OSHKOSH CORP
Form DEFA14A
October 26, 2012

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ý

Filed by a Party other than the Registrant o

Check the appropriate box:

o Preliminary Proxy Statement

o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

o Definitive Proxy Statement

o Definitive Additional Materials

ý Soliciting Material under §240.14a-12

Oshkosh Corporation

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

ý No fee required.

o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

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o Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

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(3) Filing Party:

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

Solicitation/Recommendation Statement under Section 14(d)(4)
of the Securities Exchange Act of 1934

OSHKOSH CORPORATION

(Name of Subject Company)

OSHKOSH CORPORATION

(Name of Person Filing Statement)

Common Stock, $0.01 par value per share

(Title of Class of Securities)

688239201

(CUSIP Number of Class of Securities)

Bryan J. Blankfield
Executive Vice President, General Counsel and Secretary
Oshkosh Corporation
2307 Oregon Street
P.O. Box 2566
Oshkosh, Wisconsin 54903
(920) 235-9151

(Name, address and telephone number of person authorized to receive notices
and communications on behalf of the person filing statement)

With copies to:

Gary P. Cullen	**Richard J. Grossman**	**Patrick G. Quick**
Skadden, Arps, Slate,	**Skadden, Arps, Slate,**	**John K. Wilson**
Meagher & Flom LLP	**Meagher & Flom LLP**	**Foley & Lardner LLP**
155 North Wacker Drive	**4 Times Square**	**777 East Wisconsin Avenue**
Chicago, Illinois 60606	**New York, NY 10036**	**Milwaukee, Wisconsin 53202**
(312) 407-0700	**(212) 735-3000**	**(414) 271-2400**

o

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Item 1. ***Subject Company Information***

Name and Address

The name of the subject company to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits and annexes attached hereto, this "Statement") relates is Oshkosh Corporation, a Wisconsin corporation ("Oshkosh" or the "Company"). The Company's principal executive offices are located at 2307 Oregon Street, Oshkosh, Wisconsin 54902. The Company's telephone number at this address is (920) 235-9151.

Securities

The title of the class of equity securities to which this Statement relates is the Company's common stock, par value $0.01 per share (the "Common Stock" or the "Shares"). All references in this Statement to the "Shares" shall include the associated rights to purchase shares of Series A2 Junior Participating Preferred Stock, par value $0.01 per share (the "Rights"), to be issued pursuant to the Rights Agreement, dated as of October 25, 2012, by and between the Company and Computershare Trust Company, N.A., as rights agent (the "Rights Agreement"). As of September 30, 2012, there were 91,557,770 Shares outstanding, 4,678,834 Shares issuable upon the exercise of outstanding stock options and 343,000 Shares issuable upon the vesting of performance shares at target (potential Shares issued range from 0 to 200 percent of the target awards).

Item 2. ***Identity and Background of Filing Person***

Name and Address

The name, business address and business telephone number of the Company, which is the subject company and the person filing this Statement, are set forth in "Item 1. Subject Company Information" above. The Company's website address is www.oshkoshcorporation.com. The information on the Company's website should not be considered a part of this Statement or incorporated herein by reference.

Tender Offer

This Statement relates to the unsolicited tender offer by IEP Vehicles Sub LLC, a Delaware limited liability company (the "Offeror"), which, according to the Schedule TO (as defined below), is a wholly owned subsidiary of Icahn Enterprises Holdings L.P., a Delaware limited partnership ("Icahn Enterprises Holdings"), and by Icahn Enterprises Holdings as co-bidder, along with other entities affiliated with Carl C. Icahn who may be deemed to be co-bidders, pursuant to which the Offeror has offered to purchase any and all of the issued and outstanding Shares at a price of $32.50 per Share in cash, without interest and less any applicable withholding taxes. The value of the consideration offered, together with all of the terms and conditions applicable to the tender offer, is referred to in this Statement as the "Offer." The Offer is subject to the terms and conditions set forth in the Tender Offer Statement on Schedule TO (together with the exhibits thereto, as amended, the "Schedule TO") filed by the Offeror, Icahn Enterprises Holdings and the other co-bidders that are members of the Icahn Group (as defined below) with the Securities and Exchange Commission (the "SEC") on October 17, 2012.

The Schedule TO was filed jointly by the Offeror, Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II L.P., Icahn Partners Master Fund III L.P., High River Limited Partnership, Hopper Investments LLC, Barberry Corp., Icahn Onshore LP, Icahn Offshore LP, Icahn Capital L.P., IPH GP LLC, Icahn Enterprises Holdings, Icahn Enterprises G.P. Inc., Beckton Corp. and Mr. Icahn, a citizen of the United States of America (collectively, the "Icahn Group").

According to the Schedule TO, the purpose of the Offer is to acquire any and all Shares validly tendered and not properly withdrawn prior to the expiration date of the Offer, which is midnight, New York City time, on December 3, 2012, unless extended by the Offeror (the "Expiration Date"), and thereby provide immediate liquidity at a premium for those shareholders choosing to tender their Shares. The Offeror has stated that if on the Expiration Date, at least 25% of outstanding Shares are validly tendered in the Offer and not withdrawn, then the Offeror intends to extend the Expiration Date and so long as at least 25% of outstanding Shares remain so tendered in the Offer, the Offeror intends to continue to extend the Offer until the Company holds its 2013 annual meeting of shareholders (the "2013 Annual Meeting").

The Icahn Group has also stated that it intends to nominate, and solicit proxies for the election of, a slate of nominees (the "Icahn Slate") for election to the board of directors of the Company (the "Board") at the 2013 Annual Meeting. The Icahn Group has further stated that if the Icahn Slate is elected at the 2013 Annual Meeting or otherwise appointed as the entire Board, it expects the new Board (1) to cause the conditions to the Offer relating to Section 180.1141 of the Wisconsin Business Corporation Law (the "Wisconsin Business Combination Statute") and Section 180.1150 of the Wisconsin Business Corporation Law (the "Wisconsin Control Share Statute") to be satisfied so that payment can be made promptly to tendering shareholders in accordance with the terms of the Offer and (2) to spin off the Company's JLG business to the Company's shareholders.

According to the Schedule TO, if at any time the Shares validly tendered in the Offer and not properly withdrawn which, when added to any Shares already owned by the Offeror and its affiliates, represent at least a majority of outstanding Shares on a fully diluted basis, the Offeror intends to demand that the Board accelerate the date of the 2013 Annual Meeting so that the conditions to the Offer relating to the Wisconsin Business Combination Statute and the Wisconsin Control Share Statute can be satisfied and the Offer can proceed to close quickly in accordance with its terms.

The Schedule TO provides that the Offer is subject to numerous conditions, including, among others:

- the Icahn Slate having been elected to the Board in its entirety or otherwise having been appointed as the entire Board;

- the purchase of any Shares tendered in the Offer having been approved by the Board so that the provisions of the Wisconsin Business Combination Statute would not, at or following consummation of the Offer, prohibit, restrict or apply to any "business combination" (as defined in Section 180.1140 of the Wisconsin Business Corporation Law) involving the Company and the Offeror or any affiliate or associate of the Offeror;

- the Board having specified that the provisions of the Wisconsin Control Share Statute do not limit or affect the voting power of any of the Shares held by the Offeror or any of its affiliates or associates at or following the consummation of the Offer;

- the Company not having adopted a shareholder rights agreement (which the Board adopted on October 25, 2012);

- conditions relating to the absence of litigation, injunctions and other adverse actions;

- conditions relating to national securities exchanges and the national and global economy;

- conditions relating to the accuracy and completeness of information contained in the Company's filings with the SEC;

- conditions relating to the absence of changes to compensation paid to the Company's employees outside of the ordinary course of business and the adoption of severance payments payable in the event of a termination of employment or change of control of the Company;

conditions relating to the absence of material adverse effects on the Company or its subsidiaries or on the value of the Shares;

conditions relating to the issuance of securities by the Company or its subsidiaries;

conditions relating to certain activities of the Company or its subsidiaries that are outside of the ordinary course of business, including changes in the constituent documents of the Company and its subsidiaries, business combinations, acquisitions or dispositions of assets and material changes in capitalization;

conditions relating to the proposal, announcement or commencement of a tender offer or exchange offer for the Shares by a party other than the Offeror; and

conditions relating to antitrust considerations in the United States.

According to the Schedule TO, all of the conditions to the Offer are for the sole benefit of the Offeror and may be asserted by the Offeror regardless of the circumstances giving rise to any such condition. For a full description of the conditions to the Offer, please see Annex A to this Statement. The foregoing summary of the conditions to the Offer does not purport to be complete and is qualified in its entirety by reference to the contents of Annex A to this Statement.

According to the Schedule TO, the principal business address of the Offeror is 767 Fifth Avenue, 47th Floor, New York, New York 10153, where the business phone number is (212) 702-4300.

With respect to all information described in this Statement contained in the Schedule TO and any exhibits, amendments or supplements thereto, including information concerning the Icahn Group or their respective affiliates, officers or directors, or actions or events with respect to any of them, the Company takes no responsibility for the accuracy or completeness of such information or for any failure by the Icahn Group to disclose any events or circumstances that may have occurred and may affect the significance, completeness or accuracy of any such information.

Item 3. ***Past Contacts, Transactions, Negotiations and Agreements***

Except as described in this Statement or in the excerpts from the Company's Definitive Proxy Statement on Schedule 14A, dated and filed with the SEC on December 12, 2011 (the "2012 Proxy Statement"), relating to the Company's 2012 annual meeting of shareholders (the "2012 Annual Meeting"), which excerpts are filed as Exhibit (e)(1) to this Statement and incorporated herein by reference, as of the date of this Statement, there are no material agreements, arrangements or understandings, nor any actual or potential conflicts of interest, between the Company or any of its affiliates, on the one hand, and (i) the Company or any of its executive officers, directors or affiliates, or (ii) the Offeror or any of its executive officers, directors or affiliates, on the other hand. Exhibit (e)(1) is incorporated herein by reference and includes the following sections from the 2012 Proxy Statement: "Stock Ownership of Directors, Executive Officers and Other Large Shareholders," "Executive Compensation Compensation Discussion and Analysis," "Executive Compensation Summary Compensation Table," "Executive Compensation Grants of Plan Based Awards," "Executive Compensation Outstanding Equity Awards at September 30, 2011," "Executive Compensation Pension Benefits," "Executive Compensation Non-Qualified Deferred Compensation," "Executive Compensation Potential Payments Upon Termination or Change in Control," "Executive Compensation Executive Employment Agreements" and "Director Compensation."

Any information contained in the sections from the 2012 Proxy Statement incorporated by reference herein shall be deemed modified or superseded for purposes of this Statement to the extent that any information contained herein modifies or supersedes such information.

Relationship with the Offeror

According to the Schedule TO, affiliates of the Offeror beneficially owned 8,665,260 Shares as of October 17, 2012. The Shares owned by the Offeror represent approximately 9.46% of the issued and outstanding Shares as of September 30, 2012.

Shares Held by Non-Employee Directors and Executive Officers of the Company

As a group, the non-employee directors and executive officers of the Company hold an aggregate of approximately 627,765 Shares as of October 15, 2012. If the Company's non-employee directors and executive officers were to tender any Shares they own for purchase pursuant to the Offer, then they would receive the same cash consideration per Share on the same terms and conditions as the other shareholders of the Company who tender their Shares. If the non-employee directors and executive officers were to tender all of the 627,765 Shares owned by them for purchase pursuant to the Offer and those Shares were purchased by the Offeror for $32.50 per Share, then the non-employee directors and executive officers would receive an aggregate amount of approximately $20.4 million in cash. To the knowledge of the Company, none of the Company's non-employee directors or executive officers currently intends to tender any of their Shares pursuant to the Offer.

Equity-Based Awards Held by Non-Employee Directors and Executive Officers of the Company

Set forth below is a discussion of the treatment in connection with the Offer of various equity incentive compensation awards held by the Company's non-employee directors and executive officers. For purposes of valuing the amount of benefits that could be realized by the non-employee directors and executive officers in respect of such awards in connection with the Offer, the discussion below assumes that the non-employee directors and executive officers will receive the same $32.50 per Share consideration being offered to all other shareholders of the Company in connection with the Offer. The Offer, if consummated according to its terms, would constitute a change in control of the Company as defined in the plans under which the awards were granted.

Treatment of Stock Options

The Company has granted stock option awards to its executive officers and non-employee directors under the Oshkosh Corporation 1990 Incentive Stock Plan, the Oshkosh Corporation 2004 Incentive Stock and Awards Plan, and the Oshkosh Corporation 2009 Incentive Stock and Awards Plan, as amended and restated. Under each plan, upon a change in control of the Company (as defined in the plans), all stock option awards will fully vest and immediately become exercisable. Under the Oshkosh Corporation 2004 Incentive Stock and Awards Plan and the Oshkosh Corporation 2009 Incentive Stock and Awards Plan, the individual holding the option award will have the right to receive, in exchange for surrender of each option, an amount of cash equal to the excess, if any, of the fair market value of a Share as determined on the date of exercise over the exercise price of the option.

The following table summarizes, with respect to (i) each named executive officer of the Company, (ii) the other executive officers of the Company as a group and (iii) each non-employee director of the Company, the cash consideration that would be payable upon surrender of stock options held by the executive officers and non-employee directors as of October 15, 2012, valued at the amount by which the Offer price of $32.50 exceeds the exercise price of the options, which consideration would be subject to applicable withholding taxes.

Name of Executive Officer or Director	Shares Subject to Vested Stock Options (#)	Cash Consideration for Vested Stock Options ($)	Shares Subject to Unvested Stock Options (#)	Cash Consideration for Unvested Stock Options ($)
Charles L. Szews(1)	361,134	2,515,894		
David M. Sagehorn	205,466	2,158,391	104,334	772,079
Wilson R. Jones	114,832	1,083,422	83,668	526,058
Bryan J. Blankfield	250,166	2,134,189	48,834	366,144
Joseph H. Kimmitt	167,966	1,131,027	42,734	303,407
Other Executive Officers (11 individuals)	507,159	3,777,462	332,341	2,390,558
Richard M. Donnelly	26,616	98,984	2,434	
Michael W. Grebe	38,616	301,544	2,434	
Peter B. Hamilton	500	1,225	1,000	2,450
Kathleen J. Hempel	38,616	301,544	2,434	
Leslie F. Kenne	1,024	651	2,051	1,309
Harvey N. Medvin	15,816	63,830	2,434	
J. Peter Mosling, Jr.	26,616	98,984	2,434	
Craig P. Omtvedt	6,916	63,830	2,434	
Duncan J. Palmer	500	1,225	1,000	2,450
John S. Shiely				
Richard G. Sim	38,616	301,544	2,434	
William Scott Wallace	833		1,667	

(1) Mr. Szews does not have any unvested stock options for the reasons described below under "Equity-Based Awards for Mr. Szews."

Treatment of Restricted Stock and Performance Shares

The Company has granted restricted stock awards to its executive officers and non-employee directors under the Oshkosh Corporation 2009 Incentive Stock and Awards Plan. Under this plan and the related award agreements, effective upon a change in control of the Company, any shares of restricted stock that have not vested will vest and the award holder will have the right to receive, in exchange for surrender of such shares of restricted stock, an amount of cash equal to the greater of (i) the fair market value of a Share as determined on the date of the change in control, (ii) the highest per Share price paid in the change in control transaction or (iii) the fair market value of a Share calculated on the date of surrender.

The Company has granted performance share awards to its executive officers under the Oshkosh Corporation 2004 Incentive Stock and Awards Plan and the Oshkosh Corporation 2009 Incentive Stock and Awards Plan. Under these plans and the related award terms, effective upon a change in control of the Company that occurs during the performance period in respect of an award, the executive will be fully vested in the number of Shares calculated as if the performance period ended on the date of the change in control.

The following table summarizes, with respect to (i) each named executive officer of the Company and (ii) the other executive officers of the Company as a group, the cash consideration that would be payable, based on the Offer price of $32.50 per Share, in respect of the restricted stock and performance shares held by such executive officers that were unvested as of October 15, 2012, which amounts would be subject to applicable withholding taxes. None of the non-employee directors of the Company had unvested restricted stock as of October 15, 2012.

Name of Executive Officer	Shares of Unvested Restricted Stock (#)	Cash Consideration for Unvested Restricted Stock ($)	Unvested Performance Shares (#)	Cash Consideration for Unvested Performance Shares ($)
Charles L. Szews(1)				
David M. Sagehorn	45,001	1,462,533	105,000	3,412,500
Wilson R. Jones	59,501	1,933,783	82,000	2,665,000
Bryan J. Blankfield	17,667	574,178	48,000	1,560,000
Joseph H. Kimmitt	13,000	422,500	37,000	1,202,500
Other Executive Officers (11 individuals)	188,141	6,114,586	298,000	9,685,000

(1) Mr. Szews does not have any unvested restricted stock or performance shares for the reasons described below under " Equity-Based Awards for Mr. Szews."

Equity-Based Awards for Mr. Szews

In fiscal 2012, Mr. Szews declined equity compensation for the third consecutive year (September 2010, September 2011, and September 2012) so that the Company could provide retention awards to key executives and senior managers in September 2010 and to limit total awards to named executive officers and other officers in all three years to permit higher returns for the Company's shareholders at the depths of the recession in the Company's markets. Mr. Szews' decision to forgo any equity compensation awards allowed the Company to avoid approximately $15 million of pre-tax costs related to such awards, assuming that the Company would have made such awards at the 50th percentile of awards to chief executive officers at similarly-sized companies. The Human Resources Committee of the Board plans to periodically revisit this subject, which may result in the Human Resources Committee awarding equity-based incentive awards to Mr. Szews during this fiscal year. It is important to note that Mr. Szews beneficially owned 511,692 Shares as of October 15, 2012, including 15,000 Shares that Mr. Szews purchased on the open market during fiscal 2012, which provides a substantial alignment with shareholder interests.

Other Potential Severance and Change in Control Benefits of Executive Officers

Key Executive Employment and Severance Agreements

The Company currently has in effect Key Executive Employment and Severance Agreements ("KEESAs") with its executive officers (other than Colleen R. Moynihan, who has an agreement with the Company described below under " Separate Agreement with Ms. Moynihan"). Under the KEESAs, after a change in control of the Company (as defined in the KEESAs), if the Company terminates the executive's employment other than by reason of death or disability or for cause (as defined below), then the executive is entitled to a cash termination payment and other benefits. The executive is also entitled to a cash termination payment and other benefits if, after the change in control of the Company, the executive terminates his or her employment for good reason (as defined below). The Offer, if consummated according to its terms, would constitute a change in control of the Company as defined in the KEESAs. The termination payment under the KEESAs will be equal to the sum of the executive's annual salary in effect at the change in control (or any subsequent higher salary) plus the highest annual bonus award paid during the three years before the change in control, multiplied by the number of years remaining in the employment period specified in the KEESA (up to three but not less than one for certain executive officers, up to two but not less than one for other executive officers, and one for the remaining executive officers, in each case as designated by footnote in the table below). The amounts in the table below assume the maximum three years, two years or one year remaining in the employment period. If an executive with a maximum three-year employment period is entitled to a cash termination payment, then the executive also is entitled to (i) additional pension benefits under the Company's qualified and nonqualified pension plans (including the Company's Executive Retirement Plan) equal to the difference between the amount the executive would actually be entitled to receive on retirement and the amount the executive would have been entitled to receive had the executive continued to work until the earlier of age 65 or the number of years remaining in the employment period (up to three) and (ii) payment until the executive's unreduced social security age of the difference between the unreduced social security benefit payable to the executive if the executive's employment continued until the executive's unreduced social security age and the actual social security benefit payable to the executive at the end of the employment period. In addition, the KEESAs provide for outplacement services for two years and continuation of life, hospitalization, medical and dental insurance and other welfare benefits for up to three years, two years or one year, in each case as designated by footnote in the table below. The KEESAs also require payment of a pro rata portion to the termination date of the aggregate value of all contingent bonuses or incentive compensation awards to the executive for all uncompleted periods, calculated as if the target or expected performance goals with respect to such award had been attained. However, assuming the Offer was consummated on October 15, 2012, since no bonus targets had been approved for the Company's fiscal year 2013 prior to October 15, 2012, no amounts would be payable under this provision.

The KEESAs for executives with the maximum three-year employment periods provide that, if the payments under the KEESA would be considered "excess parachute payments" for purposes of the Internal Revenue Code, then the Company will pay the executive the amount necessary to offset the 20% excise tax that the Internal Revenue Code imposes and any additional taxes on this payment. To the extent that payments to other executives under their KEESAs would be considered "excess parachute payments," the payments will be reduced to the highest amount at which they are no longer considered excess parachute payments, or the executive will receive the full payment and be personally liable for the excise tax, whichever produces the larger after-tax benefit to the executive. The KEESAs for all executives are intended to operate so that payments under the KEESA are not income includible under Section 409A for purposes of the Internal Revenue Code. However, if for some reason payments under the KEESA are nonetheless "income includible under Section 409A," then the Company can be obligated to pay the executive the 20% additional income tax that Internal Revenue Code Section 409A imposes and interest and any additional taxes on this payment.

Under the KEESAs, the term "cause" generally means:

- committing any act of fraud, embezzlement or theft in connection with the executive's duties as an executive officer;
- continuing, willful and unreasonable refusal by an executive to perform duties or responsibilities;
- willfully engaging in illegal conduct or gross misconduct that causes the Company demonstrable and serious financial injury;
- willfully disclosing the Company's trade secrets or confidential information; or
- engaging in competition with the Company that the Board of Directors determines to be materially harmful to the Company.

Under the KEESAs, the term "good reason" generally means:

- a breach of the agreement by the Company;
- any reduction in an executive's base salary, percentage of base salary available as incentive compensation or bonus opportunity or benefits;

a material adverse change in the executive's working conditions or status with the Company from such working conditions or status in effect during the 180-day period prior to the change in control, including but not limited to a significant change in the nature or scope of his or her authority, powers, functions, duties or responsibilities or a significant reduction in the level of support services, staff, secretarial and other assistance, office space and accoutrements, but in each case excluding for this purpose an isolated, insubstantial and inadvertent event not occurring in bad faith that the Company remedies promptly after receipt of notice thereof;

relocation of the executive's principal place of employment to a location more than 50 miles from the executive's principal place of employment during the 180-day period prior to the change in control;

the Company requires the executive to travel on business to a materially greater extent than was required during the 180-day period prior to the change in control;

the Company's failure to cause a successor to assume an executive's agreement; or

the Company's termination of the executive's employment after a change in control without delivering proper notice of termination.

Under the KEESAs, prior to or simultaneously with a change in control over which the Company has control or within three business days of any other change in control, the Company is required to establish an irrevocable grantor trust (also known as a "rabbi trust") for the benefit of executives of the Company who are parties to KEESAs for the sole purpose of (i) holding assets equal in value to the present value at any time after a change in control of the maximum amount of severance benefits to which the executive may be entitled under the KEESA and (ii) distributing such assets as their payment becomes due. At the same time, the Company is required to fund such trust with cash or marketable securities having the value described in clause (i).

In consideration of the KEESA benefits, each executive officer party to a KEESA agrees not to compete with the Company for a period of 18 months after termination of employment and to keep in confidence any proprietary information or confidential information for a period of 18 to 24 months after termination of employment.

Separate Agreement with Ms. Moynihan

An offer letter that the Company and Ms. Moynihan have executed provides that, upon a termination of Ms. Moynihan's employment with the Company without cause or for good reason (as defined in the offer letter), Ms. Moynihan will receive severance equal to twelve month's base salary plus target bonus.

Oshkosh Corporation Executive Retirement Plan

Upon a change in control of the Company, executives who participate in the Company's Executive Retirement Plan receive accelerated vesting of their benefits under the Plan. Furthermore, if the Company terminates such an executive's employment for any reason following the change in control, the executive will be entitled to receive a single lump sum cash payment equal to the present value (as determined under the Executive Retirement Plan) of the executive's earned and vested benefits under the Executive Retirement Plan through December 31, 2004, within 60 days after the termination of the executive's employment. Such an executive will also be entitled to receive a single lump sum cash payment equal to the present value (as determined under the Executive Retirement Plan) of the executive's earned and vested benefits under the Executive Retirement Plan for the period commencing January 1, 2005, within 60 days of the change in control. The Offer, if consummated according to its terms, would constitute a change in control of the Company as defined in the Executive Retirement Plan.

Treatment of Annual Cash Incentive Awards

Under the Oshkosh Corporation 2009 Incentive Stock and Awards Plan, upon a change in control of the Company, for any annual cash incentive award that an executive officer has not earned prior to the change in control, the executive officer is entitled to receive a proportionate amount of the executive's annual cash incentive target award opportunity, based on the number of whole months that have elapsed in the fiscal year prior to the change in control. The Offer, if consummated according to its terms, would constitute a change in control of the Company as defined in the plan, but assuming the Offer was consummated on October 15, 2012, since no whole months would have elapsed in fiscal year 2013 prior to October 15, 2012, no amounts would be payable under this provision of the annual cash incentive award.

Treatment of Deferred Compensation

The Company's executive officers may elect to participate in the Company's Deferred Compensation Plan for Directors and Executive Officers, which is a non-qualified, unfunded retirement savings plan. Under the Deferred Compensation Plan, each executive officer may defer earned base salary and annual cash incentive awards, as well as restricted stock grants and performance shares.

An executive officer participating in the Deferred Compensation Plan may elect to have his or her deferrals of earned base salary and annual cash incentive awards credited to a fixed income investment account or a stock account. Deferrals credited to a fixed income investment account earn interest at the prime rate as published in The Wall Street Journal on the last business day of the immediately preceding plan year quarter, plus 1%. Deferrals credited to a stock account are treated as though invested in Shares. Any dividends earned on Shares are reinvested in each executive officer's stock account.

Payments from the Deferred Compensation Plan may be made in a lump sum or in annual installments for up to ten years at the election of the executive officer. Payments generally initiate upon the executive officer separating from service with the Company. However, in the event of a change in control of the Company, the Company will pay out the accounts of all executives in a single lump sum cash payment. The Offer, if consummated according to its terms, would constitute a change in control of the Company as defined in the Deferred Compensation Plan.

Mr. Szews' Employment Agreement

The Company currently has an employment agreement with Mr. Szews. Under the employment agreement, the Company has the right to terminate Mr. Szews' employment at any time. If the Company terminates Mr. Szews' employment without cause or Mr. Szews terminates his employment for good reason, then, provided that Mr. Szews executes a release of claims against the Company, Mr. Szews will generally be entitled to receive as severance pay, in lieu of base salary and bonus for the remaining term of the employment agreement, an amount equal to the sum of (i) the product of two times the sum of (A) Mr. Szews' then current base salary, plus (B) a representative annual bonus amount for Mr. Szews, plus (ii) if Mr. Szews will not receive a bonus with respect to the fiscal year in which such termination occurs under the bonus plan then in effect solely as a result of the termination of Mr. Szews' employment, a pro rata bonus for the fiscal year in which the termination occurs in an amount based upon the bonus (if any) that Mr. Szews would have received had he remained employed through the entire fiscal year. If Mr. Szews is entitled to severance pay, then, for no additional consideration, Mr. Szews is obligated to make himself available to consult with and otherwise assist or provide general advice to the Company's then Chief Executive Officer and to the Board of Directors as and at such times as they may reasonably request during the two-year period after the date of termination of Mr. Szews' employment. If there is a change in control of the Company for purposes of Mr. Szews' KEESA at a time that the KEESA is in effect, then the rights and obligations of the

Company and Mr. Szews in respect of his employment are to be determined in accordance with the KEESA rather than under the employment agreement.

In consideration of the benefits provided to Mr. Szews in his employment agreement, Mr. Szews entered into a confidentiality and loyalty agreement with the Company whereby he agrees not to compete with the Company for a period of 18 months after the termination of his employment and to keep in confidence any proprietary information or confidential information for a period of two years after the termination of his employment. In this agreement, Mr. Szews also agrees not to solicit the Company's employees and to notify the Company before accepting employment with a competitor of the Company for a period of 18 months after the termination of his employment.

Assuming the employment of the Company's executive officers had been terminated following a change in control of the Company by the Company without cause or by the executive officer for good reason on October 15, 2012, (i) each named executive officer of the Company and (ii) the other executive officers of the Company as a group would have been entitled to the following payments and benefits (determined without regard to (i) any equity incentive awards, which are described above, (ii) any tax reimbursements, which are only applicable to the named executive officers and are set forth in "Item 8. Additional Information Golden Parachute Compensation" and "Item 8. Additional Information Narrative to Golden Parachute Compensation Table" of this Statement and (iii) any reduction as a result of payments being considered "excess parachute payments" as described under " Key Executive Employment and Severance Agreements" above).

Name	Cash Termination Payment ($)	Continued Insurance Coverage ($)	Outplacement Services ($)	Legal and Accounting Advisor Services ($)	Unvested Retirement Benefits ($)	Additional Retirement Benefits ($)	Total ($)
Charles L. Szews(1)	7,052,409	66,070	150,000	10,000		3,321,432	10,599,911
David M. Sagehorn(1)	3,402,915	64,040	86,445	10,000	268,654	1,356,193	5,188,247
Wilson R. Jones(2)	1,917,554	41,415	86,250	5,000	266,527		2,316,746
Bryan J. Blankfield(1)	2,878,623	70,259	67,188	10,000		1,368,340	4,394,410
Joseph H. Kimmitt(1)	2,639,187	5,593	61,600	10,000		638,887	3,355,267
Other Executive Officers (11 individuals)(2)(3)	11,001,682	337,692	535,433	50,000	922,015		12,846,822

(1) Indicates a maximum three-year employment period under the executive's KEESA.

(2) Indicates a maximum two-year employment period under the executive's KEESA.

(3) Indicates a maximum one-year employment period under the executive's KEESA.

Director Compensation

Retainer and Meeting Fees

Each non-employee director, other than Mr. Donnelly, is entitled to receive an annual retainer of $85,000. Mr. Donnelly is entitled to receive an annual retainer of $150,000 in recognition of his position as Chairman of the Board. The Chairpersons of the Audit Committee and the Human Resources Committee receive an additional annual retainer of $15,000, and the Chairperson of the Governance Committee receives an additional annual retainer of $10,000. Committee members receive an additional fee of $13,500 per calendar year for each Committee on which they serve. Additionally, the Company reimburses directors for reasonable travel and related expenses that they incur in attending meetings of the Board of Directors and Board committees as well as continuing education programs.

Restricted Stock Awards

The Company generally grants shares of restricted stock to the non-employee directors at the meeting of the Board of Directors held on the date of the Company's annual meeting of shareholders, or at the time a director joins the Board of Directors. Upon election at the 2012 Annual Meeting, the Company granted to each of its then non-employee directors 5,000 shares of restricted stock under the Oshkosh Corporation 2009 Incentive Stock and Awards Plan, which were subject to certain limited restrictions on transfer that have since expired.

Deferred Compensation Plan

The Company's non-employee directors may elect to participate in the Company's Deferred Compensation Plan for Directors and Executive Officers, under which each director may defer up to 100% of all retainer fees, attendance fees and fees for serving as a committee chair. The Company will reduce the fees paid to each director by the amount of all deferrals made on his or her behalf.

A director participating in the Deferred Compensation Plan may elect to have his or her deferrals credited to a fixed income investment account or a stock account. Deferrals credited to a fixed income investment account earn interest at the prime rate as published in The Wall Street Journal on the last business day of the immediately preceding plan year quarter, plus 1%. Deferrals credited to a stock account are treated as though invested in Shares. Any dividends earned on Shares are reinvested in each director's stock account.

Payments from the Deferred Compensation Plan may be made in a lump sum or in annual installments for up to ten years at the election of the director. Payments generally initiate upon the director ceasing to be a member of the Board of Directors. However, in the event of a change in control of the Company, the Company will pay out the accounts of all directors in a single lump sum cash payment. The Offer, if consummated according to its terms, would constitute a change in control of the Company as defined in the Deferred Compensation Plan.

Indemnification of Directors and Officers; Limitation on Liability of Directors

The Wisconsin Business Corporation Law (the "WBCL") provides that the Company must indemnify a director or officer for certain expenses and liabilities (a) to the extent that such officers or directors have been successful on the merits or otherwise in the defense of a proceeding and (b) in proceedings in which the director or officer is not successful in defense thereof, unless (in the latter case only) it is determined that the director or officer breached or failed to perform duties to the Company and such breach or failure constituted: (i) a willful failure to deal fairly with the Company or its shareholders in connection with a matter in which the director or officer has a material conflict of interest; (ii) a violation of the criminal law unless the director or officer had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful; (iii) a transaction from which the director or officer derived an improper personal profit; or (iv) willful misconduct. The WBCL also provides that the Company may pay or reimburse the reasonable expenses as incurred of a director or officer who is a party to a proceeding.

Article VII of the Company's By-Laws requires that the Company must, to the fullest extent permitted or required by the WBCL, including any amendments to the WBCL (but only to the extent an amendment permits or requires the Company to provide broader indemnification rights than prior to the amendment), indemnify the Company's directors and officers against any and all liabilities, and pay or reimburse any and all properly documented reasonable expenses, incurred in any proceedings to which any director or officer is a party because he or she is or was a director or officer. The Company may, but is not required to, supplement the rights to indemnification against liabilities and allowance of expenses under the Company's By-Laws by the purchase of insurance on behalf of any one or more of the directors, officers or employees, whether or not it would be required or permitted to indemnify or allow expenses to a director, officer or employee.

The indemnification provided by the WBCL and the Company's By-Laws is not exclusive of any other rights to which a director or officer may be entitled. The general effect of the indemnification provisions may be to reduce the circumstances in which an officer or director may be required to bear the economic burden of the liabilities and expense.

The Company maintains a liability insurance policy for its directors and officers as permitted by the WBCL and the Company's By-Laws.

Under the WBCL, directors of the Company are not personally liable to the Company, its shareholders or any person asserting rights on behalf of the Company or its shareholders for breaches or failures to perform any duty resulting solely from their status as such directors unless the person asserting liability proves that the breach or failure to perform constitutes any of the following: (i) a willful failure to deal fairly with the Company or its shareholders in connection with a matter in which the director has a material conflict of interest; (ii) a violation of the criminal law, unless the director had reasonable cause to believe that his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful; (iii) a transaction from which the director derived an improper personal profit; or (iv) willful misconduct.

Item 4. ***The Solicitation or Recommendation***

Solicitation/Recommendation

The Board has reviewed the Offer with the assistance of the Company's management and legal and financial advisors and, after careful consideration, the Board has unanimously determined that the Offer is inadequate, undervalues the Company and is not in the best interests of the Company and its shareholders. **Accordingly, and for the reasons described in more detail below, the Board of Directors of the Company unanimously recommends that you REJECT the Offer and NOT TENDER your Shares pursuant to the Offer.**

If you have tendered any of your Shares, you can withdraw them. For assistance in withdrawing your Shares, you can contact your broker or the Company's information agent, Innisfree M&A Incorporated ("Innisfree"), at the contact information below:

Innisfree M&A Incorporated
501 Madison Avenue, 20th Floor
New York, NY 10022
Shareholders May Call Toll-Free: (877) 750-9499
Banks & Brokers May Call Collect: (212) 750-5833

A copy of a letter to shareholders communicating the Board's recommendation and a form of press release announcing such recommendation are filed as Exhibits (a)(4) and (a)(5) hereto, respectively, and are incorporated herein by reference.

Background of the Offer; Reasons for Recommendation

Background

On June 30, 2011, Mr. Icahn and certain of his affiliates filed a Schedule 13D with the SEC reporting a 9.51% ownership stake in the Company and indicating that Mr. Icahn intended to have conversations with the Company's management to discuss enhancing shareholder value. Mr. Icahn's filing was preceded by a call to Mr. Szews to inform him of the filing. Two weeks later, a representative of Mr. Icahn notified the Company pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), of (i) Mr. Icahn's "present good faith intention to acquire voting securities of [the Company] in an amount exceeding $131.9 million but less than $659.5 million of the outstanding voting securities of [the Company], depending upon various factors including market conditions," and (ii) Mr. Icahn's filing of a notification with the Federal Trade Commission (the "FTC") and the Antitrust Division of the Department of Justice (the "DOJ") with respect to such acquisition.

During the three-month period following the initial Schedule 13D filing, Mr. Szews and Mr. Sagehorn, with the concurrence of the Board, had several conversations and in-person meetings with Mr. Icahn and his representatives. The