

**KIRKLAND & ELLIS LLP**  
AND AFFILIATED PARTNERSHIPS

Craig S. Primis, P.C.  
To Call Writer Directly:  
+1 202 389 5921  
craig.primis@kirkland.com

1301 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
United States  
+1 202 389 5000  
www.kirkland.com

Facsimile:  
+1 202 389 5200

December 16, 2020

**VIA ECF**

The Honorable Michael E. Wiles  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green  
New York, New York 10004

Re: Notice of Supplemental Authority  
*Garrett Motion Inc., et al. v. Honeywell International Inc., et al.*  
Case No. 20-12212 (MEW) - Adv. Proc. No. 20-01223 (MEW)

Dear Judge Wiles:

I write on behalf of Honeywell International Inc. to advise the Court that yesterday the Delaware Supreme Court affirmed the decision in *Chemours Co. v. DowDupont Inc.*, 2020 WL 1527783 (Del. Ch. Mar. 30, 2020). The Delaware Supreme Court's decision—attached hereto as Exhibit A—adopts the reasoning of the Chancery Court opinion and in so doing confirms that Garrett's unconscionability and fiduciary duty arguments fail as a matter of law.

Garrett has alleged in its operative complaint that the Indemnification and Reimbursement Agreement ("IRA") is unenforceable because it is unconscionable and arises from a breach of fiduciary duty by certain of the defendants. *See* Compl., Counts 1, 3, 4, 9. In its recent filings setting forth potential counterclaims, Garrett has asserted that the parties' Tax Matters Agreement ("TMA") is "unenforceable in whole or in part" for the same reasons. *See* Ex. B, Debtors' Am. Notice of Counterclaims [Docket No. 556] at 2. The crux of these arguments is that, according to Garrett, the terms of the IRA and TMA are too one-sided to be enforceable and that Garrett should not be bound by the contracts because it "had no meaningful choice in the[ir] negotiation and execution." Compl. ¶ 294.

As Honeywell explained in its motion to dismiss briefing, the Delaware Chancery Court just this year rejected the same arguments Garrett makes here, holding that a requirement of arm's length bargaining in a parent-subsidary relationship is "wholly inconsistent with the routine enforcement of parent-subsidary contracts." *Chemours*, 2020 WL 1527783, at \*14. The court also went on to explain that "[s]uch contracts are routinely enforced *not* because they reflect arms'-length bargaining between a parent and its subsidiary—which of course they do not—but because



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the parent determines that they are desirable *for the parent*, and subsidiary fiduciaries ‘are obligated only to manage the affairs of the subsidiary in the best interests of the parent and its shareholders.’” *Chemours*, 2020 WL 1527783, at \*14 (citing *Anadarko Petroleum Corp. v. Panhandle E. Corp.*, 545 A.2d 1171, 1174 (Del. 1988)) (emphasis in original). The Delaware Supreme Court affirmed the Chancery’s Court’s decision in all respects. *See* Ex. A (“[W]e find it evident that the final judgment of the Court of Chancery should be affirmed on the basis of and for the reasons stated in its March 30, 2020 memorandum opinion.”). Yesterday’s affirmance means the essential holding of *Chemours*—that a parent corporation may structure a spin-off transaction however it sees fit, so long as the spun-off entity is not rendered insolvent—has been validated by the highest court in Delaware, consistent with prior Delaware cases cited by Honeywell.

While Delaware has recognized a narrow exception to these principles for situations in which a parent leaves its subsidiary insolvent as part of a spin-off, Garrett has not made that allegation here. As a result, its facial attacks on the IRA and TMA are foreclosed as a matter of law. Garrett conceded on the record that its operative complaint does not allege insolvency. *See* 10/22/2020 Hr’g Tr. 14:11-13 (THE COURT: “I didn’t see an allegation of insolvency in the complaint that you filed.” MR. SCHECK: “That’s correct, Your Honor.”). At oral argument on Honeywell’s motion to dismiss, the Court admonished Garrett to assert any insolvency-based claims it may have in short order. *See* 11/18/2020 Hr’g Tr. 92:8-10 (“And it serves nobody’s purpose, yours or anybody else’s, ... for there to be a delay in your introduction of that issue to this case.”). Garrett’s Notice of Counterclaims thereafter included a vague reference to insolvency but failed to actually assert any insolvency-based claims. *See* Ex. C, Debtors’ Notice of Counterclaims [Docket No. 513] at 3 (“To the extent it is determined that one or more Debtor entities were insolvent, rendered insolvent, or inadequately capitalized at the time of the 2018 spinoff as structured by Honeywell, there may be affirmative claims (including potential breach of contract and tort claims) and defenses that would offset or limit the amount of Honeywell’s claims.”). Garrett and the Equity Committee also included an express reservation of rights purporting to allow them to bring additional claims (including insolvency-based claims). *See id.* at 4. But after Honeywell noted the equivocal nature of those statements and pressed for clarification on whether Garrett was, in fact, asserting insolvency-based claims, Garrett then filed an amended notice removing the reference to insolvency entirely—confirming that it no longer intends to pursue insolvency or undercapitalization-based claims. *See* Ex. B. These concessions make clear that Garrett has not asserted (and cannot assert) insolvency in these proceedings, foreclosing its fiduciary duty and unconscionability claims as a matter of law.

Respectfully submitted,

/s/ Craig S. Primis

Craig S. Primis, P.C.

Counsel for Honeywell International Inc.

## **Exhibit A**

**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

|                            |   |                               |
|----------------------------|---|-------------------------------|
| THE CHEMOURS COMPANY,      | § |                               |
|                            | § | No. 147, 2020                 |
| Plaintiff Below,           | § |                               |
| Appellant,                 | § | Court Below—Court of Chancery |
|                            | § | of the State of Delaware      |
| v.                         | § |                               |
|                            | § |                               |
| DOWDUPONT INC., CORTEVA,   | § | C.A. No. 2019-0351            |
| INC.; and E. I. DU PONT DE | § |                               |
| NEMOURS AND COMPANY,       | § |                               |
|                            | § |                               |
| Defendants Below,          | § |                               |
| Appellees.                 | § |                               |

Submitted: December 2, 2020  
Decided: December 15, 2020

Before **SEITZ**, Chief Justice; **VALIHURA**, **VAUGHN**, **TRAYNOR** and  
**MONTGOMERY-REEVES**, Justices.

**ORDER**

This 15<sup>th</sup> day of December 2020, after careful consideration of the parties' briefs and the record on appeal, we find it evident that the final judgment of the Court of Chancery should be affirmed on the basis of and for the reasons stated in its March 30, 2020 memorandum opinion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.  
Chief Justice

## **EXHIBIT B**

Susheel Kirpalani  
Michael B. Carlinsky  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
Telephone: (212) 489-7000  
Facsimile: (212) 846-4900  
Email: susheelkirpalani@quinnemanuel.com  
Email: michaelcarlinsky@quinnemanuel.com

Matthew Scheck  
Razmig Izakelian (admitted pro hac vice)  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
865 S. Figueroa Street, 10th Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000  
Facsimile: (213) 443-3100  
Email: matthewscheck@quinnemanuel.com  
Email: razmigizakelian@quinnemanuel.com

*Special Counsel to the Debtors and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

GARRETT MOTION INC., *et al.*,<sup>1</sup>

*Debtors.*

Case No. 20-12212 (MEW)

Chapter 11  
(Jointly Administered)

**AMENDED NOTICE OF COUNTERCLAIMS OR CAUSES OF ACTION RELATING  
TO DISALLOWANCE OR AMOUNT OF CLAIMS ASSERTED BY HONEYWELL**

The above-captioned debtors (collectively, the “Debtors”), by and through their undersigned counsel, and in accordance with Paragraph 2 of the *Order Establishing Procedures for the Estimation of Claims of Honeywell et al. Against the Debtors* (the “Estimation Procedures

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<sup>1</sup> The last four digits of Garrett Motion Inc.’s tax identification number are 3189. Due to the large number of debtor entities in these chapter 11 cases, which are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors’ corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

Order”),<sup>2</sup> hereby identify the following additional counterclaims or causes of action that (i) relate to the disallowance or amount of Honeywell’s claims and (ii) were not already asserted in *Garrett Motion Inc. & Garrett ASASCO Inc. v. Honeywell International Inc. et al.*, Adversary Proceeding No. 20-1223 (the “Pending Complaint”):

**I. ADDITIONAL CLAIMS BASED ON THE TAX MATTERS AGREEMENT**

As part of Honeywell’s 2018 spinoff of the Debtors, Honeywell orchestrated a series of transaction steps to offload hundreds of millions of dollars of Honeywell’s historic state and federal income tax liabilities onto certain of the Debtors via a September 12, 2018 Tax Matters Agreement (“Tax Matters Agreement”).

As a result of Honeywell’s illicit conduct related to the Tax Matters Agreement, the Debtors identify the following additional claims that have not yet been asserted in the adversary proceeding which render the Tax Matters Agreement unenforceable in whole or in part, including the MTT Claim, and would require Honeywell to disgorge or otherwise return any payments and/or value it received from the Debtors under the Tax Matters Agreement (including, without limitation, for the use and/or retention of tax attributes that properly belong or belonged to the Debtors):

- Breach of Contract, including arbitrary administration
- Unconscionability
- Unjust Enrichment
- Lack of Consideration
- Breach of Fiduciary Duty

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Debtors’ motion pursuant to sections 105(a) and 502(c) of the Bankruptcy Code, seeking to establish procedures for estimating Honeywell’s claims (Dkt. 309).

- Unenforceable for violation of public policy, tax administration policy, and/or applicable law.
- Breach of Implied Covenant of Good Faith and Fair Dealing
- Offset of approximately \$35 million in amounts paid under the Tax Matters Agreement.

## **II. ADDITIONAL CLAIMS CONCERNING INDEMNIFICATION AGREEMENT**

- Breach of contract and/or breach of good faith and fair dealing, relating to Honeywell's management of the underlying asbestos claims and defense costs or its after-tax benefits from the Indemnification Agreement.

## **III. RESERVATION OF RIGHTS**

- The foregoing additional claims or causes of action are asserted in relation to the disallowance or amount of claims asserted by Honeywell. Neither the foregoing nor the items contained in the Pending Complaint constitutes a list of all potential claims or defenses that may be raised depending on the specifics of Honeywell's yet-to-be-filed proofs of claim, or that may be revealed through documents and information that will be provided by Honeywell in discovery.<sup>3</sup>

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<sup>3</sup> Nothing herein addresses the relative priority of competing claims against Garrett ASASCO or any other Debtor or non-Debtor subsidiary. In the event that there are creditors of the Debtors other than Honeywell and the consenting creditors that are impaired in these cases, the Debtors reserve the right to assert that Honeywell's claims should be avoided or subordinated to the extent necessary to pay all such creditors' claims in full.



Dated: New York, New York  
December 15, 2020

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By: /s/ Susheel Kirpalani

Michael B. Carlinsky  
Susheel Kirpalani  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
(212) 849-7000  
michaelcarlinsky@quinnemanuel.com  
susheelkirpalani@quinnemanuel.com

Matthew Scheck  
Razmig Izakelian (admitted pro hac vice)  
865 S. Figueroa St.  
Los Angeles, CA 90017  
(213) 443-3000  
matthewscheck@quinnemanuel.com  
razmigizakelian@quinnemanuel.com

*Special Counsel to the Debtors and Debtors  
in Possession*

## **EXHIBIT C**

Susheel Kirpalani  
Michael B. Carlinsky  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
Telephone: (212) 489-7000  
Facsimile: (212) 846-4900  
Email: susheelkirpalani@quinnemanuel.com  
Email: michaelcarlinsky@quinnemanuel.com

Matthew Scheck  
Razmig Izakelian (admitted pro hac vice)  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
865 S. Figueroa Street, 10th Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000  
Facsimile: (213) 443-3100  
Email: matthewscheck@quinnemanuel.com  
Email: razmigizakelian@quinnemanuel.com

*Special Counsel to the Debtors and Debtors in Possession*

Andrew K. Glenn  
David S. Rosner  
Jed I. Bergman  
Andrew R. Kurland  
KASOWITZ BENSON TORRES LLP  
1633 Broadway  
New York, New York 10019  
Telephone: (212) 506-1700  
Email: AGlenn@kasowitz.com  
Email: DRosner@kasowitz.com  
Email: JBergman@kasowitz.com  
Email: AKurland@kasowitz.com

*Proposed Counsel to the Official Committee of Equity Security Holders*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

GARRETT MOTION INC., *et al.*,<sup>1</sup>

*Debtors.*

Case No. 20-12212 (MEW)

Chapter 11  
(Jointly Administered)

<sup>1</sup> The last four digits of Garrett Motion Inc.'s tax identification number are 3189. Due to the large number of debtor entities in these chapter 11 cases, which are being jointly administered, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <http://www.kccllc.net/garrettmotion>. The Debtors' corporate headquarters is located at La Pièce 16, Rolle, Switzerland.

**NOTICE OF COUNTERCLAIMS OR CAUSES OF ACTION RELATING TO  
DISALLOWANCE OR AMOUNT OF CLAIMS ASSERTED BY HONEYWELL**

The above-captioned debtors (collectively, the “Debtors”), together with the Official Committee of Equity Security Holders (the “Official Equity Committee”), by and through their undersigned counsel and proposed counsel and in accordance with Paragraph 2 of the *[Proposed] Order Establishing Procedures for the Estimation of Claims of Honeywell et al. Against the Debtors* (the “Estimation Procedures Order”),<sup>2</sup> hereby identify the following additional counterclaims or causes of action that (i) relate to the disallowance or amount of Honeywell’s claims and (ii) were not already asserted in *Garrett Motion Inc. & Garrett ASASCO Inc. v. Honeywell International Inc. et al.*, Adversary Proceeding No. 20-1223 (the “Pending Complaint”):

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As a result of Honeywell’s illicit conduct related to the Tax Matters Agreement, the Debtors identify the following additional claims that have not yet been asserted in the adversary proceeding which render the Tax Matters Agreement unenforceable in whole or in part, including the MTT Claim, and would require Honeywell to disgorge or otherwise return any payments and/or

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Debtors’ motion pursuant to sections 105(a) and 502(c) of the Bankruptcy Code, seeking to establish procedures for estimating Honeywell’s claims (Dkt. 309).

value it received from the Debtors under the Tax Matters Agreement (including, without limitation, for the use and/or retention of tax attributes that properly belong or belonged to the Debtors):

- Breach of Contract, including arbitrary administration
- Unconscionability
- Unjust Enrichment
- Lack of Consideration
- Breach of Fiduciary Duty
- Unenforceable for violation of public policy, tax administration policy, and/or applicable law
- Breach of Implied Covenant of Good Faith and Fair Dealing
- Offset of approximately \$35 million in amounts paid under the Tax Matters Agreement.

## **II. ADDITIONAL CLAIMS CONCERNING INDEMNIFICATION AGREEMENT**

- The amount of Honeywell's claim, in any case, cannot exceed the equity value of Garrett ASASCO at the time of the 2018 spinoff, following satisfaction of all other liabilities under applicable law.
- To the extent it is determined that one or more Debtor entities were insolvent, rendered insolvent, or inadequately capitalized at the time of the 2018 spinoff as structured by Honeywell, there may be affirmative claims (including potential breach of contract and tort claims) and defenses that would offset or limit the amount of Honeywell's claims.

- Breach of contract and/or breach of good faith and fair dealing, relating to Honeywell's management of the underlying asbestos claims and defense costs or its after-tax benefits from the Indemnification Agreement
- Pursuant to applicable foreign law, any potential Honeywell indemnification obligations of certain Debtor entities are necessarily limited to only the amount of equity of those entities that is not reserved for other purposes as required by law.

### **III. CLAIMS RELATED TO OWNERSHIP OF CHINESE SUBSIDIARY**

- Due to certain regulatory issues, the transfer of legal title to a Chinese subsidiary from Honeywell to GMI could not be accomplished as the parties intended at the time of the 2018 spinoff. In or around June 2020 Honeywell did transfer the legal title of the entity, but instead of transferring it to GMI, Honeywell transferred it to a Swiss entity, Garrett Motion Sàrl. There accordingly may be one or more claims for breach of contract and/or sounding in tort arising out of this recent transaction.

### **IV. RESERVATION OF RIGHTS**

The foregoing additional claims or causes of action are asserted in relation to the disallowance or amount of claims asserted by Honeywell. Neither the foregoing nor the items contained in the Pending Complaint constitutes a list of all potential claims or defenses that may be raised depending on the specifics of Honeywell's yet-to-be-filed proofs of claim, or that may be revealed through documents and information that will be provided by Honeywell in discovery.<sup>3</sup>

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<sup>3</sup> Nothing in this Notice shall be interpreted to confer standing on the Equity Committee to pursue any claims and causes of action on behalf of any of the Debtors' estates.

Dated: New York, New York  
December 4, 2020

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

By: /s/ Susheel Kirpalani

Michael B. Carlinsky  
Susheel Kirpalani  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
(212) 849-7000  
michaelcarlinsky@quinnemanuel.com  
susheelkirpalani@quinnemanuel.com

Matthew Scheck  
Razmig Izakelian (admitted pro hac vice)  
865 S. Figueroa St.  
Los Angeles, CA 90017  
(213) 443-3000  
matthewscheck@quinnemanuel.com  
razmigizakelian@quinnemanuel.com  
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Andrew K. Glenn  
David S. Rosner  
Jed I. Bergman  
Andrew R. Kurland  
KASOWITZ BENSON TORRES LLP  
1633 Broadway  
New York, New York 10019  
Telephone: (212) 506-1700  
AGlenn@kasowitz.com  
DRosner@kasowitz.com  
JBergman@kasowitz.com  
AKurland@kasowitz.com

*Proposed Counsel to the Official Committee  
of Equity Security Holders*