transerve Marine, Inc., a Virginia corporation (“**TMI**”), Osprey Associates, a Virginia general partnership (“**OA**” and, together with ATC and TMI, are the “**Sellers**” and each a “**Seller**”), Allied Marine Industries, Inc., a Delaware corporation (“**AMI**”), Gregory H. Law, an individual resident in Virginia (“**Greg Law**”), Kelly Law, an individual resident in Virginia (“**Kelly Law**”), Michael E. Law, an individual resident in Virginia (“**Mike Law**”), W. Bruce Law, an individual resident in Virginia (“**Bruce Law**”), Kirk J. Woodruff, an individual resident in Virginia (“**Kirk Woodruff**”, and, together with Greg Law, Kelly Law, Mike Law, and Bruce Law, the “**AMI Primary Shareholders**”), and Kirby Corporation, a Nevada corporation (“**Buyer**”). The AMI Primary Shareholders and AMI are collectively referred to herein as the “**Owners**”.

RECITALS

WHEREAS, Sellers are engaged in the coastwise marine transportation by barge of chemicals and dry cargo (as conducted by Sellers, the “**Business**”);

WHEREAS, Sellers wish to sell and assign to Buyer, and Buyer wishes to purchase and assume from Sellers, certain assets, and certain specified liabilities, of the Business, subject to the terms and conditions set forth herein;

WHEREAS, AMI is the sole shareholder of ATC; and

WHEREAS, the AMI Primary Shareholders, collectively, hold all voting stock in AMI, and also are the owners of all of the equity interests and voting power in TMI and OA; NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
Definitions

Section 1.01 Defined Terms. The following terms have the meanings specified or referred to in this **Section 1.01**:

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Business Day**” means any day except Saturday, Sunday or any other day on which commercial banks located in Virginia are authorized or required by Law to be closed for business.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Contracts**” means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Sellers and Buyer concurrently with the execution and delivery of this Agreement.

“**Dollars or $**” means the lawful currency of the United States.

“**Encumbrance**” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“**Environmental Claim**” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“**Environmental Law**” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“**Environmental Notice**” means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“**Environmental Permit**” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“**ERISA Affiliate**” means, with respect to any Person, any other Person that, together with such first Person, would be treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code.

“**Escrow Agent**” means the entity designated to serve as escrow agent under the Escrow Agreement.

“**Escrow Agreement**” means the Escrow Agreement among Buyer, Sellers and the Escrow Agent, to be executed and delivered at the Closing in the form attached hereto as **Exhibit A**.

“**Escrow Amount**” means the sum of $5,800,000 to be deposited with the Escrow Agent and held in escrow pursuant to the Escrow Agreement.

“**GAAP**” means United States generally accepted accounting principles in effect from time to time.

“**Governmental Authority**” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“**Governmental Order**” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“**Hazardous Materials**” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“**Intellectual Property**” means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world: (a) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered, unregistered or arising by Law, and all registrations and applications for registration of such trademarks, including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications; (b) internet domain names, whether or not trademarks, registered in any generic top level domain by any authorized private registrar or Governmental Authority; (c) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered, unregistered or arising by Law), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (d) confidential information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable; and (e) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications.

“**Intellectual Property Licenses**” means all licenses, sublicenses and other agreements by or through which other Persons, including Sellers’ Affiliates, grant Sellers exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used in or necessary for the conduct of the Business as currently conducted.

“**Knowledge” or “to the Knowledge of”** or any other similar knowledge qualification, means (i) with respect to a party hereto that is an entity, that any partner, director or officer of such entity has or had actual knowledge or awareness of the facts, circumstances or matter in question, or would have knowledge or awareness of such facts, circumstances or matter after reasonable inquiry, and (ii) with respect to a party hereto that is an individual, that such individual has or had actual knowledge or awareness of the facts, circumstances or matter in question, or would have knowledge or awareness of such facts, circumstances or matter after reasonable inquiry.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Liabilities**” means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

“**Losses**” means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, reasonable costs or expenses of whatever kind, including reasonable attorneys’ fees, the cost of investigation, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that “Losses” shall not include punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, prospects, condition (financial or otherwise) or assets of the Business, (b) the value of the Purchased Assets, or (c) the ability of Sellers or Owners to consummate the transactions contemplated hereby on a timely basis; *provided*, *however,* that “Material Adverse Effect” shall not include any event, occurrence, fact, condition, or change, directly or indirectly, arising out of or attributable to: (i) any changes, conditions or effects in the United States economies or securities or financial markets in general; (ii) changes, conditions or effects that generally affect businesses similar to the Business; (iii) any change, effect or circumstance resulting from an action required or permitted by this Agreement, except pursuant to **Section 4.03**, **Section 5.03** and **Section 7.08**; or (iv) conditions caused by acts of terrorism or war (whether or not declared); *provided further, however,* that any event, occurrence, fact, condition, or change referred to in clauses (i), (ii) or (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition, or change has a disproportionate effect on the Business compared to similar businesses conducted by other parties.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Post-Closing Tax Period**” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“**Release**” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

"**Representative**" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"**Restricted Business**" means the coastwise marine transportation by barge of chemicals and dry cargo.

"**Sugar Holdback Amount**" means an amount equal to $10,000,000.

"**Taxes**" means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"**Tax Return**" means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Territory**" means the sea lanes along the East Coast of the United States and the Gulf Coast of the United States.

"**Transaction Documents**" means this Agreement, the Escrow Agreement, the Bill of Sale, the Assignment and Assumption Agreement, Lease Agreement**,** and the other agreements, instruments and documents required to be delivered at the Closing.

"**Trips in Progress Holdback Amount**" means an amount equal to $4,000,000.

"**WARN Act**" means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

Section 1.02 Other Definitional Provisions. Each of the terms below has the meaning set forth in the provision of this Agreement identified opposite such term in the table below.

Term	**Provision**
Accounts Receivable	Section 2.02(c)
Acquisition Proposal	Section 7.03(a)
Agreement	Preamble
Allocation Schedule	Section 2.06(b)(i)
AMI	Preamble
AMI Primary Shareholders	Preamble
Assigned Contracts	Section 2.01(c)
Assignment and Assumption Agreement	Section 3.02(a)(iii)
Assumed Liabilities	Section 2.03
ATC	Preamble
Audited Financial Statements	Section 4.04

Term	Provision
Average Annual Volume	Section 2.06(b)(ii)
Balance Sheet	Section 4.04
Balance Sheet Date	Section 4.04
Benefit Plan	Section 4.17(a)
Bill of Sale	Section 3.02(a)(iii)
Books and Records	Section 2.01(h)
Bruce Law	Preamble
Business	Recitals
Business Real Property	Section 4.10
Business Employees	Section 4.18(a)
Buyer	Preamble
Buyer Basket Exclusions	Section 9.04(a)
Buyer Closing Certificate	Section 8.03(f)
Buyer Indemnitees	Section 9.02
Buyer Aggregate Indemnity Cap	Section 9.04(a)
Chartered Vessel	Section 2.05(b)
Closing	Section 3.01
Closing Date	Section 3.01
Confidentiality Agreement	Section 7.02
Contingent Sugar Payment	Section 2.06(b)
Direct Claim	Section 9.05(c)
Direct Expense	Section 2.06(a)(i)(A)
Disputed Amounts	Section 2.08
Excluded Assets	Section 2.02
Excluded Contracts	Section 2.02(a)
Excluded Liabilities	Section 2.04
Financial Statements	Section 4.04
Final Indemnification Loss	Section 9.06
FIRPTA Certificate	Section 8.02(k)
Greg Law	Preamble
Gross Revenue	Section 2.06(a)(i)(B)
Indemnified Party	Section 9.05
Indemnifying Party	Section 9.05
Independent Accountants	Section 2.08
Insurance Policies	Section 4.13
Intellectual Property Assets	Section 4.11(a)
Interim Balance Sheet	Section 4.04
Interim Balance Sheet Date	Section 4.04
Interim Financial Statements	Section 4.04
Inventory	Section 2.01(a)
Kelly Law	Preamble
Kirk Woodruff	Preamble
Material Contracts	Section 4.07(a)
Material Customers	Section 4.12
Mike Law	Preamble

Term	Provision
Owners	Preamble
Permitted Encumbrances	Section 4.08(a)(i)
Protocol of Delivery and Acceptance	Section 3.02(a)(vi)
Purchase Price	Section 2.05
Purchased Assets	Section 2.01
Restricted Period	Section 7.07(a)
Sellers	Preamble
Seller Basket Exclusions	Section 9.04(b)
Seller Closing Certificate	Section 8.02(h)
Seller Indemnitees	Section 9.03
Seller Payment	Section 2.06(a)(iii)
Sugar Program	Section 2.06(b)(i)(A)
Tangible Personal Property	Section 2.01(e)
Third Party Claim	Section 9.05(a)
TMI	Preamble
Transition Services Agreement	Section 3.02(a)(vii)
Undisputed Amounts	Section 2.08
Union	Section 4.18(b)
Vessels	Section 2.01(a)

ARTICLE II
Purchase and Sale

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Sellers shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Sellers, free and clear of any Encumbrances other than Permitted Encumbrances, all of the Purchased Assets. The term "**Purchased Assets**" means, collectively, all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business, including the following:

(a) the vessels described in **Section 2.01(a)** of the Disclosure Schedules (collectively, the "**Vessels**");

(b) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories, including those items set forth on **Section 2.01(b)** of the Disclosure Schedules ("**Inventory**"), which schedule lists all material items of Inventory;

(c) all Contracts set forth on **Section 2.01(c)** of the Disclosure Schedules (the "**Assigned Contracts**");

(d) all Intellectual Property Assets;

(e) all machinery, engines, instruments, rigging, anchors, chains, cables, tackle, apparel, accessories, equipment, radio installation and navigational equipment, inventory, parts, spare parts and other appurtenances used in or relating to the Vessels, whether or not on board, and all fuel, lubes and stores on board the Vessels (the "**Tangible Personal Property**");

(f) all Permits that are held by Sellers and required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets, including those listed on **Section 4.15(b)** and **Section 4.16(b)** of the Disclosure Schedules, to the extent assignable by Sellers;

(g) all of Sellers' rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets, including manufacturer's warranties with respect to the Vessels;

(h) all books and records, including machinery and equipment maintenance files and data, equipment logs, ships and captains logs, quality control records and procedures, and all personnel records and files (including medical monitoring files) of those Business Employees hired by Buyer pursuant to **Section 7.05** ("**Books and Records**").

Section 2.02 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the "**Excluded Assets**"):

(a) all of Sellers' cash and cash equivalents;

(b) all of Sellers' bank accounts;

(c) all accounts or notes receivable held by Sellers, and any security, claim, remedy or other right related to any of the foregoing ("**Accounts Receivable**");

(d) all real property of Sellers, whether owned or leased;

(e) Contracts, including Intellectual Property Licenses, that are not Assigned Contracts (the "**Excluded Contracts**");

(f) any interest in or right to any refund of Taxes relating to the Business or the Purchased Assets for or applicable to any taxable period (or portion thereof) ending on or prior to the Closing Date.

(g) any insurance policies and rights, claims or causes of action thereunder;

(h) all credits, prepaid expenses and security deposits owned by a Seller;

(i) all rights to causes of action, lawsuits, judgments, claims and demands of any nature in favor of a Seller, including all such rights under all guarantees, indemnities and similar rights in favor of a Seller, other than manufacturers warranties related to the Purchase Assets, whether choate or inchoate, known or unknown, contingent or non-contingent;

(j) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Sellers;

(k) any shares of stock, membership interests, partnership interests or other equity securities of subsidiaries of Sellers;

(l) all Benefit Plans and assets attributable thereto;

(m) the rights which accrue or will accrue to Sellers under the Transaction Documents; and

(n) the following books and records: customer complaints and inquiry files, books of account, ledgers and general financial and accounting records, research and development files, strategic plans, internal financial statements, marketing and promotional surveys, and material and research and intellectual property files relating to the Intellectual Property Assets and the Intellectual Property Licenses.

(o) Furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones and other tangible personal property not included in **Section 2.01** above (though such assets may be available for Buyer and its Affiliates' use under the terms of the Transition Services Agreement);

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge all Liabilities of Sellers in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by a Seller on or prior to the Closing (collectively, the "**Assumed Liabilities**").

Section 2.04 Excluded Liabilities. Notwithstanding any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Sellers or any of their respective Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the "**Excluded Liabilities**"). Sellers shall, and shall cause each of their respective Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy.

Section 2.05 Purchase Price. The aggregate purchase price for the Purchased Assets shall be $116,000,000, subject to adjustment pursuant to **Section 2.06** hereof (the "**Purchase Price**"), plus an amount for diesel fuel and lube oil on board on the Closing Date determined pursuant to **Section 2.05(b)**, plus the assumption of the Assumed Liabilities. The Purchase Price shall be paid as follows:

(a) The Purchase Price less the Escrow Amount, the Trips in Progress Holdback Amount and the Sugar Holdback Amount shall be paid by wire transfer of immediately available funds to an account designated prior to the Closing Date in writing by Sellers to Buyer.

(b) On the Closing Date, Sellers will determine the amount of diesel fuel and lube oil on each Vessel owned by Sellers and each vessel chartered in by Sellers whose charter is assumed by Buyer (a "**Chartered Vessel**"), in each case that is subject to a contract of affreightment on the Closing Date. In the case of owned Vessels, Buyer will pay Sellers for the amount of diesel fuel on board valued at the per gallon price quoted by PAPCO for delivery at Allied Terminals on the Southern Branch of the Elizabeth River on the Closing Date (the "**PAPCO Price**") and will pay Sellers for the amount of lube oil on board valued at the Exxon Mobil price at Norfolk, Virginia on the Closing Date (the "Exxon Price"). In the case of Chartered Vessels, (a) if the amount of diesel fuel and lube oil on board is greater than the amount of diesel fuel and lube oil that was on board at the commencement of the applicable charter, Buyer will pay Sellers for the difference, valued at the PAPCO Price or the Exxon Price, as applicable, or (b) if the amount of diesel fuel and lube oil on board is less than the amount of diesel fuel and lube oil that was on board at the commencement of the applicable charter, Sellers will pay Buyer for the difference, valued at the PAPCO Price or the Exxon Price, as applicable. The payments under this **Section 2.05(b)** shall be aggregated or netted to determine the net amount due from Buyer to Sellers or Sellers to Buyer, as the case may be. Buyer will not pay any amount for diesel fuel and lube oil on board any Vessels or Chartered Vessels that are subject to time charters on the Closing Date.

(c) The Escrow Amount shall be deposited by wire transfer of immediately available funds into an account designated by the Escrow Agent and shall be held and distributed in accordance with the terms of the Escrow Agreement to satisfy any and all claims made by Buyer or any other Buyer Indemnitee against Sellers pursuant to **Article IX**.

(d) The Trips in Progress Holdback Amount and the Sugar Holdback Amount shall be held by Buyer and disbursed or applied as set forth in **Section 2.06**.

(e) All payments by Buyer to Sellers shall be made to the appropriate Seller in accordance with written instructions from all Sellers.

Section 2.06 Trips in Progress; Contingent Sugar Payment.

(a) *Trips in Progress*.

(i) For each Vessel that is engaged in a trip in progress under a voyage charter on the Closing Date, the Gross Revenues attributable to that trip, whether received by a Seller or Buyer and whether received before or after the Closing, and the Direct Expenses attributable to that trip (excluding any allocation of general and administrative expenses), whether paid by a Seller or Buyer and whether paid before or after the Closing, will be allocated to a Seller and Buyer in proportion to the number of days (or portion thereof) in the trip for which each party was the owner of the Vessel. The trip time will be from arrival at the trip load port until arrival at the next load port. If the Vessel was released from a time charter to perform services for a different customer, any reimbursement due to the time charterer shall be included in the Direct Expenses attributable to the trip in progress. For the purposes of this **Section 2.06(a)**, the terms “Gross Revenue” and “Direct Expenses” shall mean as follows:

(A) “**Gross Revenues**” – All revenues attributable to the voyage, including freight, fuel surcharge, additional port surcharge, demurrage, and reimbursable expenses such as pilots and assist tugs.

(B) "**Direct Expenses**" – All expenses directly attributable to the voyage including fuel and lube, port costs, dispatch, pilots and assist tugs. Fuel will be estimated based on running days.

(ii) For each Vessel that is subject to a time charter on the Closing Date, the Charter Hire attributable to the operation of the Vessel under the time charter, whether received by a Seller or Buyer and whether received before or after the Closing, will be allocated to Sellers and Buyer in proportion to the number of days in the term of the time charter for which each party was the owner of the Vessel. Fuel costs and expenses that are reimbursed by the charterer will be paid to the party making the purchase that is being reimbursed.

(iii) If there is a net amount due from Sellers to Buyer under this **Section 2.06(a)** (the "Seller Payment"), the Seller Payment will first reduce the Trips-in-Progress Holdback. If the Seller Payment equals or exceeds the Trips-in-Progress Holdback, the Trips-in-Progress Holdback shall be reduced to zero and the excess, if any, shall be paid by Sellers to Buyer. If the Trips-in-Progress Holdback exceeds the Seller Payment, the excess shall be paid by Buyer to Sellers.

(iv) If there is a net amount due from Buyer to Sellers under this **Section 2.06(a)**, such amount and the Trips-in-Progress Holdback shall be paid by Buyer to Sellers.

(v) For purposes of calculations under this **Section 2.06(a)** only, Sellers will be considered the owner of the Vessel prior to the Closing Date and Buyer will be considered the owner of the Vessel on and after the Closing Date. The net payment due from Sellers to Buyer or from Buyer to Sellers, as the case may be, under this **Section 2.06(a)** shall be made within 60 days after the Closing Date by wire transfer of immediately available funds to an account specified in writing by the receiving party. Each party shall have reasonable access to the books and records of the other in order to verify the revenues received and expenses incurred with respect to trips in progress and time charters.

(b) *Contingent Sugar Payment.*

(i) (A) If federal legislation is enacted into law prior to the Closing Date that continues in effect in all material respects for an additional period of at least two years through the 2014 crop year the provisions of Subtitle D of the Food, Conservation, and Energy Act of 2008 (the "Sugar Program"), the Sugar Holdback Amount shall be paid by Buyer to Sellers at Closing and **Section 2.06(b)(ii)** and **(iii)** shall be disregarded and have no further effect.

(B) If such legislation is enacted into law prior to the Closing Date, but continues the Sugar Program in effect in all material respects for one year through the 2013 crop year, Buyer shall pay Sellers $5,000,000 of the Sugar Holdback Amount at Closing, **Section 2.06(b)(ii)** shall be disregarded and have no further effect and the remaining portion of the Sugar Holdback Amount shall be paid in whole or in part as provided in **Section 2.06(b)(iii)** unless **Section 2.06(b)(i)(D)** becomes applicable.

(C) If such legislation is enacted into law after the Closing Date and continues the Sugar Program in effect in all material respects for one year through the 2013 crop year, Buyer shall pay Sellers $5,000,000 of the Sugar Holdback Amount, **Section 2.06(b)(ii)** shall be disregarded and have no further effect and the remaining portion of the Sugar Holdback Amount shall be paid in whole or in part as provided in **Section 2.06(b)(iii)** unless **Section 2.06(b)(i)(D)** becomes applicable.

(D) If such legislation is enacted into law after the Closing Date and continues the Sugar Program in effect in all material respects through the 2013 and 2014 crop years, Buyer shall pay Sellers the full Sugar Holdback Amount if no previous payment has been made pursuant to **Section 2.06(b)(i)(C)** or pursuant to **Section 2.06(b)(ii)**, or $5,000,000 of the Sugar Holdback Amount if any such previous payment has been made, and **Section 2.06(b)(ii)** and **(iii)** shall be disregarded and have no further effect.

(E) Except as provided in this **Section 2.06(b)(i)**, the Sugar Holdback Amount shall be paid in whole or in part as provided in **Section 2.06(b)(ii)** and **(iii)**. Except for the reference to "crop year(s)" in this **Section 2.06(b)**, all references in this **Section 2.06(b)** to years are references to calendar years. Except as provided in this **Section 2.06(b)(i)**, all payments under this **Section 2.06(b)** shall be made by Buyer to Sellers or otherwise in accordance with written instructions from Sellers within 30 days after the end of the period or the date of the legislation, whichever is applicable, on which the determination of the payment is based.

(ii) The "Average Annual Volume" means the average annual number of net short tons of raw sugar (A) transported coastwise domestically by Sellers and Buyer for Florida Sugar Marketing & Terminal Assn., Inc. (the "Association") pursuant to the Florida Bulk Sugar Affreightment Agreement, dated October 5, 1989, between Allied Towing Corporation, TMI and the Association, as amended to date (the "Existing Florida Contract"), (B) if the Existing Florida Contract expires or is terminated, transported coastwise domestically by any other transportation company for the Association or its successor corporation, Florida Sugar & Molasses Exchange, Inc., from the Port of Palm Beach, Florida to any of the same destinations specified in the Existing Florida Contract, (C) transported coastwise domestically by Buyer for the Association other than under the Existing Florida Contract and (D) transported coastwise domestically by Sellers and Buyer from Louisiana for American Sugar Refining, Inc. and Louisiana Sugar Cane Products, Inc., in each case during the specified time period. If the Average Annual Volume during the period 2012-2014 is greater than or equal to 500,000 net short tons, Buyer shall pay Sellers $5,000,000 of the Sugar Holdback Amount. If the Average Annual Volume for 2012-2014 is greater than 300,000 net short tons but less than 500,000 net short tons, Buyer shall pay Sellers an amount equal to $5,000,000 multiplied by the Average Annual Volume for 2012-2014 and divided by 500,000. If the Average Annual Volume for 2012-2014 is less than or equal to 300,000 net short tons, no payment shall be due from Buyer to Sellers.

(iii) If the Average Annual Volume during the period 2013-2015 is greater than or equal to 500,000 net short tons, Buyer shall pay Sellers $5,000,000 of the Sugar Holdback Amount. If the Average Annual Volume is greater than 300,000 net short tons but less than 500,000 net short tons, Buyer shall pay Sellers an amount equal to $5,000,000 multiplied by the Average Annual Volume for 2013-2015 and divided by 500,000. If the Average Annual Volume for 2013-2015 is less than or equal to 300,000 net short tons, no payment shall be due from Buyer to Sellers.

(iv) In the event of a weather-related natural phenomenon, such as a hurricane, drought or freeze, in any year during the period 2012-2014 that results in a reduction of the Average Annual Volume during such period below 400,000 net short tons, that year shall be dropped and replaced by the year 2015 in calculating the Average Annual Volume for purposes of **Section 2.06(b)(ii)**. In the event that any such natural phenomenon occurs in any year during the period 2013-2015 that results in a reduction of the Average Annual Volume during such period below 400,000 net short tons, that year shall be dropped in calculating the Average Annual Volume for purposes of **Section 2.06(b)(ii)**, if applicable, and **Section 2.06(b)(iii)** and the calculation will instead be based on the remaining two years in the period. In no event shall the average annual volume for purposes of determining payments under this **Section 2.06(b)** be based on a period of less than two years, so that if there are multiple years in which such natural phenomena occur, the determinations of Average Annual Volumes and the related payments shall be delayed for successive years until the determination can be made for at least a two-year period; provided that the Average Annual Volumes and the related payments shall in any event be determined based on a period that includes 2014, 2015 or 2016, whichever has the greatest volume, as the second year (regardless of natural phenomena) if not determined before the end of 2016.

(v) No payment of any portion of the Sugar Holdback Amount shall be due from Buyer except as provided in this **Section 2.06(b)**. The Sugar Holdback Amount is the maximum amount payable under this **Section 2.06(b)** under any circumstances. Buyer shall have the right to set off against any payment otherwise due to Sellers under this **Section 2.06(b)** the amount of any Losses for which Buyer is entitled to indemnification under Article IX.

(vi) Buyer shall have the right to operate the Business after Closing in the manner it deems appropriate and shall have no obligation to operate the Business to maximize the payments to Sellers under this **Section 2.06(b)**. Buyer will have the right to make any business decisions relating to the Business, including without limitation capital expenditures and pricing of services, that Buyer in good faith determines are in the best interests of Buyer, its Affiliates and their stockholders. The obligation of Buyer to make payments to Sellers under this **Section 2.06(b)** is strictly a contractual relationship between Buyer and Sellers and does not create any express or implied fiduciary or special relationship between Buyer and Sellers or create any express or implied fiduciary, special or other duties on the part of Buyer to Sellers.

(vii) Sellers acknowledge that information provided by Buyer to Sellers relating to the calculation of amounts due pursuant to this **Section 2.06(b)**, to the extent not available to the public, may constitute confidential and/or material nonpublic information concerning Buyer and its Affiliates ("Nonpublic Information"). Sellers and Owners acknowledge that purchasing or selling securities of Buyer's ultimate parent corporation by Persons to whom Buyer discloses any Nonpublic Information is prohibited until the information is publicly disclosed. Sellers and Owners shall keep Nonpublic Information confidential and shall use Nonpublic Information solely for the purpose of verifying amounts payable under this **Section 2.06(b).**

Section 2.07 Allocation of Purchase Price. Sellers and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as shown on the allocation schedule (the "**Allocation Schedule**"). A draft of the Allocation Schedule shall be prepared by Buyer and delivered to Sellers within sixty (60) days following the Closing Date. If Sellers notify Buyer in writing within ten (10) business days following their receipt of the Allocation Schedule that Sellers object to one or more items reflected in the Allocation Schedule, Sellers and Buyer shall resolve such dispute as provided in **Section 2.08**. If Sellers fail to deliver a written notice of objection to Buyer within such ten (10) business day period, Sellers shall be deemed to have accepted such Allocation Schedule and may not object to or challenge it thereafter. Buyer and Sellers shall file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with the Allocation Schedule. Any adjustments to the Purchase Price pursuant to **Section 2.06** herein shall be allocated in a manner consistent with the Allocation Schedule.

Section 2.08 Resolution of Certain Disputed Amounts. If Buyer or any Seller disputes the calculation of any amounts payable under **Section 2.06(a),** or if a Seller objects in writing to any of the items reflected in the Allocation Schedule as permitted under **Section 2.06(b)(i)**, then the parties hereto shall negotiate in good faith to resolve such dispute for thirty (30) days after the date that either Sellers or Buyer notified the other party regarding such dispute (or, in the case of **Section 2.06(b)(i)**, for thirty (30) days after the date that Buyer received the written notice called for therein). If Sellers and Buyer fail to reach an agreement on any such disputed amounts within such thirty (30) day period, then any amounts remaining in dispute ("**Disputed Amounts**" and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to the office of PricewaterhouseCoopers LLP or, if PricewaterhouseCoopers LLP is unable to serve, Buyer and Sellers shall appoint by mutual agreement the office of an impartial nationally recognized firm of independent certified public accountants other than the accountant used primarily by either Sellers or Buyer or their respective Affiliates (the "**Independent Accountants**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountants shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item by the parties. The fees and expenses of the Independent Accountants shall be borne equally by the Buyer and Sellers.

Section 2.09 Withholding Tax. Buyer shall be entitled to deduct and withhold from the Purchase Price all Taxes that Buyer may be required to deduct and withhold from the Purchase Price under any provision of Tax Law. All such withheld amounts shall be timely paid by Buyer to the proper Governmental Authority and if so paid shall be treated as delivered to Sellers hereunder.

Section 2.10 Third Party Consents. To the extent that Sellers' rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Sellers, at their expense, shall use their reasonable best efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Sellers, to the maximum extent permitted by law and the Purchased Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Notwithstanding any provision in this **Section 2.10** to the contrary, Buyer shall not be deemed to have waived its rights under **Section 8.02(c)** hereof unless and until Buyer either provides written waivers thereof or elects to proceed to consummate the transactions contemplated by this Agreement at Closing.

ARTICLE III
Closing

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "**Closing**") shall take place at 10:00 A.M., Central time, on the second Business Day after all of the conditions to Closing set forth in **Article VIII** are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Sellers and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "**Closing Date**".

Section 3.02 Closing Deliverables.

(a) At the Closing, Sellers shall deliver to Buyer the following:

(i) the Escrow Agreement duly executed by Sellers;

(ii) a bill of sale in the form of **Exhibit B** hereto (the "**Bill of Sale**") and duly executed by Sellers, transferring the tangible personal property included in the Purchased Assets to Buyer;

(iii) an assignment and assumption agreement in the form of **Exhibit C** hereto (the "**Assignment and Assumption Agreement**") and duly executed by Sellers, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(iv) a bill of sale transferring each Vessel to Buyer, duly executed by the applicable Seller in the form of Coast Guard Form CG-1340 attached hereto as **Exhibit D**;

(v) a certified abstract of title for each Vessel issued by the National Vessel Documentation Center no earlier than seven (7) days prior to the Closing Date;

(vi) two originally executed copies of the protocol of delivery and acceptance confirming the date and time of delivery of each of the Vessels in the form attached hereto as **Exhibit E** (the "**Protocol of Delivery and Acceptance**");

(vii) a Transition Services Agreement in the form attached hereto as **Exhibit F** (the "**Transition Services Agreement**") duly executed by **[ATC]**;

(viii) the Seller Closing Certificate;

(ix) the FIRPTA Certificate;

(x) the certificates of the Secretary or Assistant Secretary of Sellers required by **Section 8.02(i)** and **Section 8.02(j)**; and

(xi) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

(b) At the Closing, Buyer shall deliver to Sellers the following:

(i) the Purchase Price less the Escrow Amount and less the Trips in Progress Holdback Amount;

(ii) the Escrow Agreement duly executed by Buyer;

(iii) the Assignment and Assumption Agreement duly executed by Buyer;

(iv) the Transition Services Agreement duly executed by Buyer;

(v) two originally executed copies of the Protocol of Delivery and Acceptance confirming the date and time of delivery of each of the Vessels;

(vi) a certificate of financial responsibility for each Vessel for which such certificate is required;

(vii) the Buyer Closing Certificate; and

(viii) the certificates of the Secretary or Assistant Secretary of Buyer required by **Section 8.03(g)** and **Section 8.03(h)**.

(c) At the Closing, Buyer shall deliver the Escrow Amount to the Escrow Agent pursuant to the Escrow Agreement.

ARTICLE IV
Representations and warranties of seller

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Sellers and Owners jointly and severally represent and warrant to Buyer that the statements contained in this **Article IV** are true and correct as of the date hereof.

Section 4.01 Organization and Qualification of Sellers. Each Seller is a corporation or partnership duly organized, validly existing and in good standing under the Laws of the Commonwealth of Virginia and has full corporate or partnership power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. ATC was formerly named Allied Towing Corporation. **Section 4.01** of the Disclosure Schedules sets forth each jurisdiction in which each Seller is licensed or qualified to do business, and each Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary. Each Seller is a “citizen of the United States” within the meaning of 46 U.S.C. Section 50501, qualified to engage in the coastwise trade of the United States and has been for as long as it has engaged in the Business.

Section 4.02 Authority of Sellers. Each Seller has full corporate or partnership power and authority to enter into this Agreement and the other Transaction Documents to which such Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each Seller of this Agreement and any other Transaction Document to which such Seller is a party, the performance by each Seller of its obligations hereunder and thereunder and the consummation by such Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of such Seller. This Agreement has been duly executed and delivered by each Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of each Seller enforceable against each Seller in accordance with its terms. When each other Transaction Document to which a Seller is or will be a party has been duly executed and delivered by such Seller (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of such Seller enforceable against it in accordance with its terms.

Section 4.03 No Conflicts; Consents. Except as stated in **Section 4.03** of the Disclosure Schedules, the execution, delivery and performance by each Seller of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of such Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to such Seller, the Business or the Purchased Assets; (c) require the consent of, notice to or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which such Seller is a party or by which such Seller or the Business is bound or to which any of the Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the Purchased Assets. Except as stated in Section 4.03 of the Disclosure Schedules, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to any Seller in connection with the execution and delivery of this Agreement or any of the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act.

Section 4.04 Financial Statements. Complete copies of the audited financial statements consisting of the balance sheet of Sellers as of December 31 in each of the years 2009, 2010 and 2011 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Business as at June 30, 2012 and the related statements of income and retained earnings, stockholders' equity and cash flow for the six-month period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") have been delivered to Buyer.

The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of the Business, and fairly present in all material respects the financial condition of Sellers as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. The balance sheet of the Sellers as of December 31, 2011 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of Sellers as of June 30, 2012 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". Sellers maintain a standard system of accounting for the Business established and administered in accordance with GAAP.

Section 4.05 Undisclosed Liabilities. No Seller has any Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 4.06 Absence of Certain Changes, Events and Conditions. Except as set forth in **Section 4.06** of the Disclosure Schedules, since the Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) material change in any method of accounting or accounting practice for the Business, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(c) entry into any Contract that would constitute a Material Contract;

(d) incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(e) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Balance Sheet, except for the consumption or sale of Inventory in the ordinary course of business;

(f) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Purchased Assets;

(g) material damage, destruction or loss, or any material interruption in use, of any Purchased Assets, whether or not covered by insurance;

(h) acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit;

(i) material capital expenditures with respect to any Vessel or that would constitute an Assumed Liability;

(j) imposition of any Encumbrance upon any of the Purchased Assets other than Permitted Encumbrances;

(k) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of any employees, officers, directors, independent contractors or consultants employed or engaged in the Business, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee employed or engaged in the Business or any termination of any employees for which the aggregate costs and expenses exceed $10,000.00 or (iii) action to accelerate the vesting or payment of any compensation or benefit for any employee, officer, director, consultant or independent contractor employed or engaged in the Business;

(l) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant employed or engaged in the Business, (ii) Benefit Plan, or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;

(m) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(n) purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Business for an amount in excess of $100,000 individually (in the case of a lease, per annum) or $100,000 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of Inventory or supplies in the ordinary course of business consistent with past practice;

(o) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 4.07 Material Contracts.

(a) **Section 4.07(a)** of the Disclosure Schedules lists each of the following Contracts (x) by which any of the Purchased Assets are bound or affected or (y) to which any Seller is a party or by which it is bound in connection with the Business or the Purchased Assets (such Contracts, together with all Contracts relating to Intellectual Property set forth in **Section 4.11(b)** of the Disclosure Schedules, being "**Material Contracts**"):

(i) all Contracts that are time charters or voyage charters involving the Vessels, or that involve the use of towing Vessels;

(ii) all Contracts involving aggregate consideration in excess of $100,000 and which, in each case, cannot be cancelled without penalty or without more than 90 days' notice;

(iii) all Contracts that require a Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" provisions;

(iv) all Contracts that provide for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(v) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(vi) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(vii) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements);

(viii) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including guarantees);

(ix) all Contracts with any Governmental Authority;

(x) all Contracts that limit or purport to limit the ability of a Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;

(xi) all joint venture, partnership or similar Contracts;

(xii) all Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;

(xiii) all powers of attorney with respect to the Business or any Purchased Asset;

(xiv) all collective bargaining agreements or Contracts with any Union; and

(xv) all other Contracts that are material to the Purchased Assets or the operation of the Business and not previously disclosed pursuant to this **Section 4.07**.

(b) Sellers have provided to Buyer a true, correct and complete copy of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder). With respect to each Material Contract that is an Assigned Contract:

(i) such Assigned Contract is valid and binding on a Seller in accordance with its terms and is in full force and effect;

(ii) no Seller or, to Sellers' Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any such Assigned Contract;

(iii) no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any such Assigned Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder;

(iv) there are no material disputes pending or threatened under any such Assigned Contract;

(v) to the Knowledge or Sellers, no Assigned Contract will upon completion or performance thereof have or be reasonably likely to have a Material Adverse Effect;

Section 4.08 Title to Purchased Assets.

(a) Sellers have good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All such Purchased Assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(i) those items set forth in **Section 4.08** of the Disclosure Schedules;

(ii) liens for Taxes not yet due and payable;

(iii) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business or the Purchased Assets;

(iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the Business or the Purchased Assets, which do not prohibit or interfere with the current operation of any Real Property and which do not render title to any Real Property unmarketable; or

(v) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the Business or the Purchased Assets.

(b) Each Vessel shall be delivered at the Closing safely afloat at its location at the time of Closing.

(c) The Vessels satisfy all requirements for coastwise documentation under 46 U.S.C. Chapter 121. No Vessel has been "sold foreign" within the meaning of 46 U.S. C. Section 12132.

Section 4.09 Condition and Sufficiency of Assets.

(a) Each of the Vessels is in good operating condition and repair, and is adequate for the uses to which it is being put and no Vessel is in need of maintenance or repairs except for ordinary wear and tear or routine maintenance and repairs. Each of the Vessels is seaworthy.

(b) The Purchased Assets, together with the Excluded Assets and the Transition Services Agreement are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing (exclusive of human resources, licenses and permits that are not part of the Purchased Assets, and services provided by third-party vendors in the normal course of the Business) and constitute all of the rights, property and assets used by Sellers to conduct the Business as currently conducted. Except as set forth in **Section 4.09** of the Disclosure Schedules, each item of the Purchased Assets that constitutes tangible personal property is in the possession of the Sellers.

Section 4.10 [RESERVED].

Section 4.11 Intellectual Property.

(a) Sellers own or have the right to use pursuant to a valid Assigned Contract, and the Purchased Assets include, all Intellectual Property necessary for the operation of the Business as currently conducted (collectively, the "**Intellectual Property Assets**") free from any and all Encumbrances other than Permitted Encumbrances and those Encumbrances existing under an Assigned Contract.

(b) **Section 4.11(b)** of the Disclosure Schedules lists all Intellectual Property Licenses. Sellers have provided Buyer with true and complete copies of all such Intellectual Property Licenses. All such Intellectual Property Licenses are valid, binding and enforceable between a Seller and the other parties thereto, and such Seller and such other parties are in full compliance with the terms and conditions of such Intellectual Property Licenses.

(c) The Intellectual Property Assets and Intellectual Property Licenses as currently or formerly owned, licensed or used by a Seller or proposed to be used by Buyer, and the conduct of the Business as currently and formerly conducted by a Seller and proposed to be conducted by Buyer have not, do not and will not infringe, violate or misappropriate the Intellectual Property of any Person. No Seller has received any communication, and no Action has been instituted, settled or, to such Seller's Knowledge, threatened that alleges any such infringement, violation or misappropriation, and none of the Intellectual Property are subject to any outstanding Governmental Order.

Section 4.12 Customers. **Section 4.12** of the Disclosure Schedules sets forth with respect to the Business (i) each customer who has paid aggregate consideration to a Seller for goods or services rendered in an amount greater than or equal to $500,000 for each of the two most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such periods. No Seller has received any notice, and has no reason to believe, that any of the Material Customers has ceased, or intends to cease after the Closing, to use the goods or services of the Business or to otherwise terminate or materially reduce its relationship with the Business.

Section 4.13 Insurance. Sellers now have in full force and effect property, hull and machinery, protection and indemnity, pollution and excess liability insurance coverage for the Purchased Assets. **Section 4.13** of the Disclosure Schedules lists all insurance policies held by or covering the Business and the Purchased Assets (including carrier, policy number, term, type of coverage and limits of coverage). Sellers have not received any written notice from any insurance carrier alleging any defects or inadequacies with respect to the Purchased Assets that, if not corrected, would result in termination of insurance coverage or increase in the normal and customary cost of any of the insurance policies.

Section 4.14 Legal Proceedings; Governmental Orders.

(a) Except as set forth in **Section 4.14(a)** of the Disclosure Schedules, there are no Actions pending or, to Sellers' Knowledge, threatened against or by a Seller (a) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in **Section 4.14(b)**of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business or the Purchased Assets. Each Seller is in compliance with the terms of each Governmental Order set forth in **Section 4.14(b)** of the Disclosure Schedules. No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

Section 4.15 Compliance With Laws; Permits.

(a) Each Seller has, at all times during the past five (5) years, complied, and is now complying, in all material respects with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

(b) All Permits required for Sellers to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Sellers and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. **Section 4.15(b)** of the Disclosure Schedules lists all current Permits issued to a Seller which are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in **Section 4.15(b)** of the Disclosure Schedules.

Section 4.16 Environmental Matters.

(a) The operations of Sellers with respect to the Business and the Purchased Assets are currently and have been in compliance with all Environmental Laws. No Seller or Owner has received from any Person, with respect to the Business or the Purchased Assets, any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Sellers have obtained and are in material compliance with all Environmental Permits (each of which is disclosed in **Section 4.16(b)** of the Disclosure Schedules) necessary for the conduct of the Business as currently conducted or the ownership, lease, operation or use of the Purchased Assets and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Sellers through the Closing Date in accordance with Environmental Law. With respect to any such Environmental Permits, a Seller has undertaken, or will undertake prior to the Closing Date, all measures necessary to facilitate transferability of the same, and no Seller or Owner is aware of any condition, event or circumstance that might prevent or impede the transferability of the same, and has not received any Environmental Notice or written communication regarding any material adverse change in the status or terms and conditions of the same.

(c) None of the Business or the Purchased Assets or any real property currently or formerly owned, leased or operated by a Seller in connection with the Business is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) Except as set forth in Schedule 4.16(d), there has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the Business or the Purchased Assets, and no Seller or Owner has received an Environmental Notice that any of the Business or the Purchased Assets has been contaminated with any Hazardous Material which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, a Seller.

(e) **Section 4.16(e)** of the Disclosure Schedules contains a complete and accurate list of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by a Seller and any predecessors in connection with the Business or the Purchased Assets as to which a Seller may retain liability, and none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any similar state list, and no Seller or Owner has received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by a Seller.

(f) No Seller has retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(g) Sellers have provided or otherwise made available to Buyer and listed in **Section 4.16(g)** of the Disclosure Schedules: (i) any and all environmental reports, studies, audits, records, sampling data, site assessments, risk assessments, and other similar documents with respect to the Business or the Purchased Assets related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise ensure compliance with current or future Environmental Laws (including costs of remediation, pollution control equipment and operational changes).

(h) No Seller or Owner is not aware of or reasonably anticipates, as of the Closing Date, any condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, prevent, impede or materially increase the costs associated with the ownership, lease, operation, performance or use of the Business or the Purchased Assets as currently carried out.

Section 4.17 Employee Benefit Matters.

(a) **Section 4.17(a)** of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, profit-sharing, deferred compensation, incentive, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by a Seller or AMI for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Business or any spouse or dependent of such individual, or under which a Seller or AMI has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on **Section 4.17(a)** of the Disclosure Schedules, each, a "**Benefit Plan**").

(b) Except as stated in **Section 4.17(a)** of the Disclosure Schedules, none of Sellers, AMI or any member of any of their respective ERISA Affiliates participates in or has ever participated in any "multiemployer plan" as defined in Section 3(37) of ERISA.

(c) None of the Purchased Assets is subject of any Encumbrance arising under Section 302(f) of ERISA or Section 421(n) of the Code, and neither Buyer nor any of its Affiliates will succeed to or have any Liability under or in connection with any Benefit Plan as a result of the consummation of the transactions contemplated by the Transaction Documents.

Section 4.18 Employment Matters.

(a) **Section 4.18(a)** of the Disclosure Schedules contains a list of all persons who are employees employed or engaged in the Business as of the date hereof (collectively, the "**Business Employees**"), and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. As of the date hereof, all compensation, including wages, commissions and bonuses payable to employees, independent contractors or consultants employed or engaged in the Business for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of a Seller with respect to any compensation, commissions or bonuses.

(b) Except as set forth in **Section 4.18(b)** of the Disclosure Schedules, no Seller is, nor has it been for the past five (5) years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"). There has not, in the past five (5) years, been, nor to Sellers' Knowledge has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting a Seller or any employees employed or engaged in the Business. No Seller has any duty to bargain with any Union other than pursuant to an agreement or arrangement set forth in **Section 4.18(b)** of the Disclosure Schedules.

(c) Each Seller is and has been in compliance with the terms of the collective bargaining agreements and other Contracts listed on **Section 4.18(b)** of the Disclosure Schedules and all applicable Laws pertaining to employment and employment practices to the extent they relate to employees employed or engaged in the Business, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence and unemployment insurance. All individuals characterized and treated by any Seller as consultants or independent contractors employed or engaged in the Business are properly treated as independent contractors under all applicable Laws. All employees employed or engaged in the Business classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified in all material respects. There are no Actions against a Seller pending, or to the Sellers' Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor employed or engaged in the Business, including any claim relating to unfair labor practices, employment discrimination, harassment, retaliation, equal pay, wages and hours or any other employment related matter arising under applicable Laws.

(d) Each Seller has complied in all material respects with the WARN Act.

Section 4.19 Taxes.

(a) All Tax Returns required to be filed by a Seller for any Pre-Closing Tax Period have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by a Seller (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Sellers have withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of any Seller.

(d) All deficiencies asserted, or assessments made, against a Seller as a result of any examinations by any taxing authority have been fully paid.

(e) No Seller is a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

(f) There are no Encumbrances for Taxes upon any of the Purchased Assets nor, to Sellers' Knowledge, is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

(g) No Seller is a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(h) No Seller is now, nor has any Seller ever been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011 4(b).

(i) None of the Purchased Assets is property that a Seller is required to treat as being owned by any other person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended.

(j) None of the Purchased Assets is tax-exempt use property within the meaning of Section 168(h) of the Code.

Section 4.20 Affiliate Transactions. Except as set forth on **Section 4.20** of the Disclosure Schedules, no Seller has engaged in any business arrangement or transaction with any Affiliate or Owner, other than with another Seller in connection with the Business, and no Owner or Affiliate (other than a Seller) owns or has the right to use any material assets used in the Business.

Section 4.21 Brokers. There is no broker, finder or investment banker entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of any Seller or Owner.

Section 4.22 Full Disclosure. No representation or warranty by any Seller or Owner in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

ARTICLE V
Representations and warranties of owners

Owners jointly and severally represent and warrant to Buyer that the statements contained in this **Article V** are true and correct as of the date hereof.

Section 5.01 Organization of Owners. AMI is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware.

Section 5.02 Authority of Owners. Each Owner has full power and authority (corporate or otherwise) to enter into this Agreement and the other Transaction Documents to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each Owner of this Agreement and any other Transaction Document to which Owner is a party, the performance by each Owner of its obligations hereunder and thereunder and the consummation by each Owner of the transactions contemplated hereby and thereby have been duly authorized by all requisite action (corporate or otherwise) on the part of each Owner. This Agreement has been duly executed and delivered by each Owner, and (assuming due authorization, execution and delivery by Buyer and each Seller) this Agreement constitutes a legal, valid and binding obligation of each Owner enforceable against each Owner in accordance with its terms. When each other Transaction Document to which each Owner is or will be a party has been duly executed and delivered by each Owner (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of each Owner enforceable against it in accordance with its terms.

Section 5.03 No Conflicts; Consents. Except as stated in **Section 5.03** of the Disclosure Schedules, the execution, delivery and performance by each Owner of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) with respect to AMI, conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of AMI; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to such Owner; or (c) require the consent, notice or other action by any Person under any Contract to which any Owner is a party. Except as stated in **Section 5.03** of the Disclosure Schedules, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to any Owner in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act.

Section 5.04 Legal Proceedings. There are no Actions pending or, to each Owner’s Knowledge, threatened against or by any Owner or any Affiliate of any Owner that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

ARTICLE VI
Representations and warranties of buyer

Buyer represents and warrants to Sellers that the statements contained in this **Article VI** are true and correct as of the date hereof.

Section 6.01 Organization of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Delaware.

Section 6.02 Authority of Buyer. Buyer has full limited liability company power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any other Transaction Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite limited liability company action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Sellers and Owners) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each other Transaction Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

Section 6.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of formation, limited liability company agreement or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings as may be required under the HSR Act.

Section 6.04 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any other Transaction Document based upon arrangements made by or on behalf of Buyer.

Section 6.05 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

Section 6.06 Legal Proceedings. Except as set forth in **Section 6.06** of the Disclosure Schedules, there are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

ARTICLE VII
Covenants

Section 7.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Sellers shall (x) conduct the Business in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the current Business organization, operations and franchise and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having relationships with the Business. Without limiting the foregoing, from the date hereof until the Closing Date, Sellers shall:

(a) preserve and maintain all Permits required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;

(b) pay the debts, Taxes and other obligations of the Business when due;

(c) maintain the properties and assets included in the Purchased Assets in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;

(d) continue in full force and effect without modification all insurance policies maintained with respect to the Business and the Purchased Assets;

(e) perform all of its obligations under all Assigned Contracts;

(f) maintain the Books and Records in accordance with past practice;

(g) comply in all material respects with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets; and

(h) not take or, to the extent in Sellers' control permit, any action that would cause any of the changes, events or conditions described in **Section 4.06** to occur.

Section 7.02 Access to Information. Subject to applicable Law and that certain Confidentiality Agreement dated May 25, 2011 by and among Kinder Morgan Liquids Terminals LLC, AMI and Kirby Inland Marine, LP (the "**Confidentiality Agreement**"), from the date hereof until the Closing, each Seller shall (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the real property, properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business and the Purchased Assets; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Sellers to cooperate with Buyer in its investigation of the Business. Any investigation pursuant to this **Section 7.02** shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Sellers. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by or on behalf of any Seller or Owner in this Agreement.

Section 7.03 No Solicitation of Other Bids.

(a) No Seller or Owner shall, nor shall any of them authorize or permit any of their respective Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Each Seller and Owner shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" means any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Business or the Purchased Assets.

(b) In addition to the other obligations under this **Section 7.03**, each Seller and Owner shall promptly (and in any event within one Business Day after receipt thereof by such Seller or Owner or their respective Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Each Seller and Owner agrees that the rights and remedies for noncompliance with this **Section 7.03** shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

Section 7.04 Notice of Certain Events.

(a) From the date hereof until the Closing, Sellers shall promptly notify Buyer, if and when it becomes within Sellers' Knowledge, in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Sellers hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in **Section 8.02** to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to Sellers' Knowledge, threatened against, relating to or involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to **Section 4.14** or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Buyer's receipt of information pursuant to this **Section 7.04** shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by a Seller or Owner in this Agreement (including **Section 9.02** and **Section 10.01(b)**) and shall not be deemed to amend or supplement the Disclosure Schedules.

Section 7.05 Hiring of Business Employees.

(a) Buyer will consider for employment all Business Employees employed by a Seller or AMI with respect to the Business as of the Closing Date; *provided*, *however*, that nothing herein shall be construed to obligate Buyer to offer employment to or to continue the employment of any Business Employees. Sellers agree to fully pay or otherwise satisfy any claims arising out of or related to the time period prior to and including the Closing Date brought by any Business Employee relating to or arising out of (i) their employment by a Seller or AMI, (ii) any employment contract or labor agreement entered into by a Seller or AMI, (iii) any Employee Plan liabilities of a Seller or AMI and (iv) any Law requiring notice of severance, or severance benefit (except as otherwise provided hereinbelow).

(b) With respect to any Business Employees to whom Buyer elects to make offers of employment (which employment would be conditioned upon the Closing of all transactions contemplated under this Agreement and Sellers' or AMI's termination of such affected Business Employee's employment with a Seller or AMI, and would commence on the Closing Date) and who accept such offers and are hired by Buyer, Buyer shall retain the right to terminate at will (with or without cause) the employment of any Business Employee hired by Buyer at any time after the Closing Date. Nothing herein expressed or implied by this Agreement shall confer upon any Business Employee, or legal representative thereof, any rights or remedies, including any right to employment or benefits for any specified period, of any nature or kind whatsoever, under or by reason of this Agreement.

(c) Sellers and AMI, as applicable, shall retain all obligations and liabilities resulting from Buyer's failure to hire any Business Employees with respect to compliance with the WARN Act, including any notifications required thereunder. Under such circumstances, Sellers and AMI shall indemnify, defend and hold Buyer harmless with respect to any claims, actions, demands, damages, costs and expenses (including attorney's fees) relating to or arising out of any failure to comply with the WARN Act.

Section 7.06 Confidentiality. From and after the Closing, each Seller and Owner shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that such Seller or Owner can show that such information (a) is generally available to and known by the public through no fault of such Seller or Owner, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by such Seller or Owner, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation or (c) as required by law. If any Seller or Owner, or any of their respective Affiliates or Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such Seller or Owner shall promptly notify Buyer in writing and shall disclose only that portion of such information which such Seller or Owner is advised by its counsel in writing is legally required to be disclosed, *provided that* such Seller or Owner shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information. Prior to the Closing, Buyer shall, and shall cause its Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that Buyer can show that such information (a) is generally available to and known by the public through no fault of Buyer, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by Buyer, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation or (c) as required by law. If Buyer, or any of its Affiliates or Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such person or entity shall promptly notify Sellers in writing and shall disclose only that portion of such information which such entity or person is advised by its counsel in writing is legally required to be disclosed, provided that such entity or person shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information. Notwithstanding the foregoing, in the event of a conflict between the provisions of this **Section 7.06** and the provisions of the Confidentiality Agreement, the provisions of this **Section 7.06** shall control.

Section 7.07 Non-competition; Non-solicitation

(a) For a period of five (5) years commencing on the Closing Date (the "**Restricted Period**"), no Seller or Owner shall, and none of them shall permit any of its Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) cause, induce or encourage any material actual or prospective client, customer, supplier or licensor of the Business (including any existing or former client or customer of a Seller and any Person that becomes a client or customer of the Business after the Closing), or any other Person who has a material business relationship with the Business, to terminate or modify any such actual or prospective relationship. Notwithstanding the foregoing, a Seller or Owner may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if such Seller or Owner is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 3% or more of any class of securities of such Person. Notwithstanding the foregoing, it shall not be a violation of this **Section 7.07(a)** for Sellers and Owners and their Affiliates to arrange for third-party transportation on behalf of customers of Sellers' retained terminal business.

(b) During the Restricted Period, no Seller or Owner shall, nor shall any Seller or Owner permit any of its Affiliates to, directly or indirectly, hire or solicit any person who is offered employment by Buyer pursuant to **Section 7.05,** or is or was employed in the Business during the Restricted Period, or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; *provided*, *however,* that nothing in this **Section 7.07(b)** shall prevent any Seller or Owner, or any of their respective Affiliates from hiring any employee whose employment has been terminated by Buyer.

(c) Each Seller and Owner acknowledges that a breach or threatened breach of this **Section 7.07** would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such Seller or Owner of any such obligations, Buyer shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(d) Each Seller and Owner acknowledges that the restrictions contained in this **Section 7.07** are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this **Section 7.07** should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this **Section 7.07** and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 7.08 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions (including those under the HSR Act) required under any Law applicable to such party or any of its Affiliates; and (ii) use reasonable best efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) The parties hereto shall use reasonable best efforts to give all notices to, and obtain all consents from, all third parties that are described in **Section 4.03**, **Section 5.03** and **Section 6.03** of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all reasonable best efforts to:

(i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any other Transaction Document;

(ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any other Transaction Document; and

(iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any other Transaction Document has been issued, to have such Governmental Order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between a Seller or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(e) Notwithstanding the foregoing, nothing in this **Section 7.08** shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer or any of its Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement and the other Transaction Documents; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 7.09 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Sellers and Owners prior to the Closing, or for any other reasonable purpose, for a period of two (2) years after the Closing, Buyer shall:

(i) retain the Books and Records (including personnel files) relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Sellers; and

(ii) upon reasonable notice, afford the Sellers' and Owners' Representatives reasonable access (including the right to make, at Sellers' expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period of two (2) years following the Closing, Sellers shall:

(i) retain the books and records (including personnel files) of Sellers which relate to the Business and its operations for periods prior to the Closing; and

(ii) upon reasonable notice, afford the Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) No party hereto shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this **Section 7.09** where such access would violate any Law.

Section 7.10 Closing Conditions. From the date hereof until the Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in **Article VIII** hereof.

Section 7.11 Public Announcements. Unless otherwise required by applicable Law or stock exchange requirements (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 7.12 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Sellers to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

Section 7.13 Refunds and Remittances. From and after the Closing, if Sellers or any of their respective Affiliates receives or collects any Purchased Assets or funds relating to the operation or ownership of any Purchased Asset after the Closing, such Seller or its Affiliate shall remit such funds to Buyer within five (5) Business Days after its receipt thereof. From and after the Closing, if Buyer or its Affiliate receives or collects any Excluded Assets or funds relating to the operation or ownership of any Excluded Asset or the ownership of operation of any Purchased Asset before the Closing, Buyer or its Affiliate shall remit any such funds to Sellers within five (5) Business Days after its receipt thereof.

Section 7.14 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Sellers when due. Sellers shall, at their own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

Section 7.15 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

ARTICLE VIII
CONDITIONS TO CLOSING

Section 8.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) The filings of the parties hereto pursuant to the HSR Act, if any, shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

(b) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(c) There shall not be pending any action, proceeding or investigation by any Person, including any Governmental Authority, (i) challenging or seeking damages in connection with the transactions contemplated hereby, or (ii) seeking to restrain or prohibit the consummation of the transactions contemplated hereby.

Section 8.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Sellers contained in **Section 4.01**, **Section 4.02**, **Section 4.04**, **Section 4.20**, and **Section 4.21**, and other than the representations and warranties of Owners contained in **Section 5.01**, **Section 5.02** and **Section 5.04,** each of the representations and warranties of Sellers and Owners contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Sellers contained in **Section 4.01**, **Section 4.02**, **Section 4.04**, **Section 4.20**, and **Section 4.21**, and the representations and warranties of Owners contained in **Section 5.01**, **Section 5.02** and **Section 5.04,** shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Each Seller and Owner shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; *provided, however*, that with respect to agreements, covenants and conditions that are qualified by materiality, each Seller and Owner shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) All approvals, consents and waivers that are listed on **Section 4.03** and **Section 5.03** of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(d) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(e) Each Seller and Owner shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in **Section 3.02(a)**.

(f) Buyer shall have received all Permits that are necessary for it to conduct the Business as conducted by Sellers as of the Closing Date.

(g) All Encumbrances relating to the Purchased Assets shall have been released in full, other than Permitted Encumbrances, and Sellers shall have delivered to Buyer written evidence, in form satisfactory to Buyer in its sole discretion, of the release of such Encumbrances.

(h) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of each Seller, that each of the conditions set forth in **Section 8.02(a)** and **Section 8.02(b)** have been satisfied (the "**Seller Closing Certificate**").

(i) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each Seller and AMI certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of each Seller and AMI authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(j) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of each Seller and of AMI certifying the names and signatures of the officers of each such Seller and AMI authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(k) Buyer shall have received a certificate pursuant to Treasury Regulations Section 1.1445-2(b) (the "**FIRPTA Certificate**") that no Seller is a foreign person within the meaning of Section 1445 of the Code duly executed by each Seller.

Section 8.03 Conditions to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Sellers' waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in **Section 6.01**, **Section 6.02** and **Section 6.04**, Each of the representations and warranties of Buyer contained in this Agreement, the other Transaction Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in **Section 6.01**, **Section 6.02** and **Section 6.04** shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date; *provided*, *that*, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) All approvals, consents and waivers that are listed on **Section 6.03** of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Sellers at or prior to the Closing.

(d) Buyer shall have delivered to Sellers duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in **Section 3.02(b)**.

(e) Buyer shall have delivered the Escrow Amount to the Escrow Agent pursuant to **Section 3.02(c)**

(f) Sellers shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in **Section 8.03(a)** and **Section 8.03(b)** have been satisfied (the "**Buyer Closing Certificate**").

(g) Sellers shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors or comparable governing authority of Buyer authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(h) Sellers shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

ARTICLE IX
INDEMNIFICATION

Section 9.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is one (1) year from the Closing Date; *provided*, *however*, that the representations and warranties in **Section 4.01**, **Section 4.02**, **Section 4.08**, **Section 4.20**, **Section 4.21**, **Section 5.01**, **Section 5.02**, **Section 6.01**, **Section 6.02** and **Section 6.04** shall survive indefinitely and the representations and warranties in **Section 4.16**, **Section 4.17** and **Section 4.19** shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus sixty (60) days. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 9.02 Indemnification By Sellers and Owners. Subject to the other terms and conditions of this **Article IX**, Sellers and Owners shall, jointly and severally, indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the "**Buyer Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Sellers or Owners contained in this Agreement, the other Transaction Documents or in any certificate or instrument delivered by or on behalf of any Seller or Owner pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by any Seller or Owner pursuant to this Agreement, the other Transaction Documents or any certificate or instrument delivered by or on behalf of Sellers or Owners pursuant to this Agreement;

(c) any Excluded Asset or any Excluded Liability; or

(d) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of any Seller or any of its Affiliates conducted, existing or arising on or prior to the Closing Date.

Section 9.03 Indemnification By Buyer. Subject to the other terms and conditions of this **Article IX**, Buyer shall indemnify and defend each of Seller, Owner and their respective Affiliates and Representatives (collectively, the "**Seller Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement; or

(c) any Assumed Liability.

(d) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Buyer or any of its Affiliates conducted, existing or arising after the Closing Date and relating to any of the Purchased Assets.

Section 9.04 Certain Limitations. The indemnification provided for in **Section 9.02** and **Section 9.03** shall be subject to the following limitations:

(a) No Seller or Owner shall be liable to the Buyer Indemnitees for indemnification under **Section 9.02(a)** (other than with respect to a claim for indemnification based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in **Section 4.01**, **Section 4.02**, **Section 4.08**, **Section 4.19**, **Section 4.20,** and **Section 4.21** (the "**Buyer Basket Exclusions**")), until the aggregate amount of all Losses in respect of indemnification under **Section 9.02(a)** (other than those based upon, arising out of, with respect to or by reason of the Buyer Basket Exclusions) exceeds \$500,000, in which event Sellers and Owners shall be required to pay or be liable for all such Losses from the first dollar; *provided*, *however*, that Sellers and Owners collectively shall not be liable to the Buyer Indemnitees for indemnification under **Section 9.02(a)** (other than with respect to a claim for indemnification based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty contained in the Buyer Basket Exclusions) for Losses that exceed \$11,600,000 in the aggregate (the "**Buyer Aggregate Indemnity Cap**").

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under **Section 9.03(a)** (other than with respect to a claim for indemnification based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in **Section 6.01**, **Section 6.02** and **Section 6.04** (the "**Seller Basket Exclusions**")) until the aggregate amount of all Losses in respect of indemnification under **Section 9.03(a)** (other than those based upon, arising out of, with respect to or by reason of the Seller Basket Exclusions) exceeds \$500,000.00, in which event Buyer shall be required to pay or be liable for all such Losses from the first dollar.

(c) For purposes of this **Article IX**, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

Section 9.05 Indemnification Procedures. The party making a claim under this **Article IX** is referred to as the "**Indemnified Party**", and the party against whom such claims are asserted under this **Article IX** is referred to as the "**Indemnifying Party**".

(a) **Third Party Claims.** If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "**Third Party Claim**") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is prejudiced or forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is a Seller or Owner, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim (A) that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, (y) seeks an injunction or other equitable relief against the Indemnified Party, or (z) would, if such Third Party Claim were fully paid, be reasonably likely to result in Losses for the Buyer in excess of the Buyer Indemnity Cap, and (B) unless the Indemnifying Party first acknowledges in writing that it is obligated to indemnify the Buyer against any Losses that may result from such Third-Party Claim. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to **Section 9.05(b)**, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided*, *that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to **Section 9.05(b)**, pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers, Owners and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of **Section 7.06**) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) **Settlement of Third Party Claims.** Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this **Section 9.05(b)**. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to **Section 9.05(a)**, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) **Direct Claims.** Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is prejudiced or forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 9.06 Payments. Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this **Article IX** (a "**Final Indemnification Loss**"), the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such fifteen (15) Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to but excluding the date such payment has been made at a rate per annum equal to 5%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed and shall be compounded quarterly. In the case of Final Indemnification Loss payable by Sellers or Owners, the amount payable shall first be distributed from the escrow account maintained under the Escrow Agreement to the extent of any funds remaining in such account and any amounts that remain unpaid after distribution of all amounts remaining in such account (or that are not paid within fifteen (15) Business Days after a Loss becomes a Final Indemnification Loss) shall be payable, jointly and severally, but Sellers and Owners. The parties hereto shall execute and deliver to the Escrow Agent joint written instructions (and any other documents or instruments reasonably requested by the Escrow Agent or that are required to be executed and delivered pursuant to the Escrow Agreement in connection with a distribution of amounts from such escrow account) instructing the Escrow Agent to pay any amounts payable to a Buyer Indemnitee in respect of a Final Indemnification Loss.

Section 9.07 Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in **Section 8.02** or **Section 8.03**, as the case may be.

Section 9.08 Exclusive Remedies. Subject to **Section 7.07** and **Section 11.11**, the parties acknowledge and agree that, from and after the Closing, their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or wilful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this **Article IX**. Nothing in this **Section 9.08** shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Person's fraudulent, criminal or intentional misconduct.

ARTICLE X
TERMINATION

Section 10.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Sellers and Buyer;

(b) by Buyer by written notice to Sellers if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Sellers pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VIII** and such breach, inaccuracy or failure has not been cured by Sellers within twenty (20) days of Sellers' receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in **Section 8.01** or **Section 8.02** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by December 31, 2012, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Sellers by written notice to Buyer if:

(i) No Seller or Owner is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in **Article VIII** and such breach, inaccuracy or failure has not been cured by Buyer within twenty (20) days of Buyer's receipt of written notice of such breach from Sellers; or

(ii) any of the conditions set forth in **Section 8.01** or **Section 8.03** shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by December 31, 2012, unless such failure shall be due to the failure of Sellers or Owners to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by them prior to the Closing; or

(d) by Buyer or Sellers in the event that (i) there shall be any Law enacted that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 10.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this **Article X** and **Section 7.06** and **Article XI** hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any wilful breach of any provision hereof.

ARTICLE XI
Miscellaneous

Section 11.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred**.**

Section 11.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid; or (d) if by facsimile or electronic mail, upon confirmation of receipt. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 11.02**):

If to a Seller or an Owner:	Allied Marine Industries P.O. Box 717 Norfolk, Virginia 23501 Attention: W. Bruce Law Facsimile: 757-226-7635 E-mail: brucel@almarine.com or wbrucel@cox.net
with a copy to:	Vandeventer Black LLP 101 West Main St. 500 World Trade Center Norfolk, VA 23510 Attention: Patrick A. Genzler, Esq. E-mail: pgenzler@vanblk.com
If to Buyer:	Kirby Corporation 55 Waugh Drive, Suite 1000 Houston, Texas 77007 Attention: David W. Grzebinski Facsimile: 713-435-1010 Email: david.grzebinski@kirbycorp.com and Amy D. Husted Facsimile: 713-435-1408 Email: amy.husted@kirbycorp.com
with a copy to:	Fulbright & Jaworski L.L.P. 2200 Ross Avenue, Suite 2800 Dallas, Texas 75201 Facsimile: 214-855-8200 E-mail: tadler@fulbright.com Attention: Thomas G. Adler, Esq.

Section 11.03 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 11.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 11.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in **Section 7.07(d)**, upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 11.06 Entire Agreement. This Agreement and the other Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 11.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that prior to the Closing Date, Buyer may, without the prior written consent of any Seller or Owner, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 11.08 No Third-party Beneficiaries. Except as provided in **Article IX**, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 11.09Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by Buyer and each Seller. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 11.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Delaware.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF DELAWARE IN EACH CASE LOCATED IN THE CITY OF DELAWARE AND COUNTY OF DELAWARE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 11.10(C)**.

Section 11.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 11.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement or other documents delivered pursuant hereto delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

ALLIED TRANSPORTATION COMPANY

Date

By /s/ Gregory H. Law
Name: Gregory H. Law
Title: President

TRANSERVE MARINE, INC.

By /s/ W. Bruce Law
Name: W. Bruce Law
Title: Director

OSPREY ASSOCIATES

By /s/ W. Bruce Law
Name: W. Bruce Law
Title: Director

ALLIED MARINE INDUSTRIES, INC.

By /s/ Kirk J. Woodruff
Name: Kirk J. Woodruff
Title: President

/s/ Gregory H. Law
Gregory H. Law

/s/ Kelly Law
Kelly Law

/s/ W. Bruce Law
W. Bruce Law

/s/ Michael E. Law
Michael E. Law

/s/ Kirk J. Woodruff
Kirk J. Woodruff

[Signatures Continue on the Following Page]

KIRBY CORPORATION

By: /s/David W. Grzebinski
Name: David W. Grzebinski
Title: Executive Vice President and
Chief Financial Officer

Exhibit 31.1

Certification of Chief Executive Officer

In connection with the filing of the Quarterly Report on Form 10-Q for the quarter ended September 30, 2012 by Kirby Corporation, Joseph H. Pyne certifies that:

1. I have reviewed this report on Form 10-Q of Kirby Corporation (the “registrant”);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

/S/ JOSEPH H. PYNE

Joseph H. Pyne
Chairman of the Board and
Chief Executive Officer

Dated: November 5, 2012

Exhibit 31.2

Certification of Chief Financial Officer

In connection with the filing of the Quarterly Report on Form 10-Q for the quarter ended September 30, 2012 by Kirby Corporation, David W. Grzebinski certifies that:

1. I have reviewed this report on Form 10-Q of Kirby Corporation (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/S/ DAVID W. GRZEBINSKI

David W. Grzebinski
Executive Vice President and
Chief Financial Officer

Dated: November 5, 2012

Exhibit 32

Certification Pursuant to Section 18 U.S.C. Section 1350

In connection with the filing of the Quarterly Report on Form 10-Q for the quarter ended September 30, 2012 (the “Report”) by Kirby Corporation (the “Company”), each of the undersigned hereby certifies that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/S/ JOSEPH H. PYNE

Joseph H. Pyne
Chairman of the Board and
Chief Executive Officer

/S/ DAVID W. GRZEBINSKI

David W. Grzebinski
Executive Vice President and
Chief Financial Officer

Dated: November 5, 2012