UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
VISTEON CORPORATION, et al.,	:	Case No. 09-11786 (CSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket Nos. 1477 & 3012**

OBJECTION BY AURELIUS CAPITAL MASTER, LTD., ACP MASTER, LTD., AND AURELIUS CONVERGENCE MASTER, LTD. TO THE DEBTORS' SECOND AMENDED DISCLOSURE STATEMENT

Aurelius Capital Master, Ltd. ("Aurelius Capital Master"), a holder of 6,350,000 shares (or 4.87%) of the common stock of Visteon Corporation ("Visteon," and together with its debtor affiliates, the "Debtors"), ACP Master, Ltd. ("ACP Master"), a holder of 5,218,092 shares (or 4.00%) of Visteon common stock, and Aurelius Convergence Master, Ltd. ("Aurelius Convergence Master"), a holder of 1,131,906 shares (or 0.87%) of Visteon common stock, by and through their undersigned counsel, hereby submit this objection (the "Objection") to the Debtors' Second Amended Disclosure Statement (the "Disclosure Statement") for the Second Amended Joint Plan of Reorganization of Visteon Corporation and its Debtor Affiliates (the "Second Amended Plan"). In support of the Objection, Aurelius Capital Master, ACP Master, and Aurelius Convergence Master respectfully state as follows:

BACKGROUND

1. On May 28, 2009, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors' cases are being jointly administered.

2. On December 17, 2009, the Debtors filed a proposed chapter 11 plan (the

"Initial Plan") and an accompanying disclosure statement. The Initial Plan provided that the senior secured term loan would be converted into 96% of the equity in the reorganized Debtors, with the remaining 4% of the equity in the reorganized Debtors going to the Pension Benefit Guaranty Corporation. The Initial Plan also created a Management Equity Incentive Program (the "MEIP"), under which management would receive up to 10% of the reorganized Debtors' equity (dilutive to the shares distributed to creditors), worth potentially hundreds of millions of dollars, in addition to the compensation they would receive under the company's Annual Incentive Plan and Key Employee Incentive Plan. The Initial Plan provided no recovery to the unsecured bonds and the equity.

3. On March 15, 2010, the Debtors filed their first amended Plan (the "First Amended Plan") and an accompanying disclosure statement. Pursuant to the First Amended Plan, the Debtors proposed to convert the senior secured term loan into 85% of the equity in the reorganized Debtors, with the remaining 15% of the equity distributed to the Debtors' unsecured creditors. The First Amended Plan continued to provide management with a MEIP under which they would receive up to 10% of the reorganized Debtors' equity (exclusive of shares distributed to creditors) in addition to compensation under the company's Annual Incentive Plan and Key Employee Incentive Plan. Equity holders were to receive no distribution under the First Amended Plan.

4. On May 7, 2010, the Debtors filed their Second Amended Plan and accompanying Disclosure Statement. According to the Debtors, the Second Amended Plan, which they refer to as the "toggle plan," is the result of negotiations with certain of their unsecured bondholders and the official creditors' committee. The Second Amended Plan consists of two mutually exclusive sub-plans: (i) a rights offering sub-plan, pursuant to which the

senior secured term loan will be paid off in cash, certain unsecured bondholders will have the opportunity to purchase 95% of the equity in reorganized Visteon for $1.25 billion in cash raised through a rights offering, and the remaining 5% of the equity in reorganized Visteon will be distributed to the Debtors' unsecured creditors; and (ii) a claims conversion sub-plan similar to the First Amended Plan. Equity holders receive no distribution under the Second Amended Plan.

5. The Second Amended Plan continues to provide management with a MEIP under which they would receive up to 10% of the reorganized Debtors' equity and now clarifies that under the MEIP management will receive 3% of the reorganized Debtors' equity on emergence under the rights offering sub-plan and 2.5% of the reorganized Debtors' equity on emergence under the claims conversion sub-plan (dilutive to the shares distributed to creditors) with the remaining 7% - 7.5% of the equity on reserve for distributions post emergence.[1] The equity for management under the MEIP is in addition to the compensation they will receive under the company's Annual Incentive Plan and Key Employee Incentive Plan.

OBJECTION

I. The Disclosure Statement Must Not be Approved Because the Second Amended Plan is Patently Unconfirmable

6. It is well settled that a disclosure statement should not be approved where the proposed plan is unconfirmable on its face. See, e.g., In re Curtis Ctr. Ltd. P'ship, 195 B.R. 631, 638 (Bankr. E.D. Pa. 1996); In re Cardinal Congregate I, 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990); In re Bjolmes Realty Trust, 134 B.R. 1000, 1002 (Bankr. D. Mass. 1991). In such circumstances, the Court should deny approval of the disclosure statement to avoid the waste of

[1] Using management's artificially low equity valuation range in the Disclosure Statement of $1.405 billion to $1.920 billion, the stock that management *will* receive under the MEIP on emergence is worth between $42.15 million and $48.00 million, with between $98.35 million and $144.00 million in reserve for distribution post emergence. The value of the stock distributed on emergence and on reserve is in actuality worth substantially more than this as management's plan valuation is unduly low.

time and expense associated with the distribution, review of, and voting on the plan. See In re Pecht, 57 B.R. 137, 139 (Bankr. E.D. Va. 1986); In re E. Me. Elec. Coop., Inc., 125 B.R. 329, 333 (Bankr. D. Me. 1991); In re Phoenix Petroleum Co., 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001).

7. Here, the Second Amended Plan provides zero recovery for equity holders, who are therefore deemed to reject the Second Amended Plan. When an impaired class rejects a plan, the plan may only be confirmed if, among other things, the plan is "fair and equitable" and does not discriminate unfairly with respect to the rejecting class. See 11 U.S.C. § 1129(b)(1). Section 1129(b)(2) of the Bankruptcy Code further provides that to be "fair and equitable" to a dissenting class of equity holders, a plan must give each equity holder property with a value at least equal to the "value of [its equity] interest." 11 U.S.C. § 1129(b)(2)(C)(i). In addition, a senior class cannot receive more than full compensation for its claims over an objecting junior class. In re Exide Techs., 303 B.R. 48, 61 (Bankr. D. Del. 2003).

8. The Second Amended Plan patently fails to meet this test: It grossly overcompensates the Debtors' creditors – giving them returns far greater than the amount of their claims – to the detriment of the pre-petition equity holders. The main difference between the claims conversion sub-plan of the Second Amended Plan and the rights offering sub-plan is that, under the claims conversion sub-plan the secured creditors receive stock with a value far greater than the amount of their claims, while under the rights offering sub-plan the bondholders who are eligible to participate in the rights offering will be able to purchase stock at a value substantially under market, giving them a return far greater than the amount of their claims. To this end, the Second Amended Plan is premised on a valuation that is substantially lower than the total

amount of the secured and unsecured claims against the Debtors. In fact, Visteon's enterprise value substantially exceeds the amount of its debt, leaving significant value for shareholders.

9. The obvious flaws in the Debtors' valuation have not escaped notice: In spite of the risks and uncertainty inherent in the bankruptcy process, Visteon's bank debt is currently trading above par plus accrued. Moreover, Visteon's bonds are trading significantly above par plus accrued, even though the Second Amended Plan appears to give a recovery to the bond claims of only 8.1 - 8.2% under the rights offering sub-plan,[2] and 21-25% under the claims conversion sub-plan.[3] This indicates the market's view that the stock to be distributed to Visteon's creditors, as well as to management, pursuant to the Second Amended Plan is worth far more than its purported plan value. See Statutory Comm. of Unsecured Creditors v. Motorola, Inc. (In re Iridium Operating LLC), 373 B.R. 283, 293 (Bankr. S.D.N.Y. 2007) (public trading markets constitute an impartial gauge of investor confidence and an unbiased measure of fair market value).

10. The root of the problem is twofold: faulty valuation techniques and unduly pessimistic financial projections that the Debtors' management made in December 2009, *five months ago* – at a time when the U.S. economy was in the midst of the worst downturn since the Great Depression, and company valuations in the auto and other sectors were correspondingly depressed. Since then, Visteon's outlook has improved, and the valuations of comparable companies have rebounded. The Form 10-K for the year ended December 31, 2009 (the "10-K") that Visteon filed on February 26, 2010 disclosed revenue, gross margin, EBITDA,

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[2] Although it is unclear, the projected recovery of between 8.1% - 8.2% under the rights offering sub-plan does not appear to take into account the rights to participate in the rights offering.

[3] The Disclosure Statement provides that under the rights offering sub-plan eligible holders of the 7% Senior Notes Claims and the 8.25% Senior Notes Claims will receive their pro rata share of 5% of the stock in the reorganized Debtors and the right to participate in the rights offering – leading to a recovery that appears to be 8.1% - 8.2%, whereas non-eligible holders will receive their pro rata share of 5% of the stock in the reorganized Debtors and the "Cash Amount" – leading to a recovery of up to 50%.

net income, and a cash balance for 2009 materially higher than had been forecast in the disclosure statement for the Initial Plan, which was filed a mere two weeks before year-end. Additionally, on April 30, 2010, Visteon reported Adjusted EBITDA for the quarter ended March 31, 2010 that was $30 million (or 23%) above Visteon's forecast.[4] Since the Initial Plan was proposed, the financial markets (including the high yield and lending markets) have risen dramatically, and the Debtors' operating results have outpaced management's expectations substantially. Notwithstanding these material developments, the Debtors continue to seek confirmation of a plan based on an out-of-date valuation estimate.

11. These obvious flaws in the valuation on which the Second Amended Plan is predicated render the Second Amended Plan patently unconfirmable. The Second Amended Plan overpays creditors, giving them under-valued stock in the reorganized Debtors that, in fact, is worth far more than the amount of their claims. This violation of the absolute priority rule cannot possibly be cured by a "yes" vote, since pre-petition equity holders receive nothing under the Second Amended Plan and are therefore conclusively presumed to vote "no." Approval of the Disclosure Statement would therefore be a fruitless exercise.

II. <u>The Disclosure Statement Fails to Provide Adequate Information</u>

12. The Disclosure Statement fails to provide adequate information required by Bankruptcy Code section 1125. Section 1125 provides:

> (b) An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing *adequate information* . . . .

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[4] <u>See</u> *Debtors' Objection to the Motion of the Ad Hoc Equity Committee for Order Directing the Appointment of Examiner Pursuant to Section 1104(c)(2) of the Bankruptcy Code*, ¶ 23 [Doc. No. 2945].

11 U.S.C. § 1125(b) (italics added). "Adequate information" is defined by the Bankruptcy Code as "information of a kind, and in sufficient detail, as far as is reasonably practicable . . . that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about a plan." 11 U.S.C. § 1125(a).

13. The Disclosure Statement is deficient in two principal respects: It fails to provide adequate information as to the valuation on which the Second Amended Plan is predicated, or the incentive compensation – potentially in the hundreds of millions of dollars – to be provided to the Debtors' management.

A. Valuation

14. The Debtors' valuation, and the basis thereof, is a crucial disclosure item in any disclosure statement. See In re Ligon, 50 B.R. 127, 130 (Bankr. M.D. Tenn. 1985) ("A description of available assets and their value is a vital element of necessary disclosure."). Courts consider valuation related disclosure to be a key component in determining whether to approve a disclosure statement so that creditors and equity holders can make an informed decision on a plan of reorganization. See id. at 130 ("Knowledge of the debtor's financial condition is essential before any informed decision concerning the merits of a plan can be made."); In re Dakota Rail Inc., 104 B.R. 138, 148 (Bankr. D. Minn. 1989) ("Because the knowledge of a debtor's financial condition is essential before any informed decision concerning the merits of a chapter 11 plan can be made, it is vital, if not a prerequisite, that a description of available assets, their value, and certainly their ownership be disclosed under § 1125.").

15. In this case, where all parties except for the equity holders will receive a meaningful distribution, adequate disclosure regarding the Debtors' valuation is critical. The Second Amended Plan and the distributions thereunder are premised on the Debtors'

valuation of their businesses. Yet the only discussion regarding the Debtors' valuation is provided in a bare-bones section of the Disclosure Statement. That section sets forth the conclusion, without any analysis, of the Debtors' financial advisor and investment banker, Rothschild, Inc. ("Rothschild"), on the Debtors' total enterprise value ("TEV"). It provides that Rothschild has concluded that the Debtors' TEV is between $1.98 billion and $2.345 billion based on three valuation methodologies: a discounted cash flow analysis, a comparable companies analysis, and a precedent transactions analysis. See Disclosure Statement, Article VII.D. Nowhere in the Disclosure Statement is there any disclosure of Rothschild's analysis underlying under each of the valuation methodologies.

16. This brief and non-substantive conclusion of the Debtors' TEV by Rothschild can hardly be deemed "adequate information" under section 1125 of the Bankruptcy Code. See In re Egan, 33 B.R. 672 (Bankr. N.D. Ill. 1983) (stating that mere statements of opinion or belief, without accompanying factual support, are inadequate); In re East Redley Corp., 16 B.R. 429, 430 (Bankr. Pa. 1982) (noting that the debtor's providing of an opinion in fixing the value to be assigned to property without factual support does not constitute adequate information).

17. It is imperative that the Disclosure Statement set forth, among other things, (i) Rothschild's valuation analysis underlying each of the three valuation methodologies utilized, (ii) the comparables used by Rothschild, (iii) Rothschild's key steps and assumptions in determining valuation, and (iv) the rationale for Rothschild's conclusion. Without this information, it is impossible for equity holders to know whether the Debtors have conducted a proper valuation and whether the distribution currently proposed to them (i.e., nil) is appropriate.

18. *Notably, parties other than the Debtors are not in a position to cure these disclosure defects. Rather, the Debtors must disclose each of these key items of missing information.* In particular, the Disclosure Statement must contain the following additional valuation-related disclosure before it can satisfy the Bankruptcy Code standard of providing information to creditors and equity holders that is sufficient to allow them to make an informed judgment about the Plan:

- *Non-Consolidated Joint Venture Interests*. The Disclosure Statement should disclose why the Debtors' equity in their non-consolidated joint ventures is worth a purported $195 million, or about 2.5 times 2009 net income, when automotive suppliers comparable to the Debtors' non-consolidated joint ventures currently trade at significantly higher net income multiples. Additionally, the Disclosure Statement projections should disclose and explain the methodology used to project Equity in Net Income of Affiliates, the income that the Debtors expect the non-consolidated joint ventures to generate.

- *Halla Climate Control Corporation ("Halla")*. Given its importance to the Debtors' value, the Disclosure Statement should provide financial information regarding Halla. Additionally, the Debtors should disclose why they value their 70% stake in Halla on a consolidated basis rather than utilizing Halla's observable market value. The shares of Halla are publicly traded on the Korean Stock Exchange and based on their closing price as of May 17, 2010, Visteon's 70% stake in Halla is worth in excess of $1 billion. This is without providing any premium for Visteon's control position.

- *Balance Sheet Cash*. The Debtors should disclose why they consider only "excess cash" as part of their equity valuation, rather than "total cash." In doing so, the Debtors do not adequately take into account the $1.1 billion of cash on their balance sheets and ignore the market convention for valuing the cash of automotive parts suppliers, namely, that a company's total cash balance is included in the equity valuation.

- *Deferred Tax Assets*. The Debtors should disclose the extent to which their deferred tax assets - net operating losses ("NOLs") and tax credits - were included in their valuation and why they support a plan that would squander the value of these assets by triggering an ownership change under section 382 of the Internal Revenue Code.

- *Minority Interests*. The Debtors should disclose how the value of their non-controlling minority interests was determined.

- *Debt Capacity*. Given that the Plan provides for a radical deleveraging of the Debtors, the Debtors should provide disclosure concerning their debt capacity analysis and the reasoning for their determination to seek a debt-free balance sheet on emergence under the claims conversion sub-plan and incur only $400 million of funded debt under the rights offering sub-plan. In addition, the Debtors must disclose any analysis with respect to reinstatement of the secured term loan. Most automotive suppliers have a material amount of debt capacity and the Debtors' proposed capital structure is unrealistic, suboptimal and only serves to provide a windfall to the banks and management, the recipients of the new equity.

- *Total Enterprise Value*. The Disclosure Statement does not provide any of the backup or analysis behind Rothschild's estimate of TEV. At a minimum, proper disclosure requires the Debtors to disclose the backup and analysis behind Rothschild's estimated TEV of the Debtors. In particular, the Debtors should disclose (i) the list of companies used in the comparable companies analysis and the valuation multiples derived for each of the comparable companies; (ii) the list of transactions used in the precedent transactions analysis and the valuation multiples derived for each of the comparable transactions; (iii) the range of terminal multiples used in the discounted cash flow analysis and the basis for the selection of such multiples; (iv) the inputs used to derive the discount rate range of 12.5% to 14.5% under the discounted cash flow analysis; and (v) the projected cash pension payments and the discount rate applied to these payments under the discounted cash flow analysis.

- *Revenue projections*. The Debtors should disclose how their revenue projections compare to the information provided by industry standard sources for projected automobile production data (i.e., CSM Worldwide).

- *Administrative & Professional Claims*. The Debtors should disclose the composition of the $105 million in administrative and professional claims to be paid under the Plan and provide a description of each claim category.

B. Management Incentive Compensation

19. As noted above, the Second Amended Plan creates a MEIP, which reserves 10% of the reorganized Debtors' equity for payments to management, with 2.5% - 3% paid on emergence and up to an additional 7% - 7.5% paid post emergence (under the claims conversion and rights offering sub-plans respectively). Using management's artificially low equity valuation range in the Disclosure Statement of $1.405 billion to $1.920 billion, the stock that management *will* receive under the MEIP on emergence is worth between $42.15 million

and $48.00 million, with between $98.35 million and $144.00 million in reserve for distribution post emergence. The value of the stock distributed on emergence and on reserve is in actuality worth substantially more than this as the Second Amended Plan's valuation is unduly low. The MEIP awards are in addition to the compensation management will receive under the company's Annual Incentive Plan and Key Employee Incentive Plan. To adequately provide disclosure to parties in interest, the following should be included after the narrative in Article V.H.2. of the Disclosure Statement:

- Based on Rothschild's Distributable Equity Value range of between $1.405 billion and $1.920 billion for Reorganized Visteon, the restricted New Visteon Common Stock that management will receive under the Management Equity Incentive Plan on the Effective Date is worth between $42.15 million and $48.00 million, with New Visteon Common Stock worth between $98.35 million and $144.00 million held in reserve for distribution post Effective Date.

- Of the 2.5% - 3% in New Visteon Common Stock that will be distributed on the Effective Date under the Management Equity Incentive Plan, more than one-fifth (22%) will be distributed to the Debtors' CEO, Donald Stebbins. Based on Rothschild's Distributable Equity Value range of between $1.405 billion and $1.920 billion for Reorganized Visteon, the New Visteon Common Stock that the CEO will receive under the Management Equity Incentive Plan on the Effective Date is worth between $9.273 million and $10.560 million.

- In the view of Aurelius Capital Master, Ltd., ACP Master, Ltd., and Aurelius Convergence Master, Ltd., the Distributable Equity Value of Reorganized Visteon is substantially higher than the Rothschild estimate of between $1.405 billion and $1.920 billion. Accordingly, the New Visteon Common Stock to be distributed to management on the Effective Date and held on reserve under the Management Equity Incentive Plan is worth substantially more than the $140.5 million to $192.0 million estimate based on Rothschild's Distributable Equity Value range ranges.

CONCLUSION

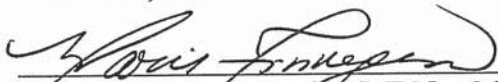
20. The Debtors' Second Amended Plan is deeply flawed and patently unconfirmable. To avoid an unnecessary waste of estate resources, the Court should refuse to approve the Disclosure Statement. Alternatively, the Court should require substantial revisions

to the Disclosure Statement, along the lines set forth above.

WHEREFORE, Aurelius Capital Master, ACP Master, and Aurelius Convergence Master respectfully request that the Court (i) deny approval of the Disclosure Statement and (ii) grant such other relief as this Court may deem just and proper.

Dated: May 18, 2010
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP



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