Testimony of Andrew M. Bursky, Chairman – Atlas Holdings LLC
Presented to House Committee on Financial Services
Wednesday, January 26, 2011

EXECUTIVE SUMMARY

- **Small and mid-size private equity firms ("PEs") have a long track record of preserving and generating jobs by providing capital and management resources to small and mid-size American businesses**
    - *PEs provide capital and management to struggling companies that have lost access to capital and need assistance to resolve operational, technical or financial problems*
    - *PEs provide capital and expertise to growth companies whose development is constrained because of managerial limitations and restricted access to capital*

- **Atlas Holdings, as a representative PE, has been responsible for preserving or creating more than 3,000 jobs in the last eight years**
    - *Many of these jobs are at U.S. small businesses that were either bankrupt or in the process of liquidation prior to Atlas' involvement*
    - *Atlas has worked in partnership with various unions as well as state and municipal governments and agencies to create long-term sustainable enterprises*

- **PEs will be damaged under Dodd-Frank, reducing their capacity to preserve and create jobs while producing no public benefit**
    - *No rational argument that PEs contribute to systemic risk*
    - *Investors in PEs are highly sophisticated and rely upon their own extremely detailed review for investment decisions rather than SEC dictated disclosure*
    - *PE investors are not seeking registration by PEs and are already protected by existing securities laws*

- **Regulatory requirements under Dodd-Frank will be costly to PEs, diverting PE activities from job-creating investments and reducing returns to institutional investors**
    - *PEs will be forced to divert professional staff from productive investing and business support activities to regulatory compliance*
    - *Cost of compliance for new PE registrants is estimated to be as much as $500 million; these costs reduce returns to PE investors such as endowments and pension funds*

- **Inclusion of PEs in Dodd-Frank will divert focus of SEC**
    - *It is estimated that 1,000+ PEs will be required to file as Registered Investment Advisers*
    - *Without a massive expansion of its budget, the ability of the SEC to focus on potential generators of systemic risk will be severely diluted*

- **PEs seek immediate 1-year delay, considered review by SEC and ultimately, an exemption from registration requirements**
    - *Substantial cost of compliance incurred by PEs without any public benefit*
    - *Precedent established by Venture Capital exemption*
    - *Time is of the essence; current legislation requires compliance by July 21, 2011 and substantial costs and diversion of resources to meet compliance deadline has begun*

I: JOB PRESERVATION AND GROWTH DRIVEN BY PEs

- **PEs have an impressive track record of job preservation and job creation**
- **PEs invest in small and mid-market private companies, the growth engines of the U.S. economy**
- **PEs play a vital role as patient capital providers to smaller companies that face increasingly hostile public financing markets and increasingly restrictive commercial banks**
- **PEs contribute operating knowledge and expertise that enhance business performance**

The case for job preservation and job creation by PEs is compelling, yet it has not been made with the clarity or vigor it deserves. Many studies evidencing substantial job creation by PEs have been published, some of which are quoted below. The case for job growth by PEs is even more impressive, considering the adverse selection inherent in the population of many businesses acquired by PEs, i.e. these businesses are generally available for acquisition or other forms of private equity investment because of historic underperformance, operating challenges, leadership issues or capital constraints.

- Companies backed by private equity investment employed more than 6 million Americans as of June 30, 2009, according to data collected by PitchBook, Hoovers, and the PEGCC. Since the recession began in January 2008, private equity firms have invested more than $23 billion in 137 bankrupt businesses. This rescue financing saved an estimated 185,895 jobs relative to Chapter 7 liquidation (2010 Private Equity Growth Capital Council).
- "In the current period of record-high U.S. job losses, the private equity sector's record on job creation is also particularly pertinent. There is clear evidence that private equity acquired firms expand employment in normal times … another analysis of a sample of large companies acquired by major private equity firms from 2002 to 2007 found that their U.S. workforces grew at average annual rates of 5.7 percent, compared to 1.1 percent for all U.S. companies" ("The Role of the Private Equity Sector Promoting Economic Recovery," *Private Equity Council*, Robert J. Shapiro, March 2009).
- Ernst & Young found that in 4 out of 5 cases, employment levels at PE-owned companies in the U.S. were the same as or higher at the conclusion of the PE investment than they were at the beginning, despite the fact that the bulk of the investments were in mature or distressed companies (2007 Ernst & Young).
- "Consultancy AT Kearney's analysis, which was based on a review of a number of studies in the area (albeit some conducted by industry associations with a vested interest in preserving the industry's reputation), found that private equity backed firms have created … more than 600,000 new jobs" ("Private Equity – good for jobs?" *PEI*, March 2007).
- "Inmar, a technology-driven systems and services business, is funded and supported by New Mountain Capital … Inmar has added more than 500 new jobs in the last several years under New Mountain's ownership, and we are one of the few companies headquartered in the Winston-Salem area that has been growing and hiring steadily through the Great Recession. In fact, we are adding another two dozen high-quality jobs right now, which will bring our employment in the state up to more than 750 people. Overall, New Mountain has added or created more than 7,000 jobs at the companies it has owned nationwide, net of all job losses, including about 1,000 new jobs in North Carolina." ("Private Equity Firms Provide Capital to Grow Business and Jobs," *Citizen-Times.com*, L. David Mounts, November 2010).
- "Several studies have concluded that in the markets most thoroughly penetrated by PE players, job creation by PE-controlled firms significantly outpaces job creation in the rest of the

economy" ("Lessons from Private Equity Any Company Can Use," *Harvard Business Press*, Orit Gadiesh and Hugh MacArthur, 2008).

- Researchers compiled a dataset of 288 exited private equity transactions from 1984 to 2006 that ranged in size from $1.4 million to $4.5 billion (at acquisition). PE-sponsored companies in the sample exhibited strong employment growth (13.9%), capital expenditure growth (8.3%), and operating earnings growth (EBITDA; 11.6%; all figures annualized). Employment increased at 71% of the PE-backed companies in the sample. (University of Missouri)
- According to a review of 5,000 transactions over 25 years, prior to investment, private equity portfolio companies were, on average, losing jobs at existing facilities at a rate one to three percentage points faster than their competitors. After private equity investment or acquisition, companies initially experienced a dip in employment but saw their employment growth rates rise above the industry average within four years (2008 Center for Economic Studies, Bureau of the Census).

II: JOB PRESERVATION AND CREATION – TRUE LIFE STORIES

The most telling examples of job preservation and creation by PEs are told through the actual stories of real businesses and real people across the United States. The following profiles are representative of the kind of work PEs engage in everyday – committing both capital and managerial resources to arrest the decline of a failing business or to address the challenges of funding and managing a growing manufacturing enterprise.

Importantly, as these stories describe, the work of PEs is often targeted at small to mid-size businesses, the primary growth engines of the U.S. economy. As many of these businesses are manufacturers, PEs have demonstrated that, with proper leadership, capital resources and operating strategies, U.S. manufacturers can be highly competitive in the global economy.

PRESERVING JOBS BY REVIVING FAILED BUSINESSES

Detroit Renewable Energy LLC

- **Company Location(s):** Detroit, MI; Hamtramck, MI; Flint, MI; Shreveport, LA
- **Transaction Overview:**
  - Company operates the largest "Green energy" from waste facility in the U.S. and a 39-mile, low-pressure steam loop in downtown Detroit that is the sole source of heating for 104 buildings and 144 customers in the Detroit urban core.
  - In October 2010, after years of neglect and acrimonious relations with the city, the prior owner (a large public company) elected to idle the facility, laid off 134 employees and began preparations for a permanent shutdown.
  - In November 2010, Atlas worked cooperatively with the International Union of Operating Engineers Local 324, Utility Workers of America, AFL, and CIO Local 223 and the City of Detroit to acquire the business. Atlas invested in excess of $50 million of its own capital to acquire the assets and upgrade the facilities.

- **Job Growth:** Rehired 123 workers and preserved the jobs of over 100 contract and indirect jobs that these facilities support.

Bridgewell Resources LLC

- **Company Location(s):** Tigard, OR; Bend, OR; Clackamas, OR; Dierks, AR; Gunnison, UT; Penn Laird, VA
- **Transaction Overview:**
    - Bridgewell is a global trader and value-added distributor of oils and shortenings, organic foods and bakery items, feeds and seeds, fertilizer and minerals, mat products, utility poles, construction products, and wood products.
    - In 2008, deteriorating housing markets destroyed the profitability of Bridgewell's sister division, severely constricting the liquidity of Bridgewell's prior owner.
    - In January 2010, unable to arrange DIP financing, a receiver was appointed at the request of its lending group and the liquidation of the company commenced.
    - In March 2010, Atlas invested $27 million of its own capital to acquire Bridgewell and provide liquidity to restore its market position.
- **Job Growth:** Preserved the jobs of approximately 130 skilled workers upon acquisition. Subsequently, Bridgewell has hired 20 additional employees. In 2011, Bridgewell plans to hire 25 new employees.

Michigan Seamless Tube LLC

- **Company Location(s):** South Lyon, MI
- **Transaction Overview:**
    - Company manufactures highly customized, precision-tolerance cold drawn seamless pressure and mechanical steel tubes used primarily in niche applications in the power generation, oil and natural gas extraction and non-automotive industrial markets.
    - In November 2000, the Company's former parent filed for Chapter 11 bankruptcy protection as a result of an over-leveraged balance sheet and a poorly executed capital project at a sister plant.
    - In February 2002, the Company was idled at the direction of its senior creditors to allow for liquidation of receivables and inventory and a Section 363 sale of the operating assets. All but 12 maintenance workers were released.
    - In October 2002, Atlas worked cooperatively with USW Local 1900 and the State of Michigan to acquire the business. Atlas invested $10 million of its own capital to purchase the facility and fund the restart of operations.
- **Job Growth:** Rehired 51 workers upon restart. As the result of continued investment in operations and success in the marketplace, including rapid growth in export markets, ultimately created approximately 250 high-skilled manufacturing jobs.

CREATING JOBS BY FUNDING GROWTH BUSINESSES

Phoenix Services LLC

- **Company Location(s):** Roanoke, VA; Sparrows Point, MD; Riverdale, IL; Vinton, TX; Latrobe, PA; Wilton, IA; Weirton, WV; Mingo Junction, OH; Indiana Harbor, IN; Johnstown, PA; Warren, OH; Georgetown, SC; Galati, Romania
- **Transaction Overview:**
    - Phoenix Services operates primarily in the slag processing and metal recovery business, servicing steel and non-ferrous mills and landowners with significant slag banks from former mill operations; core services include: slag removal, metallic recovery and slag processing.
    - In January 2006, Phoenix Services was formed by R. Douglas Lane, an experienced executive in the Mill Services sector, in partnership with Atlas, to acquire Thor Mill Service, Inc.
    - In partnership with Olympus Partners, Atlas has funded $76 million of growth capital and supported the expansion of the company into a leading, international service provider in its sector. As a result of winning new contracts and site revenue growth, Phoenix Services has approximately $900 million of future revenue under contract.
- **Job Growth:** Beginning with one employee in 2006, Phoenix Services has created approximately 340 jobs.

Pepper Dining Inc.

- **Company Location(s):** Pepper Dining operates over 100 restaurants in the Northeastern and mid-Atlantic region.
- **Transaction Overview:**
    - Pepper Dining is a leading franchisee of Chili's Grill and Bar restaurants.
    - Olympus Partners acquired Pepper Dining in 2007
    - Since the acquisition in 2007, Pepper Dining has opened 12 new stores across New England and in Virginia and the Carolinas, spending approximately $2.5 million per new store.
- **Job Growth:** Pepper creates 75 new jobs per store, including several management positions.

TravelCenters of America, Inc.

- **Company Location(s):** TravelCenters of America ("TA") operates a nationwide network of truck stops with over 160 locations in 41 states.
- **Transaction Overview:**
    - TA operates facilities on U.S. interstate highways which provide a variety of products and services to professional truckers and motorists, including fuel, food, merchandise, repair services, and other driver amenities.

    - In 1993, Olympus Partners and others acquired the U.S. truck stop businesses of Unocal and BP to form TA.
    - During the 14 years of private equity ownership, as a result of new investment in sites through new builds, renovations and acquisitions, adding new services, brands, and information systems, TA increased its business almost five-fold, in terms of volume and non-fuel revenues.
  - **Job Growth:** From 1993 to 2007, TA increased employment at both the management and site levels from approximately 3,000 employees to approximately 15,000 employees.

These are a small sample of the businesses whose futures were enabled through the efforts of two PEs. In the 6 cases described above, more than 600 jobs were preserved in businesses that would not be in existence today absent the actions of Atlas Holdings and more than 12,000 new jobs were created as a result of the actions of Atlas and Olympus Partners. Atlas (and its principals) and Olympus have executed more than 150 transactions like these over the course of their existence. There are more than 1,500 PEs in the United States, most engaged in job preservation and creation activities comparable to Atlas and Olympus.

III: ATLAS HOLDINGS LLC (www.atlasholdingsllc.com)

Atlas Holdings owns a diverse group of paper, packaging, capital equipment, construction materials and other basic manufacturing companies. Atlas also manages a $365 million pool of institutional capital which is being invested in new companies, with a particular focus on businesses that have struggled through the recession and which can benefit from Atlas' unique blend of operating expertise and financial acumen.

Andrew Bursky, Chairman of Atlas, is an entrepreneur who, with his partners, has been responsible for the preservation or creation of thousands of manufacturing and industrial jobs in the United States. Mr. Bursky formed his first business at age 11 which grew to employ 40 individuals in his hometown of Indianapolis, IN. He received a BA in Economics and a BS and MS in Chemical Engineering from Washington University in St. Louis and an MBA from Harvard Business School. Mr. Bursky is married with two children. He serves, or has served, on the Board of Directors of numerous public and private businesses. He also serves as a Trustee of the Eisenhower Fellowships and of Washington University in St. Louis.

IV: THE DIRECT AND INDIRECT COSTS OF DODD-FRANK ON PEs

- **Regulatory requirements under Dodd-Frank will be costly to PEs, diverting PE activities from job-creating investments and reducing returns to institutional investors**
  - *PEs with more than $150 million of capital will be required to register as Registered Investment Advisers*
  - *The cost to prepare for RIA filing, inclusive of legal advice and review, preparation of internal documentation as specified by the SEC and auditor review is anticipated to be $250,000 to $500,000 for a PE*
  - *PEs will also bear custodial fees, paying large commercial banks to secure non-negotiable stock certificates of private companies in which PEs invest*

- *Total cost of compliance for all new filing PEs is estimated to be as much as $500 million; these costs reduce returns to PE investors such as endowments and pension funds*
- ***Most critically, PEs will be forced to divert professional staff from productive investing and business support activities to regulatory compliance***

- **Inclusion of PEs in Dodd-Frank will divert focus of SEC**
  - *It is estimated that 1,000+ PEs will be required to file as Registered Investment Advisers*
  - *Without a massive expansion of its budget, the ability of the SEC to focus on potential generators of systemic risk will be severely diluted*

V: WHY PEs PRESENT NO SYSTEMIC RISK

- Capital is provided to PEs by investors only when called to fund a discrete investment.

- PEs do not create counter-party risk. *PEs are not deeply interconnected* with banks or with other non-bank financial companies through derivatives positions, exposure relating to swaps or securities lending, reliance on short-term credit for their operations, or the provision of credit to financial system participants. Furthermore, PEs are not interconnected with each other because they neither pledge their assets as security for, nor do they guarantee each others' obligations. The failure of a PE could not create cascading negative effects on other parts of the financial system.

- PEs invest in long-term illiquid assets, typically the equity of operating companies. PEs do not normally invest in short-term instruments like options, swaps or public equities.

- PE investments are not cross-collateralized, which means that neither investors nor debt holders can force a PE to sell unrelated assets to repay a debt. In a sense, PE investments are structurally firewalled from one another so that any nonperforming investment does not negatively affect another investment. Losses are limited to the underlying value of the original investment.

- PEs are diversified by industry sector, geography, and time horizon, thereby safeguarding against over-exposure.

- PEs do not rely on short-term financing that could dry up in times of financial stress. In addition, the investors in PEs do not have redemption or withdrawal rights that would enable those investors to force a fire sale of assets were those investors to attempt to make a "run on the bank." PEs, therefore, *do not face liquidity concerns* that could result in forced massive asset sales to meet investor (or other) claims—and which in turn could drive down investment values, thereby adversely affecting other financial system participants.

- PE funds typically *are not leveraged*. Even the degree of leverage at the portfolio company level is significantly less than that of most large banks and broker-dealers.

- PEs are *relatively small in size* (whether measured by assets available for investment, risk capital, liabilities or transaction volume) compared to large banks, insurance companies, broker-dealers and advisors to registered investment companies.

United States House of Representatives
Committee on Financial Services

"TRUTH IN TESTIMONY" DISCLOSURE FORM

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee on Financial Services require the disclosure of the following information. A copy of this form should be attached to your written testimony.

1. Name:	2. Organization or organizations you are representing:
Andrew M. Bursky	Atlas Holdings LLC

3. Business Address and telephone number:

[redacted]

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?	5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?
☐ Yes ☑ No	☐ Yes ☑ No

6. If you answered .yes. to either item 4 or 5, please list the source and amount of each grant or contract, and indicate whether the recipient of such grant was you or the organization(s) you are representing. You may list additional grants or contracts on additional sheets.

7. Signature:

Please attach a copy of this form to your written testimony.