

EMISPHERE TECHNOLOGIES INC

Form SC 13D/A

July 08, 2011

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

Rule 13d-101

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO § 240.13d-1(a) AND
AMENDMENTS THERETO FILED PURSUANT TO § 240.13d-2(a)

(Amendment No. 14)*

Emisphere Technologies, Inc.

(Name of Issuer)

Common Stock, Par Value \$.01 Per Share
(Title of Class of Securities)

291345106
(CUSIP Number)

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Doron Lipshitz, Esq.

O Melveny & Myers LLP

7 Times Square

New York, New York 10036

(212) 326-2000

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

July 6, 2011

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box " ".

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See §240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page. The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

Continued on following pages

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1 NAME OF REPORTING PERSONS

MHR CAPITAL PARTNERS MASTER ACCOUNT LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Anguilla, British West Indies

7 SOLE VOTING POWER

NUMBER OF

SHARES **8** 10,847,505 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER
EACH

REPORTING

PERSON **10** 10,847,505 SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

10,847,505

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

16.6%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

MHR ADVISORS LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 SOLE VOTING POWER

NUMBER OF

SHARES **8** 12,326,089 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER
EACH

REPORTING

PERSON **10** 12,326,089 SHARED DISPOSITIVE POWER
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

12,326,089

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

18.7%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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CUSIP No.: **291345106** **13D** **Page 4 of 14 Pages**

1 NAME OF REPORTING PERSONS

2 MHR INSTITUTIONAL PARTNERS II LP
CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

5 WC
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 SOLE VOTING POWER

NUMBER OF

SHARES **8** 7,362,112
SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0
EACH SOLE DISPOSITIVE POWER

REPORTING

PERSON **10** 7,362,112
SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

7,362,112

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

11.4%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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CUSIP No.:

291345106

13D

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1 NAME OF REPORTING PERSONS

MHR INSTITUTIONAL PARTNERS IIA LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 SOLE VOTING POWER

NUMBER OF

SHARES 18,547,405
8 SHARED VOTING POWER

BENEFICIALLY

OWNED BY 0
EACH 9 SOLE DISPOSITIVE POWER

REPORTING

PERSON 18,547,405
10 SHARED DISPOSITIVE POWER
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

18,547,405

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

26.1%

14 TYPE OF REPORTING PERSON (See Instructions)

PN

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1 NAME OF REPORTING PERSONS

MHR INSTITUTIONAL ADVISORS II LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 SOLE VOTING POWER

NUMBER OF

SHARES **8** 25,909,517 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER
EACH

REPORTING

PERSON **10** 25,909,517 SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

25,909,517

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

34.5%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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CUSIP No.: **291345106** **13D** **Page 7 of 14 Pages**

1 NAME OF REPORTING PERSONS

MHR FUND MANAGEMENT LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

7 SOLE VOTING POWER

NUMBER OF

SHARES **8** 38,235,606 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER
EACH

REPORTING

PERSON **10** 38,235,606 SHARED DISPOSITIVE POWER
WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

38,235,606

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

47.5%

14 TYPE OF REPORTING PERSON (See Instructions)

OO

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CUSIP No.: **291345106** **13D** **Page 8 of 14 Pages**

1 NAME OF REPORTING PERSONS

MARK H. RACHESKY, M.D.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

AF

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States of America

7 SOLE VOTING POWER

NUMBER OF

SHARES **8** 38,369,904 SHARED VOTING POWER

BENEFICIALLY

OWNED BY **9** 0 SOLE DISPOSITIVE POWER
EACH

REPORTING

PERSON **10** 38,369,904 SHARED DISPOSITIVE POWER

WITH

0

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11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

38,369,904

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions) ..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

47.6%

14 TYPE OF REPORTING PERSON (See Instructions)

IN; HC

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This statement on Schedule 13D (this Statement) further amends and supplements, as Amendment No. 14, the Schedule 13D filed on October 6, 2005 (the Initial 13D), as amended by Amendment No. 1, filed on January 17, 2006 (Amendment No. 1), Amendment No. 2, filed on May 11, 2006 (Amendment No. 2), Amendment No. 3, filed on August 20, 2007 (Amendment No. 3), Amendment No. 4, filed on August 24, 2007 (Amendment No. 4), Amendment No. 5, filed on July 2, 2008 (Amendment No. 5), Amendment No. 6, filed on July 2, 2009 (Amendment No. 6), Amendment No. 7, filed on August 21, 2009 (Amendment No. 7), Amendment No. 8, filed on August 25, 2009 (Amendment No. 8), Amendment No. 9, filed on June 9, 2010 (Amendment No. 9), Amendment No. 10, filed on August 2, 2010 (Amendment No. 10), Amendment No. 11, filed on August 27, 2010 (Amendment No. 11), Amendment No. 12, filed on December 22, 2010 (Amendment No. 12) and Amendment No. 13, filed on July 1, 2011 (Amendment No. 13) and, together with the Initial 13D, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6, Amendment No. 7, Amendment No. 8, Amendment No. 9, Amendment No. 10, Amendment No. 11 and Amendment No. 12, the Schedule 13D) and relates to shares of common stock, par value \$0.01 per share (the Shares), of Emisphere Technologies, Inc. (the Issuer). Certain of the securities reported herein were previously reported on Schedule 13G, which was filed on April 8, 2005. Defined terms used in this Statement but not defined herein shall have the respective meanings given such terms in Amendment No. 13.

Item 3. Source and Amount of Funds or Other Consideration

Item 3 is hereby amended to add the following:

The source of funds for the purchases reported in this Statement was the working capital of Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA.

Item 4. Purpose of Transaction

Item 4 is hereby amended to add the following:

MHR Private Placement and Waiver Agreement

On July 6, 2011, the transactions contemplated by the MHR Purchase Agreement, as described in Item 4 to Amendment No. 13, were consummated. In connection therewith, 4,300,438 Shares and warrants to purchase 3,010,307 Shares pursuant to the MHR Purchase Agreement were allocated among and, at the closing, were issued to Master Account, Capital Partners (100), Institutional Partners II, and Institutional Partners IIA. The Issuer also issued warrants to purchase an aggregate of 795,000 Shares to Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA pursuant to the MHR Waiver Agreement. Additionally, the Issuer announced on July 7, 2011 that it completed the sale of 4,300,438 Shares and warrants to purchase 3,010,307 Shares pursuant to a private placement to certain other investors.

Table of Contents**Item 5. Interest in Securities of the Issuer**

Item 5 is hereby amended by deleting such item in its entirety and replacing it with the following:

The percentages set forth in this Statement are calculated based on 60,677,478 Shares outstanding as of July 6, 2011, as disclosed by the Issuer to the Reporting Persons.

All percentages of beneficial ownership presented herein are calculated after giving effect to the issuance of the Shares pursuant to exercise or vesting of Warrants, restricted stock or stock options currently owned by the Reporting Persons, and assuming such Reporting Persons Convertible Notes were converted into Shares as of such date.

(a) (i) Master Account may be deemed the beneficial owner of 10,847,505 Shares (approximately 16.6% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 6,226,054 Shares held for the account of Master Account, (B) 3,201,572 Shares that can be obtained by Master Account upon exercise of warrants to acquire Shares and (C) 1,419,879 Shares that can be obtained by Master Account upon the conversion of the Convertible Notes.

(ii) Capital Partners (100) may be deemed the beneficial owner of 1,478,584 Shares (approximately 2.4% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 847,125 Shares held for the account of Capital Partners (100), (B) 437,288 Shares that can be obtained by Capital Partners (100) upon exercise of warrants to acquire Shares and (C) 194,171 Shares that can be obtained by Capital Partners (100) upon the conversion of the Convertible Notes.

(iii) Advisors may be deemed the beneficial owner of 12,326,089 Shares (approximately 18.7% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) (1) 6,226,054 Shares held for the account of Master Account, (2) 3,201,572 Shares that can be obtained by Master Account upon exercise of warrants to acquire Shares and (3) 1,419,879 Shares that can be obtained by Master Account upon the conversion of the Convertible Notes, and (B) (1) 847,125 Shares held for the account of Capital Partners (100), (2) 437,288 Shares that can be obtained by Capital Partners (100) upon exercise of warrants to acquire Shares and (3) 194,171 Shares that can be obtained by Capital Partners (100) upon the conversion of Convertible Notes.

(iv) Institutional Partners II may be deemed the beneficial owner of 7,362,112 Shares (approximately 11.4% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 3,240,750 Shares held for the account of Institutional Partners II, (B) 2,576,418 Shares that can be obtained by Institutional Partners II upon the exercise of warrants to acquire Shares and (C) 1,544,944 Shares that can be obtained by Institutional Partners II upon the conversion of the Convertible Notes.

(v) Institutional Partners IIA may be deemed the beneficial owner of 18,547,405 Shares (approximately 26.1% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) 8,164,436 Shares held for the account of Institutional Partners IIA, (B) 6,490,782 Shares that can be obtained by Institutional Partners IIA upon the exercise of warrants to acquire Shares and (C) 3,892,187 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Convertible Notes.

(vi) Institutional Advisors II may be deemed the beneficial owner of 25,909,517 Shares (approximately 34.5% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) (1) 3,240,750 Shares held for the account of Institutional Partners II, (2) 2,576,418 Shares that can be obtained by Institutional Partners II upon the exercise of warrants to acquire Shares and (3) 1,544,944 Shares that can be obtained by Institutional Partners II upon the conversion of the Convertible Notes, and (B) (1) 8,164,436 Shares held for the account of Institutional Partners IIA, (2) 6,490,782 Shares that can be obtained by Institutional Partners IIA upon the exercise of warrants to acquire Shares and (3) 3,892,187 Shares that can be obtained by Institutional Partners IIA upon the conversion of the Convertible Notes.

(vii) Fund Management may be deemed the beneficial owner of 38,235,606 Shares (approximately 47.5% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of all of the Shares otherwise described in this Item 5(a) by virtue of Fund Management's investment management agreement with Master Account, Capital Partners (100), Institutional Partners II and Institutional Partners IIA.

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(viii) Dr. Rachesky may be deemed the beneficial owner of 38,369,904 Shares (approximately 47.6% of the total number of Shares outstanding, calculated in accordance with Rule 13d-3(d)(1)(i) under the Act). This number consists of (A) all of the Shares otherwise described in this Item 5(a) by virtue of Dr. Rachesky's position as the managing member of each of Fund Management, Advisors and Institutional Advisors II, (B) 14,000 Shares that can be obtained upon the exercise of certain options to purchase Shares, (C) 115,000 Shares that can be obtained upon the exercise of certain non-qualified stock options to purchase Shares and (D) 5,298 Shares held for his own account.

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- (b) (i) Master Account may be deemed to have (x) the sole power to direct the disposition of 10,847,505 Shares which may be deemed to be beneficially owned by Master Account as described above, and (y) the sole power to direct the voting of 10,847,505 Shares which may be deemed to be beneficially owned by Master Account as described above.
- (ii) Capital Partners (100) may be deemed to have (x) the sole power to direct the disposition of 1,478,584 Shares which may be deemed to be beneficially owned by Capital Partners (100) as described above, and (y) the sole power to direct the voting of 1,478,584 Shares which may be deemed to be beneficially owned by Capital Partners (100) as described above.
- (iii) Advisors may be deemed to have (x) the sole power to direct the disposition of 12,326,089 Shares which may be deemed to be beneficially owned by Advisors as described above, and (y) the sole power to direct the voting of 12,326,089 Shares which may be deemed to be beneficially owned by Advisors as described above.
- (iv) Institutional Partners II may be deemed to have (x) the sole power to direct the disposition of 7,362,112 Shares which may be deemed to be beneficially owned by Institutional Partners II as described above, and (y) the sole power to direct the voting of 7,362,112 Shares which may be deemed to be beneficially owned by Institutional Partners II as described above.
- (v) Institutional Partners IIA may be deemed to have (x) the sole power to direct the disposition of 18,547,405 Shares which may be deemed to be beneficially owned by Institutional Partners IIA as described above, and (y) the sole power to direct the voting of 18,547,405 Shares which may be deemed to be beneficially owned by Institutional Partners IIA as described above.
- (vi) Institutional Advisors II may be deemed to have (x) the sole power to direct the disposition of 25,909,517 Shares which may be deemed to be beneficially owned by Institutional Advisors II as described above, and (y) the sole power to direct the voting of 25,909,517 Shares which may be deemed to be beneficially owned by Institutional Advisors II as described above.
- (vii) Fund Management may be deemed to have (x) the sole power to direct the disposition of the 38,235,606 Shares which may be deemed to be beneficially owned by Fund Management as described above, and (y) the sole power to direct the voting of 38,235,606 Shares which may be deemed to be beneficially owned by Fund Management as described above.
- (viii) Dr. Rachesky may be deemed to have (x) the sole power to direct the disposition of the 38,369,904 Shares which may be deemed to be beneficially owned by Dr. Rachesky as described above, and (y) the sole power to direct the voting of 38,369,904 Shares which may be deemed to be beneficially owned by Dr. Rachesky as described above.
- (c) Except as otherwise disclosed herein, there have been no transactions with respect to the Shares since the filing of Amendment No. 13 by any of the Reporting Persons.
- (d) (i) The partners of Master Account, including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Master Account in accordance with their partnership interests in Master Account.
- (ii) The partners of Capital Partners (100), including Advisors, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Capital Partners (100) in accordance with their partnership interests in Capital Partners (100).
- (iii) The partners of Institutional Partners II, including Institutional Advisors II, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Institutional Partners II in accordance with their partnership interests in Institutional Partners II.
- (iv) The partners of Institutional Partners IIA, including Institutional Advisors II, have the right to participate in the receipt of dividends from, or proceeds from the sale of, the securities held for the account of Institutional Partners IIA in accordance with their partnership interests in Institutional Partners IIA.
- (e) Not applicable.

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Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer

The information set forth in Item 4 above is incorporated into this Item 6 by reference.

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SIGNATURES

After reasonable inquiry and to the best of my knowledge and belief, the undersigned certifies that the information set forth in this Statement is true, complete and correct.

Date: July 8, 2011

MHR CAPITAL PARTNERS MASTER ACCOUNT LP

By: MHR Advisors LLC,
its General Partner

By: /s/ Hal Goldstein
Name: Hal Goldstein
Title: Vice President

MHR ADVISORS LLC

By: /s/ Hal Goldstein
Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL PARTNERS II LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Hal Goldstein
Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL PARTNERS IIA LP

By: MHR Institutional Advisors II LLC,
its General Partner

By: /s/ Hal Goldstein
Name: Hal Goldstein
Title: Vice President

MHR INSTITUTIONAL ADVISORS II LLC

By: /s/ Hal Goldstein
Name: Hal Goldstein
Title: Vice President

MHR FUND MANAGEMENT LLC

By: /s/ Hal Goldstein
Name: Hal Goldstein
Title: Managing Principal

MARK H. RACHESKY, M.D.

/s/ Hal Goldstein, Attorney in Fact