IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
VISTEON CORPORATION, et al.,	)	Case No. 09-11786 (CSS)
	)	
Debtors.	)	**Hearing Date: September 13, 2010**

MOTION OF MARK TAUB AND ANDREW SHIRLEY FOR STAY PENDING APPEAL OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING FIFTH AMENDED JOINT PLAN OF REORGANIZATION OF VISTEON CORPORATION AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

Mark Taub and Andrew Shirley, (together, the "Movants"), holders of certain equity interests in Visteon Corporation, by and through their undersigned counsel, hereby move this Court for a stay, pursuant to Rules 7062 and 8005 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), of The Findings of Fact, Conclusions of Law and Order Confirming Fifth Amended Joint Plan of Reorganization of Visteon Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code, entered on August 31, 2010 (the "Confirmation Order") [Docket # 4099], pending appeal thereof (the "Motion"). In respect of the Motion, Movants respectfully state as follows:

PRELIMINARY STATEMENT

1. The Fifth Amended Joint Plan of Reorganization of Visteon Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (the "Plan") cannot be confirmed because it provides better treatment on account of certain interests than it does other interests of the same class. Specifically, the Plan treats interests of members of class J ("Class J") who are members of the Ad Hoc Committee of Equity Holders (the "AHEC")

better than the interests of Class J members who are not part of the AHEC (the "Ordinary Shareholders"). As set forth below, this is a blatant violation of a specific and unambiguous condition to confirmation under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), and, therefore, the Plan cannot be confirmed.

2. The Bankruptcy Code states that a Chapter 11 plan may not be confirmed unless the Court finds that the plan complies with the provisions of 11 U.S.C. § 1129(a), which requires that "the plan compl[y] with the applicable provisions of this title." Bankruptcy Code section 1123(a)(4) provides that "a plan shall . . . provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

3. The Plan, under the guise of the Third Amended Equity Commitment Agreement between (i) the Debtors, (ii) certain of the Debtors' unsecured noteholders, and (iii) the AHEC (the "Amended ECA") [Docket # 3855] provides (a) AHEC members a right to purchase 144,456 shares in the Debtors' reorganized equity on account of their interests, and (b) that the Debtors will provide up to $4.25 million to the AHEC on account of the AHEC's professionals' fees. See Amended ECA § 4.3(d). In stark contrast, the Debtors do not provide any similar rights to Ordinary Shareholders on account of their interests under the Plan, nor do the Debtors agree to pay the Ordinary Shareholders' professionals' fees, notwithstanding that the AHEC members and the Ordinary Shareholders are members of the same voting class: Class J.

4. The Amended ECA is part and parcel, and is an integral part, of the Debtors' Plan. In fact, in the Debtors' own words, the Amended ECA "serve[s] as the backbone of the

Plan."[1] This is true for many reasons. First, the Debtors are a party to the Amended ECA. Second, the Amended ECA funds the Plan. Third, the execution of the Amended ECA and the fulfillment of all of the provisions contained therein are conditions precedent to confirmation of the Plan. Fourth, it requires the AHEC members to vote for the Plan. Fifth, the Plan itself references the Amended ECA throughout (over 55 times) and considers the Amended ECA to be a plan support document.

5. This opportunity to participate in the Rights Offering[2] provides the members of the AHEC with disproportionate value on account of their interests when compared to the measly (i) 2.0% of the Distributable Equity and (ii) the Old Equity Warrants given to Ordinary Shareholders on account of their interests. Indeed, the Rights Offering is so valuable that bondholders were paying 103% of claim value just for the right to purchase this same equity−an equity that already trades in the "when issued" market at a more than 80% return to its Plan value.[3] Moreover, the terms of the Amended ECA were agreed to by the Debtors and the AHEC more than a week after the July 30, 2010 Plan voting deadline. The Ordinary Shareholders were not aware of their disparate treatment when they voted for (or against) the Plan. It is entirely likely that even more Ordinary Shareholders would have voted against the Plan had they known they were being treated so unfairly.

6. As discussed in more detail below, the primary beneficiaries of this orchestrated Plan confirmation process are members of the Debtors' management who stand to reap a

[1] See Debtors' Motion for an Order Authorizing the Debtors to Enter into: (a) a Plan Support Agreement; (b) an Equity Commitment Agreement and to Pay Certain Fees in Connection Therewith (the "ECA"); and (c) a Cash Recovery Backstop Agreement, dated May 6, 2010, at ¶11. The Amended ECA amends the ECA.

[2] Capitalized terms used herein and not defined have the meaning attributed to them in the Plan.

[3] As of the date hereof, the new stock that the AHEC members have the right to buy under the Amended ECA at $27.69 per share is trading in the "when issued" market at approximately $48 per share, providing the AHEC members with a paper profit on their additional approximate 145,000 shares of almost $3 million (and counting).

windfall from a management equity incentive plan (the "MEIP") that is being instituted as part of the Plan.[4]

7. The Movants, Ordinary Shareholders, and the office of the United States Trustee (the "United States Trustee"), have objected to the Plan and have vigorously protested the preferential and disparate treatment offered by the Debtors to members of the AHEC.[5] Notwithstanding the concerns raised by the objecting parties, which the Court acknowledged, the Court confirmed the Plan on August 31, 2010. Movants timely sought appellate review in order to protect their rights under Bankruptcy Code section 1123(a)(4), and now seek a stay pending appeal in order to maintain the *status quo* pending review of the Confirmation Order.

8. As demonstrated below, Movants have a strong likelihood of success on the merits of the appeal, and, absent a stay, Movants will be irreparably harmed. Moreover, issuance of a stay will not substantially injure other parties-in-interest (except perhaps the Debtors' management who could receive up to 10% of the reorganized Debtors' equity under the MEIP pursuant to the Plan). Finally, the public interest supports staying the Confirmation Order pending appeal.

[4] Prior to filing for bankruptcy, the Debtors' management owned less than 1% of the Debtors' outstanding equity. See Visteon 10-K filed February 22, 2010. According to an 8-K filed by the Debtors on September 7, 2010, the Debtors' management will receive under the MEIP an allocation of equity-based awards representing approximately 10% of the fully diluted new common stock, giving management an undeserved windfall. See 8K filed September 7, 2010.

[5] See United States Trustee's Objection to Debtors' Fourth Amended Plan of Reorganization, dated July 30, 2010 [Docket # 3798]; United States Trustee's Supplemental Objection to the Debtors' Fourth Amended Pan of Reorganization, dated August 27, 2010 [Docket # 4042]; Letter Regarding first letter dated August 15, 2010 [Docket # 3953]; Letter Regarding Fourth Amended Plan of Reorganization dated September 1, 2010 [Docket # 4119]; Response to Current Plan of Reorganization dated August 17, 2010 [Docket # 3953]; Objection of Andrew Shirley to Confirmation of Debtors' Fourth Joint Amended Plan of Reorganization, dated July 30, 2010 [Docket # 3802]; and Supplemental Objection of Andrew Shirley to Confirmation of Debtors' Fifth Joint Amended Plan of Reorganization, dated August 30, 2010 [Docket # 4075].

JURISDICTION

9. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

10. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

11. On May 28, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under the Bankruptcy Code.

12. The Debtors operated their businesses and managed their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

13. On December 17, 2009, the Debtors filed a First Disclosure Statement and Plan of Reorganization (the "First Disclosure Statement" and the "First Plan," and together, the "First Disclosure Statement and Plan") [Docket # 1475 and 1476]. Pursuant to the First Disclosure Statement and Plan, the Debtors proposed distributing the majority of their equity to their secured lenders and provided no recovery to their bondholders and shareholders. See First Plan, at II.C, 11.

14. On or about May 7, 2010 the Debtors reached an agreement with their bondholders pursuant to which certain unsecured noteholders would have the opportunity to participate in a fully backstopped rights offering that would raise $1.25 billion in exchange for 95% of the equity in the reorganized Visteon. In furtherance thereof, on June 17, 2010, the Court entered the Order Authorizing the Debtors to Enter Into: (A) a Plan Support Agreement; (B) an Equity Commitment Agreement and to Pay Certain Fees in Connection Therewith; and (c) a Cash Recovery Backstop Agreement [Docket # 3427].

15. From the time the Debtors filed their First Disclosure Statement and Plan, the Debtors have filed several amended disclosure statements and plans, all of which this Court's familiarity is assumed, culminating in the Revised Fourth Amended Disclosure Statement for the Fourth Amended Joint Plan of Reorganization of Visteon Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the United States Bankruptcy Code filed on June 24, 2010 (the "Revised Fourth Disclosure Statement" and the "Revised Fourth Plan" and together, the "Revised Fourth Disclosure Statement and Plan") [Docket # 3472]. Under the Revised Fourth Disclosure Statement and Plan, which incorporates the ECA, the Debtors proposed to cancel the interests of Class J as they did in prior plans, but provided that if Class J accepts the Plan, they would receive a "Pro Rata share of (i) 2.0% of the Distributable Equity and (ii) the Old Equity Warrants." Revised Fourth Amended Plan, at 15.

16. On August 9, 2010 (ten days after the Plan voting deadline), the Debtors filed their Notice of Filing of the Amended ECA, pursuant to which (i) AHEC members are allowed to participate in a portion of the $300 million direct purchase commitment under the ECA on account of their interests and (ii) the Debtors will pay up to $4.25 million for actual professionals' fees and expenses of the AHEC, which is money that reduces the equity value of the Ordinary Shareholders' recovery, all in exchange for the AHEC members' votes in favor of the Plan. As set forth above, the Amended ECA, along with the Rights Offering and the Exit Financing, are integral parts of the Plan and the Debtors' emergence from Chapter 11.

17. On August 30th the Debtors filed the Plan incorporating the terms of the Amended ECA. The Court confirmed the Plan on August 31, 2010.

RELEVANT FACTS

18. For the duration of these chapter 11 cases, the Debtors sought to suppress their value and deny recovery to the Debtors' equity holders (the "Shareholders"), notwithstanding that the Shareholders were clearly "in the money." The Debtors filed the First Plan and Disclosure Statement on December 17, 2010, just two weeks before the end of the year. Two months later the Debtors filed quarterly earnings and an annual report for the year ended December 31, 2010 (the "Annual Report"). The Annual Report revealed sales, gross margin, EBITDA and net income that were materially higher than what the First Plan projected. The understated financial projections in the First Disclosure Statement and Plan have never been updated.

19. Even after Johnson Controls Inc. ("JCI") made an unsolicited offer on May 21, 2010 for the Debtors' interiors and electrics business, which JCI stated would provide a recovery to the Shareholders, the Debtors' changed their position only slightly and proposed a non-negotiated amendment to their Revised Fourth Amended Plan that would provide a minimal recovery to Shareholders *only* if the Shareholders voted for the plan. See Revised Fourth Amended Plan.

20. Shareholders continued to voice their concerns that based on the success of the Debtors' businesses after the Petition Date, they were being treated unfairly.[6] However, this Court deemed it appropriate to address such concerns in the context of a "valuation fight" at the confirmation hearing. See Transcript of Hearings dated May 12, 2010, p. 38, 5-6, 18-19. In fact, this Court aptly observed: "We are in a good old fashioned brawl, all right. We all

[6] See Motion to Appoint Examiner by AHEC of Equity Holders, dated April 2, 2010 [Docket # 2720]; Objection by Ad Hoc Equity Committee to Equity Commitment Agreement, dated May 20, 2010 [Docket # 3170]; Supplemental Objection of Ad Hoc Equity Committee to the Disclosure Statement dated May 21, 2010 [Docket # 3182]; Update of Ad Hoc Equity Committee to Supplemental Objection to Disclosure Statement, dated June 11, 2010 [Docket # 3329].

know it… And we're going to fight. There's going to be a fight. Well, let's get to it. And I don't think there's any reason to keep tiptoeing around it. Equity thinks they're in the money. They're going to come to confirmation and they're going to try to prove it." Id. at 171, 8-14. Equity holders were told: "We need to get busy and get it done and roll the dice and see what happens." Id. at 173, 6-8. Much to the misfortune of the Ordinary Shareholders, the Debtors have postured this case to deprive them of the opportunity to have the "old fashioned brawl" regarding the true value of the Debtors.

21. Faced with the prospect of a confirmation battle with the Shareholders, and forced for the first time in these cases to justify a valuation that was not updated since the filing of the First Plan of Reorganization−despite Visteon's continuous performance exceeding its financial projections−the Debtors sought to avoid a valuation fight by cutting a deal with the AHEC and entering into the Amended ECA. Without the Amended ECA, the Debtors would not have enough votes to secure Class J's acceptance of the Plan.[7]

22. In order to get the Plan approved without (i) providing meaningful recovery to Ordinary Shareholders, and (ii) entering into what would promise to be a losing valuation fight, the Debtors entered into the Amended ECA with the AHEC, pursuant to which the AHEC members would receive preferential treatment in return for a promise that they would vote in favor of the Plan. See Amended ECA § 4.3.

[7] According to the Affidavit of Christopher R. Schepper (the "Schepper Affidavit") [Docket #3934], 46,074,819.1937 Class J interests voted to accept the Plan and 14,731,268.9898 Class J interests voted to reject the Plan. See Schepper Affidavit, exhibit A. Of the 46,074,819.1937 who voted in favor of the plan, approximately 16,915,001.0000 belonged to members of the AHEC. Without AHEC's votes, the total vote count would be 43,891,087.1835 with only 29,159,818.1937 votes in favor of the Plan. This would not fulfill the requirement under Bankruptcy Code section 1126(d) that at least two-thirds in amount vote in favor of a plan for class to accept the plan. See 11 U.S.C. § 1126(d).

23. Importantly, as set forth above, the Debtors never offered the Ordinary Shareholders what they offered their fellow Class J members. Moreover, the Debtors' deal with the AHEC was not disclosed to the Ordinary Shareholders until *after* the Plan voting deadline and *after* the Plan objection deadline.

24. The Movants, Ordinary Shareholders, and the United States Trustee, have objected to the Plan and have vigorously protested the preferential and disparate treatment offered by the Debtors to members of the AHEC. Notwithstanding the concerns raised by the objecting parties, which the Court acknowledged, the Court confirmed the Plan on August 31, 2010. Movants timely sought appellate review in order to protect their rights under Bankruptcy Code section 1123(a)(4), and now seek a stay pending appeal in order to maintain the *status quo* pending review of the Confirmation Order.

ARGUMENT

I. THE CONFIRMATION ORDER SHOULD BE STAYED PENDING APPEAL

25. The Confirmation Order should be stayed because (i) there is a likelihood of success on the merits of the appeal, (ii) the Movants and other Ordinary Shareholders will be irreparably injured if the stay is not granted, (iii) other parties will not be harmed if the stay is granted, and (iv) the public interest concerns favor granting a stay.

26. Pursuant to Bankruptcy Rule 8005, which provides that upon "motion for a stay of the judgment, order, or decree of a bankruptcy judge, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be presented to the bankruptcy judge in the first instance," a stay pending appeal is appropriate to maintain the *status quo*. KOS Pharmaceuticals, Inc. v. Andrix Corp., 369 F.3d 700, 708 (3d Cir. 2004). In bankruptcy cases, "a myriad of circumstances can occur that would necessitate the grant of a stay pending

appeal in order to preserve a party's position." In re Highway Truck Drivers & Helpers Local Union # 107, 888 F.3d 293, 298 (3d Cir. 1989).

27. In evaluating a motion for stay pending appeal, the Court is to consider the following factors:

(i) whether the moving party is likely to succeed on the merits;

(ii) whether the moving party will suffer irreparable injury absent relief;

(iii) whether granting relief will cause harm to other interested parties; and

(iv) whether granting or denying the motion would best serve the public interest.

See Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Republic of the Phillipines v. Westinghouse Elec. Corp., 949 F.2d 653, 658 (3d Cir. 1991).

28. None of these factors is outcome determinative; they should be balanced by the Court. See Meisler v. Armenia Coffee Corp. (In re Hudson's Coffee, Inc.), 2008 Bankr. LEXIS 2994, at *4 (Bankr. D.N.J. Oct. 31, 2008) ("[N]o single factor is outcome determinative. Rather, [a court] must balance all of the elements in order to reach an appropriate determination."). The more likely it is that the Movants will succeed on appeal, the less strong the showing of irreparable harm needs to be, and vice-versa. See BEPCO, L.P. v. 15375 Mem'l Corp. (In re 1537 Mem'l Corp.), 2009 U.S. Dist. LEXIS 12004 (D. Del. 2009); see also Hickey v. City of New York (In re World Trade Center Disaster Site Litig.), 503 F.3d 167, 170 (2d Cir. 2007) ("[T]he degree to which a factor must be present varies with the strength of the other factors, meaning that 'more of one [factor] excuses less of the other.'") (citations omitted).

a. The Movants Have a High Likelihood of Success on the Merits of the Appeal

29. To demonstrate "likelihood of success," Movants need not convince the Court to revisit the correctness of its decision. See, e.g., Goldstein v. Miller, 488 F. Supp. 156, 172-73 (D. Md. 1980). A Court need not "confess error" to grant a stay. See, e.g., Evans v. Buchanan, 435 F. Supp. 832, 843 (D. Del. 1977). A Court may properly stay its own Order when it has ruled on difficult legal questions and the equities of the case suggest that the *status quo* should be maintained. See Goldstein, 488 F. Supp. at 172-73. Here, Movants have a high likelihood of success on the merits of the appeal of the Confirmation Order because the Plan fails to provide the same treatment on account of each interest of Class J in contravention of 11 U.S.C. § 1123(a)(4), rendering the Plan unconfirmable under 11 U.S.C. § 1129(a)(1).

30. In reversing plan confirmation in New Century TRS Holdings, the District Court set out the relevant standard:

> To be confirmable, a plan must "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). Courts are to enforce this provision according to its plan language. See Hartford Underwriters Ins. Co. v. Union Planters, 530 U.S. 1, 6, 120 S.Ct. 1942, 147 L.Ed.2 1 (2000). Accordingly, if claims within the same class are not receiving the same treatment, and the holders of those claims being treated less favorably have not consented to the discrimination, the plan is not confirmable.

In re New Century TRS Holdings, Inc., 407 B.R. 576, 592 (D. Del. 2009).

i. The Plan is Not Confirmable Because Class J Interests are Not Receiving the Same Treatment

31. The Debtors, in soliciting votes for the Plan, presented holders of interests in Visteon Corporation grouped under Class J, including the Movants, with a "death trap": either they vote for the Plan and receive a "Pro Rata share of (i) 2.0% of the Distributable Equity and (ii) the Old Equity Warrants," or their interests would be cancelled. Revised

Fourth Disclosure Statement, at 15. The Debtors estimated that the total value that Class J would receive if they accepted the Plan was approximately $35 million ("Two percent of the Distributable Equity equates to approximately $27.3 million to $27.7 million in value to be distributed to Class J Interests at the Plan's value, if Class J accepts the Plan. In addition, the Old Equity Warrants also are estimated to be worth approximately $7.2 million based on Black-Scholes calculation.") Id. at 15, n. 16.

32. Movants and other Ordinary Shareholders did not know that the Debtors agreed to provide more favorable treatment for the AHEC's interests when they were analyzing whether to vote for (or against) the Plan, as the Debtors announced the Amended ECA *after* the voting deadline had passed. If the Plan is consummated, Ordinary Shareholders' fellow Class J members who are also members of the AHEC will receive preferential consideration–*on account of interests having the same priority under the Bankruptcy Code*–in the form of up to $4.25 million for professionals' fees and the opportunity to participate in the Debtors' rights offering. As set forth above, the opportunity to participate in the Debtors' rights offering is so valuable that bondholders were paying 103% of claim value just for the right to purchase this same equity, an equity that already trades in the "when issued" market at more than 80% of its Plan value.

33. Indeed, the United States Trustee, who objected under 11 U.S.C. § 1123(a)(4) to this disparate treatment of the interests of Class J, observed at the Confirmation Hearing:

> And the second item that the U.S. Trustee objected to with [respect] to the plan being in violation of 11 U.S.C. § 1123(a)(4), Your Honor, was something that came up after the voting deadline and specifically it was the amendment to the equity commitment agreement. The way this played out, Your Honor, looked like the debtors extended the voting deadline by a week under the plan voting report and as debtors' counsel indicated. And then they filed an amendment to the equity commitment agreement. And under that amendment people who sit on the Ad Hoc Equity Committee are given the opportunity to participate in the

> equity commitment agreement. And they're also going to be paid by the debtors up to $4.25 million of documented fees and expenses of their counsel.
>
> Looking at this from not being involved in it and I think to a lot of the shareholders that did not sit on the Ad Hoc Equity Committee this looked like different treatment and that's exactly what we've argued it is.

Transcript of Confirmation Hearing, dated August 31, 2010, at 35-36.

34. Just as there can be no question that the Debtors seek to provide different treatment on account of the interests of the members of the AHEC than they do on account of the interests of the Ordinary Shareholders in Class J, there can also be no question that the Ordinary Shareholders did not consent to receiving the less favorable treatment proposed by the Debtors, as they were not advised of the Debtors' proposed treatment of the AHEC's interests until after the voting deadline had passed. When they ultimately did find out about the Debtors' treatment of the AHEC's interests, certain Ordinary Shareholders, including Movants, voiced their objections vehemently, both before and during the Confirmation Hearing.

ii. Notwithstanding the Plan's Unusual Architecture, the Debtors are Unable to Meet Their Burden of Proof

35. A plan proponent bears the burden of proof with respect to each and every element of section 1129(a). See In re Genesis Health Ventures, Inc., 266 B.R. 591, 599 (Bankr. D. Del. 2001) (*rev'd on other grounds*). The Debtors have not, and cannot, meet their burden because, in exchange for securing the votes of the AHEC in favor of the Plan, the Debtors clearly treated the interests held by the AHEC's members more favorable than the interests held by Ordinary Shareholders.

36. The Debtors have made two arguments explaining why their actions do not violate Bankruptcy Code section 1123(a)(4), both of which fail. First, the Debtors argue that

the inferior treatment of the Ordinary Shareholders in Class J is not treatment for purposes of assessing the Plan's compliance with 11 U.S.C. § 1123(a)(4) because it "does not represent treatment of the [AHEC's] members' interests by the Debtors, but rather an agreement by the Investors to share a small portion of the Direct Commitment with an organized group of shareholders poised to launch an attack on the Plan…."[8]

37. It is simply untrue, however, that the treatment of which Movants complain is the handiwork of third parties and not the Debtors. This Court should not condone the Debtors' attempts to obfuscate that they are parties to the Amended ECA for several reasons. First, the Amended ECA inured to the Debtors' benefit by securing Class J's acceptance of the Plan. Second, it is the Debtors, and not the other parties to the Amended ECA, who will pick up the tab for the AHEC's professionals' fees. Third, the Debtors are signatories to the Amended ECA.[9]

38. Perhaps recognizing that they are ultimately unable to distance themselves from the Amended ECA with the "*it wasn't me*" defense, the Debtors also argue that the disparate treatment of Class J members wasn't part of the Plan. The Debtors stated: "the [AHEC]'s members have not been provided their investment opportunity by the Debtors on account of

[8] See Reorganized Debtors' Memorandum of Law (I) in Support of Confirmation of the Fifth Amended Joint Plan of Reorganization of Visteon Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the United States Bankruptcy Code and (II) in Response to Objections Thereto [Docket # 4045], ¶ 9.

[9] A case the Debtors relied upon in support of their position that the Plan does not violate 1123(a)(4), In re Source Enters. Inc., 392 B.R. 541, 556-57 (S.D.N.Y. 2008), is inapposite for several reasons. First, the debtors in Source Enterprises were not parties to the agreement in question. Second, the agreement did not require anyone to vote for the plan. Third, the Source Enterprises decision is not binding on this Court. In fact, the Debtors have all but conceded that the relevant facts in Source Enterprises are not similar to the facts of this case. See Transcript of Confirmation Hearing, at 74-75.

their Interests – indeed, such opportunity is provided for outside of the Plan – and section 1123(a)(4) is therefore not applicable."[10]

39. Despite the Plan's unusual architecture, it is not fair to say that the lucrative opportunity presented to the AHEC is outside of the Plan. On the contrary, the Amended ECA is an integral part of the Plan. First, the Amended ECA funds the Plan. Second, the fulfillment of the ECA's various provisions is a condition precedent to confirmation of the Plan.[11] Third, the Amended ECA requires the AHEC members to vote for the Plan, and the Plan and Amended ECA cross-reference each other repeatedly (over 55 times). While the Movants would not go so far as the AHEC did (before the Debtors cut it in on the rights offering) in characterizing the Plan/ECA interplay as a "charade,"[12] Movants posit that it would be an improper elevation of form over substance to disregard that the Plan and Amended ECA are both aspects of a unified strategy for emerging from Chapter 11.

40. The Debtors should not be allowed to emerge from Chapter 11 until they can propound a Plan that complies with 11 U.S.C. § 1123(a)(4) by treating Class J interests equally, and is therefore, confirmable under 11 U.S.C. § 1129(a)(1).

41. For the forgoing reasons, the Movants will likely succeed on the merits on appeal.

[10] See Reorganized Debtors' Memorandum of Law (I) in Support of Confirmation of the Fifth Amended Joint Plan of Reorganization of Visteon Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the United States Bankruptcy Code and (II) in Response to Objections Thereto [Docket # 4045], ¶ 102.

[11] See Plan XI.A, 5-6

[12] See Omnibus Objection and Supplemental Amended Objection of Ad Hoc Equity Committee to, Respectively, (I) Debtors' Motion for an Order Authorizing the Debtors to Enter into: (A) Plan Support Agreement; (B) Equity Commitment Agreement and Preconfirmation Payment of Certain Fees in Connection Therewith; and (C) Cash Recovery Backstop Agreement, and (II) Debtors' Second Amended Disclosure Statement [Docket # 3170], p. 10.

b. The Movants Will Be Irreparably Harmed if the Confirmation Order is Not Stayed Pending Appeal

42. In support of Movants' request for a stay pending appeal, Movants underscore "the official role of a stay pending appeal plays, not only in maintaining the status quo, but also in preserving the right to a review of the merits." In re Charles & Lillian Brown's Hotel, Inc., 93 B.R. 49, 53 (Bankr. S.D.N.Y. 1988). The Third Circuit has recognized that a party may suffer irreparable harm justifying a stay pending appeal if it faces the possibility that its appeal would be rendered moot if the adverse party relies upon the lower court order by taking actions that cannot be undone. See In re Highway Truck Drivers & Helpers Local Union No. 107, 888 F.2d 293, 297-98 (3d Cir. 1989) (discussing "the necessity of a stay under Rule 8005" and stating that "the consequence of failing to obtain a stay is that the prevailing party may treat the judgment of the [lower] court as final [notwithstanding that an appeal is pending.]… Thus, in the absence of a stay, action of a character which cannot be reversed by the court of appeals may be taken in reliance on the lower court's decree. As a result, the court of appeals may become powerless to grant the relief requested by the appellant.") (internal citations omitted); see also In re Trone v. Roberts Farms, Inc., 652 F.2d 793, 798 (9th Cir. 1981) ("If an appellant fails to obtain a stay after exhausting all appropriate remedies, that well may be the end of the appeal . . . For this reason there is a concomitant obligation on the courts to consider such stay application thoroughly and with full appreciation of the consequences of a denial.").

43. In the instant case, if the Plan goes effective and is implemented, Movants would be left with recovery on account of their interests that is much less than their true value.

Therefore, a stay pending appeal is necessary to prevent irreparable harm to the Movants and their substantial appeal rights, which may be stripped absent a stay.[13]

c. No Other Party-in-Interest Will Be Harmed if the Confirmation Order is Stayed Pending Appeal

44. A stay of the Confirmation Order will not harm (let alone substantially harm) the Debtors, the AHEC, or any other party-in-interest. It will merely maintain the status quo while Movants pursue their appellate rights. The Debtors' employees and vendors will continue to get paid and secured lenders will continue to accrue interest at the default rate. Moreover, throughout the case, a hearing on confirmation was scheduled for September of 2010, and to continue into October of 2010. See Notice of Adjourned Hearing on Confirmation of Debtors' Fifth Amended Plan of Reorganization to August 31, 2010 [Docket #3709]. Therefore, a temporary stay of confirmation pending appeal cannot realistically upset the interests or expectations of anyone.

45. In fact, the only party that may be "harmed" by a stay of confirmation is the Debtors' management. As set forth above, the primary beneficiaries of an expedited confirmation process are members of the Debtors' management who stand to reap a windfall from a MEIP that is being instituted as part of the Plan. Prior to filing for bankruptcy, the Debtors' management owned less than 1% of the Debtors' outstanding equity. See Visteon 10-K filed February 22, 2010. According to an 8-K filed by the Debtors on September 7, 2010, the Debtors' management will receive under the MEIP an allocation of equity-based awards representing approximately 10% of the fully diluted new common stock, giving management an undeserved windfall. See 8K filed September 7, 2010. Upon information and

[13] In the event that a stay is not granted, Movants do not concede that consummation of the Plan will moot their appellate rights. Movants expressly reserve all rights in this regard.

belief, the Court and the Ordinary Shareholders were not aware that the Debtors' management would receive such a valuable MEIP under the Plan.[14]

46. As no party-in-interest will be harmed by a stay of the Confirmation Order (except perhaps the Debtors' management), the stay should be granted.

d. Public Policy Supports the Issuance of a Stay Pending Appeal

47. Granting Movants a stay pending appeal is consistent with the public policy interest of preserving the ability of a party to exercise effectively its right to a meaningful review through a full and fair appeals process. See AT&T v. Winback and Conserve Program, Inc., 42 F.3d 1421, 1427, n.8 (3d Cir. 1994) ("As a practical matter, if a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor the plaintiff."). The public interest does not favor precluding parties from enjoying the rights and benefits afforded to them by law. See In re Columbia Gas Sys., 1992 U.S. Dist. LEXIS 3253, *6 (D. Del. Mar. 10, 1992). Thus, the issuance of a stay pending appeal is in the public interest.

48. Moreover, bankruptcy courts and the bankruptcy process are courts and processes of equity. See Enron Power Marketing, Inc. v. Pub. Utility Dist. No. 1 of Snohomish County (In re Enron Corp.), 364 B.R. 489, 508 (Bankr. S.D.N.Y. 2007) ("a court must balance the advantages of applying primary jurisdiction with the possible costs that may result from complications and delay in the administrative proceeding"). In the instant case, the Debtors went behind the backs of the Ordinary Shareholders to deny them their promised "day in court" with respect to valuation of the Debtors and recovery on their interests. A balancing of

[14] In cases such as this where a management incentive plan provides too much value to the management and employees of the reorganized debtors, at the expense of unsecured creditors, plan confirmation has been denied. See In re Spansion, Inc., 426 B.R. 114 (Bankr. D.Del. 2010) (finding that management incentive plan violated § 1129(a)(3) and § 1129(b)(1) and (2) of the Bankruptcy Code, and denying plan confirmation where debtors failed to demonstrate that incentive plan was proposed in good faith and was fair and equitable to creditors).

the equities clearly militates in favor of allowing each party-in-interest, including Ordinary Shareholders and the Movants, to have their day in court.

II. THE POSTING OF A BOND IS UNNECESSARY AS A CONDITION TO GRANTING THE STAY

a. A Bond is Unnecessary Because Parties-In-Interest Will Not Suffer Harm as a Result of the Stay Pending Appeal

49. A bond is unnecessary in the present case because a stay pending appeal will not cause any harm. A trial judge has "wide discretion in the matter of requiring security and if there is an absence of proof showing a likelihood of harm, certainly no bond is necessary." Continental Oil Co. v. Frontier Refining Co., 338 F.2d 780, 782 (9th Cir. 1964); see also In re United Merchants & Manufacturers, Inc., 138 B.R. 426, 427 (D. Del. 1992) (a bond for a stay is discretionary and unnecessary when the debtor will not be harmed by the stay); In re Columbia Gas Sys., 1992 U.S. Dist. LEXIS 3253, at * 3, 5-6 (D. Del. Mar. 10, 1992) (no bond required where the debtors and estate could be accommodated under the stay and not be substantially harmed).

50. In United Merchants & Manufacturers, Inc., for example, the United States District Court for this District concluded that a creditor retirement fund which appealed the debtor's confirmation order did not need to post a bond in respect of the stay it was granted pending its appeal. See 138 B.R. at 430. The Court reasoned that the debtor was not harmed by the stay, as the relief requested by the fund did not entail a reversal of the payments already made by the debtor; rather, the fund requested that additional money reserved by the debtor for distribution be reallocated in a more equitable manner. See id. at 429.

51. Courts requiring bonds when a stay of confirmation order is granted typically do so because the stay is "likely to cause harm by diminishing the value of an estate or endanger [the non-moving parties'] interest in the ultimate recovery." See In re Adelphia Communs.

Corp., 361 B.R. 337, 368 (S.D.N.Y. 2007) (quotations omitted); see also In re Innovative Communs., 2007 Bankr. LEXIS 4654, at * 15, 17-18 (Bankr. D.V.I. May 28, 2007) (finding a bond necessary where the stay "would cause substantial harm to the creditors"); In re Gleasman, 111 B.R. 595, 603 (Bankr. W.D. Tex. 1990) (bond was required to protect appellee against diminution in the value of its collateral pending appeal).

52. These holdings are entirely inapplicable here, as there can be no showing of a likelihood of harm. As set forth above, no party-in-interest will suffer any harm as a result of the stay. See Motion § I.c.[15] Movants should therefore not be required to post a bond as a condition of obtaining a stay of the Confirmation Order.

b. A Bond is Unnecessary Because a Stay of the Order Will Not Cause Any Unexpected Delay

53. The hearing on confirmation in this case was initially expected to commence in September of 2010, and to continue into October of 2010. A stay of the Order at this point, therefore, will not cause any unexpected delay in the case. For this additional reason, a bond is not required. See Official Committee of Equity Security Holders v. Finova Group, Inc., Case No. 07-480 (D. Del. Oct. 31, 2007). In Finova Group, the District Court entered a Memorandum Order [Docket # 19] affirming a ruling made by this Court during a July 24, 2007 hearing that a bond was not required to be posted by the appellant equity holders who were granted a 90-day stay pending their appeal of an order clarifying that the debtors did not need to pay equity holders. In re Finova Corp. & The Finova Group, Inc., Case No. 01-00698 (Bankr. D. Del. July 24, 2007) (PJW), Tr. at p. 49, line 13 ("And I will not require the posting of a bond."). [Docket # 240] The District Court reasoned, as this Court had, that a bond was

[15] A full analyses demonstrating that parties-in-interest will not be harmed as a result of the stay can be found in Section I.c of this Motion. In the interest of efficiency, and in light of the exigent timing, the Movants do not deem it necessary to repeat the analyses again.

not required because the appellee debtors anticipated that their liquidation could take more time than they had originally planned. See Memorandum Order, at pp. 3-4. Accordingly, this Court and the District Court held that it was unnecessary for appellants to post a bond, as the stay granted to appellants did not cause any unexpected delay of the proceedings in that case.

54. Accordingly, the Court should not require the Movants to post a bond.

55. Movants respectfully request, that if this Court declines to grant the relief requested pursuant to Bankruptcy Rule 8005, the stay in place by operation of Bankruptcy Rule 3020(e) remain in place pending appeal. Bankruptcy Rule 3020(e) provides: "An order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." In support of their request, Movants direct the Court's attention to the Bankruptcy Court's grant of such relief in *Adelphia*, wherein the Bankruptcy Court stayed its confirmation order for 10 days, under the provisions of Bankruptcy Rule 3020(e) then in effect, noting "fairness to [bondholder group] . . . requires that I not take an affirmative step that would foreclose all opportunities for judicial review." In re Adelphia Communications Corp., Chapter 11 Case No. 02-41729 (S.D.N.Y. Jan. 24, 2007), at n. 20 and accompanying text (citing the Bankruptcy Court's ruling and Bankruptcy Rule 3020(e)). The Bankruptcy Court in Adelphia further ordered that any subsequent request for a stay be directed to the District Court. Id.

CONCLUSION

56. As set forth above, the Movants are being treated unfairly under the Plan. Recovery on account of the Movants' interests pales in comparison to the recovery that the AHEC members are receiving on account of theirs interests, even though they are both grouped in the same voting class. Not only does this violate section 1123(a)(4) of the

Bankruptcy Code, but it is contrary to spirit of the Bankruptcy Code and bankruptcy process, which seek to treat all parties-in-interest fairly and equitably. The Movants, therefore, respectfully ask this Court to preserve their rights by staying the Confirmation Order pending appeal.

WHEREFORE, Movants respectfully request that this Court stay the Confirmation Order pending appeal, and grant the Movants such other and further relief as is just and proper.

Dated: Wilmington, Delaware
September 8, 2010

NEIGER LLP
/s/ Edward Neiger
Edward E. Neiger, Esq.
317 Madison Avenue, 21st Floor
New York, NY 10017
212-267-7342
eneiger@neigerllp.com

THE ROSNER LAW GROUP LLC
/s/ Fred Rosner
Frederick B. Rosner, Esq.
Brian Arban, Esq.
1000 N. West Street, Suite 1200
Wilmington, DE 19801
302-295-4877
rosner@teamrosner.com
arban@teamrosner.com

Counsel for Movants