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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

	)	Chapter 11
In re:	)	
	)	Case No. 20-12212 (MEW)
GARRETT MOTION INC., *et al.*,[1]	)	
	)	Jointly Administered
Debtors.	)	
	)	

MOTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITIES HOLDERS FOR ENTRY OF AN ORDER TERMINATING THE DEBTORS' EXCLUSIVE PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES

[1] 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.

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The Official Committee of Equity Securities Holders (the "Equity Committee") of Garrett Motion Inc. ("GMI") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors") respectfully states the following in support of this motion (the "Motion"):

PRELIMINARY STATEMENT

The Equity Committee seeks to terminate exclusivity because the Debtors' plan needlessly transfers $1.1 billion of value away from thousands of shareholders owning 42% of GMI (many of which are small, retail investors) to a handful of hedge funds – members of the COH Group – that own a slim majority.[2] The Debtors' purported justification for this value-destructive path is a settlement with Honeywell that the Debtors vehemently opposed since the outset of the Chapter 11 Cases. The Debtors do not have a coherent explanation for their abrupt abandonment of the Honeywell litigation, which was their primary rationale for filing Chapter 11 in the first instance. Now, with the Debtors' imprimatur, the COH Plan exploits the COH Group's settlement with Honeywell by siphoning value away from the minority shareholders through a highly dilutive preferred stock offering and by blocking better plan alternatives in the process because the Honeywell settlement is purportedly exclusive to them. While settlement is a laudable goal, it should not come at the price of massive and clearly unnecessary shareholder dilution.

This is the precise scenario that the Equity Committee has sought to avoid. Since its formation, the Equity Committee has worked tirelessly to find the optimal solution to maximize value for *all* GMI shareholders by largely eliminating the dilution in the proposals made to the Debtors. The Equity Committee, which was formed in November of 2020, participated actively in the auction process, but informed the Debtors that it would continue to pursue a stand-alone

[2] Capitalized terms not otherwise defined in the Preliminary Statement shall have the meanings ascribed to them below.

plan if it presented a higher and better value to the Debtors' estates than the proposal declared to be the winner at the conclusion of the auction. The Equity Committee's stand-alone plan proposal (the "Stand-Alone Plan") does exactly that.

The Stand-Alone Plan – backstopped by $800 million of *non-convertible, redeemable* preferred stock financing committed by Atlantic Park and up to $1.85 billion of senior secured financing offered by major financial institutions on a "highly confident" basis – is far superior to the COH Plan adopted by the Debtors. The Stand-Alone Plan equals or exceeds the treatment afforded to all creditors in the COH Plan, including the proposed settlement with Honeywell. However, the Stand-Alone Plan substantially eliminates the massive dilution to existing GMI shareholders proposed by the COH Plan, which could transfer as much as $1.1 billion of value from existing GMI shareholders *to the sponsors of the COH Plan*. The COH Plan offers GMI shareholders the right to participate in only a $200 million rights offering of the $1.25 billion in preferred stock (the remaining $1.05 billion is reserved solely for the COH Group), which will in turn convert into 82.5% of the reorganized common stock. In other words, the COH Group members can buy up to 93.3% of this highly dilutive convertible preferred stock, but the 42% of shareholders outside the COH Group can only buy 6.7%.

By contrast, because the preferred stock backstopped by Atlantic Park is not convertible into common stock, the only potential dilution it would cause would be through at-the-money warrants offered to Atlantic Park and all qualified GMI shareholders that participate in the preferred stock via a rights offering. Other than a 25% minimum participation by Atlantic Park, the remaining amount of this preferred stock would be available to all GMI shareholders on a *pro rata* basis. Thus, it is significantly less dilutive than the COH preferred stock and far more democratic and fair. Using the COH Group's own valuation at emergence, the Stand-Alone Plan would provide GMI shareholders with net distributable value of $1.1 billion, while the COH Plan would offer GMI shareholders only $562 million of net distributable value on a fully diluted basis. *See* Beers Decl., Exhibit F. Thus, there is no real competition here: the Stand-Alone Plan is far superior.

The Debtors are still committed to the COH Plan despite the clear and obvious benefits of the Stand-Alone Plan, and even though it enjoys the support of substantially all GMI shareholders who are not participating in the COH Plan. None of the Debtors' purported justifications for supporting the COH Plan over the Stand-Alone Plan hold water. *First*, the Debtors expressed doubt whether the Equity Committee could secure equity financing and senior debt financing for the Stand-Alone Plan. Those misgivings have now been dispelled. *Second*, the Debtors touted the Honeywell settlement embedded in the COH Plan as providing clarity and avoiding expensive litigation. The Stand-Alone Plan, however, prescribes the exact same treatment for Honeywell and accomplishes the very same thing. *Third*, the Debtors expressed concerns over the amount of first-lien exit financing envisioned by the Stand-Alone Plan. Yet the Debtors are supporting a plan that has a debt and preferred equity annual service cost that is, on average, $15 to $20 million higher than the Stand-Alone Plan due to its significantly higher quantum of more expensive junior capital. In short, the Debtors' rejection of the Stand-Alone Plan is not a reasonable exercise of business judgment.

Nor can the Debtors exploit Honeywell's contractual support of the COH Plan to argue that the COH Plan is superior to any alternative. The Stand-Alone Plan provides Honeywell *with the exact same treatment*, and its contractual support of the COH Plan is a ruse to foreclose alternatives, not because other parties cannot create the exact same value proposition. Indeed, the Equity Committee expects that a fair and objective assessment of Honeywell's concerns should render it neutral between the plans, as it receives the same economic treatment under either plan. Furthermore, the Equity Committee stands ready to work with Honeywell to ensure proper post-reorganization governance is established to ensure the full payment of Honeywell's claims and maximize shareholder value for all shareholders – goals that are inextricably linked and completely symbiotic – and thus do not require a massive transfer of value from minority shareholders to a hand-picked few. As the Court has recently observed, "it would be an interesting conundrum for Honeywell if somebody else proposed a plan that had the exact settlement terms . . . as to Honeywell but different terms as to other people *as to how exactly Honeywell would explain that that was improper*."[3]

The Debtors' support of the COH Plan is but the latest in a series of baffling and value-destructive decisions that the Debtors have made throughout the Chapter 11 Cases. *First*, the Debtors filed bankruptcy for a solvent company, supposedly on the basis that their obligations to Honeywell must be limited through litigation, and commenced an estimation proceeding that the Debtors described as a "gating" issue that "*is mandatory under the Bankruptcy Code*."[4] Now, over four months later, and after incurring over $300 million of projected fees and expenses, the Debtors have abandoned this "gating" issue to pursue what is at best a modest reduction in the Honeywell claim.

Second, the Debtors vociferously opposed the COH Group's proposal since the beginning of the Chapter 11 Cases, describing it as a "coercive," "sweetheart" deal with a subset of the GMI shareholders, handing them the voting power and residual economic value of GMI, and

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[3] *See* Jan. 14, 2021 Hr'g Tr. 50:18-22 (emphasis added).

[4] *See* Debtors' Motion Pursuant to Sections 105(a) and 502(c) to Establish Procedures for Estimating the Maximum Amount of Honeywell's Claims and Related Relief ¶¶ 28, 42 [Dkt. No. 309]; Reply in Support of Debtors' Motion Pursuant to Sections 105(a) and 502(c) to Establish Procedures for Estimating the Maximum Amount of Honeywell's Claims and Related Relief ¶ 20 [Dkt. No. 384] ("Debtors' Estimation Reply").

settling Honeywell's claims without any judicial determination concerning their merit.[5] The Debtors spent months pursuing an auction process to frustrate the COH Group's proposal, only to immediately overturn the results of that auction – and the selection of KPS's far superior bid – to embrace the barely modified COH Group proposal.

Third, the Debtors agreed at the outset of the Chapter 11 Cases to an *$84 million* break-up fee, which the Debtors argued was "necessary to preserve the value of estate assets,"[6] to secure the KPS $2.1 billion stalking horse bid. The Debtors now acknowledge that that bid was far from a sufficient price for the Debtors' assets, having rejected an improved *$2.9 billion* bid from KPS. That demonstrably wasteful break-up fee will come out of shareholders' recoveries and represents nearly 20% of the current market capitalization of the Debtors – an enormous transfer of value away from shareholders.

Fourth, the Debtors exhibited lack of reasonable business judgment during the course of the auction, most egregiously in their support of the COH Group's proposal even though it was significantly worse than the KPS Bid and the OWJ Group Bid, both of which included unfettered "go-shop" provisions that expressly allowed the Equity Committee to continue exploring a superior plan. Notably, KPS improved its bid from $2.6 billion (which at the time, the Debtors declared to be the highest and best, including over the COH Group's proposal) to $2.9 billion – an increase in absolute value of $300 million, which would have inured directly to the benefit of shareholders. By contrast, the COH Group made only minor enhancements to its original proposal, offering a cash-out option to shareholders of $6.25 per share, which materially undervalues the company and is nominally lower than the value of its original proposal where it claimed the value to shareholders was $6.28 per share. The only other "improvement" the COH

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[5] *See* Oct. 21, 2020 Hr'g Tr. 44:21-22, 45:6-7 (Dietderich); Debtors' Estimation Reply ¶ 5; Debtors' Objection to Motion to Modify Exclusivity ¶ 9 [Dkt. No. 389].

[6] *See* Dkt. No. 18 ¶ 66.

Group offered in its revised final proposal was an increase in the rights offering from $100 million to $200 million for all shareholders (including the insider shareholders in the COH Group) who do not exercise the cash-out option, which does not translate into significant value since no more than 42% of it is available to shareholders outside the COH Group. Moreover, the incremental cash raised through the increased rights offering is given directly to Honeywell through a higher upfront cash payment on emergence.

The Debtors have thus abdicated their fiduciary duties to their shareholders – the true party in interest in these solvent Chapter 11 Cases – at every critical juncture. The Debtors' support of the COH Plan represents yet another instance of the Debtors' mercurial and arbitrary exercise of "business judgment," bringing about these additional value-destructive consequences:

- Under the COH Plan, Honeywell would receive $1.2 billion in payments, which, based on the Debtors' assumptions, has a present value of $959 million. The maximum amount Honeywell could have asserted against the Debtors is between $1.1 and $1.2 billion, which assumes a 7.25% discount rate. That maximum amount, however, does not reflect any of the claims and defenses that the Debtors have (or could have) asserted against Honeywell, including with respect to the validity of Honeywell's claims, the appropriate discount rate, and the allocation of value between the Debtors' U.S. entities and ASASCO (the obligor under the Honeywell indemnity agreement). It is thus unclear whether the Honeywell settlement provides *any* benefit to the Debtors' estates (and the Equity Committee believes that it does not). However, *even if* the Debtors had absolutely no valid claims or defenses against Honeywell, the settlement reflects a reduction of, at most, only $150-$200 million to the maximum amount Honeywell could have asserted. In exchange for this dubious "benefit," the COH Plan forces a value transfer of $1.1 billion from shareholders outside the COH Group to the COH Group.

- The Debtors will have spent approximately $300 million in process costs – 65% of the current market capitalization – to achieve this treatment of the Honeywell claim, including the unnecessary, wasteful $84 million break-up fee payable to KPS. Thus, considering these process costs, there is certainly no real net savings on the Honeywell claim, and in fact a substantial net cost to shareholders of the Debtors having pursued this dubious strategy.

Under these circumstances, the Court should terminate exclusivity to allow the Stand-Alone Plan to be solicited, in tandem, with the COH Plan. Only in this way can unconflicted

GMI shareholders decide which plan they prefer rather than relegating this decision solely to the Debtors. The Equity Committee believes that the Stand-Alone Plan will enjoy the support of substantially all non-COH Group shareholders because it avoids the value destruction in the COH Plan. Although the Equity Committee expects that the Stand-Alone Plan will be vigorously opposed by the COH Group, that opposition will not stem from their legitimate interests as GMI shareholders. Rather, their actions will be tainted by their desire to protect their "sweetheart" deal and the significant returns from new money investments that are not fairly or ratably offered to all GMI shareholders.

While terminating exclusivity will not prejudice the Debtors, maintaining exclusivity will cause GMI shareholders potentially irreparable harm. If the Debtors are correct that the COH Plan is superior, unconflicted shareholders will support it and the Court will confirm it despite the competition from the Stand-Alone Plan. But denying this motion could make that a *fait accompli* because the Equity Committee may never have the opportunity to solicit the Stand-Alone Plan. While the Equity Committee does not believe that the COH Plan is confirmable given the disparate treatment it affords to existing GMI shareholders, there is no guarantee that, in the absence of alternatives that have been presented to and reviewed by all shareholders, the Court will not confirm the COH Plan despite the Stand-Alone Plan's superiority. Second, if the Equity Committee awaited the outcome of the confirmation hearing on the COH Plan, it could forfeit its ability to propose a plan to cram down Honeywell in the event that it does not vote in favor of the Stand-Alone Plan. The RSA negotiated by the Debtors requires the Debtors' secured lenders to vote in favor of any plan that provides for payment of principal and simple interest (they have waived default interest), provided that the disclosure statement for such a plan is approved on or before February 22, 2021. The Equity Committee intends to meet this deadline (assuming it is not extended) with the Court's assistance to retain the senior lenders as an impaired accepting class. There is no guarantee that the senior lenders will agree to waive their default interest – which would result in savings of $0.23 per share (assuming emergence on April 30, 2021) – and support the Stand-Alone Plan if the Equity Committee does not meet existing RSA deadlines.

Against long odds and without the tools afforded to the Debtors, the Equity Committee has found the best alternative for the estates and shareholders. The only thing standing in the way is the Debtors' plan exclusivity. Exclusivity is intended to be a shield to allow the Debtors adequate time to formulate and advance a plan, not a sword to prevent superior alternatives. Because exclusivity should not be used to stifle a value-maximizing plan, the Court should terminate it now.

For all the reasons set forth herein, the Court should grant the Motion.

RELIEF REQUESTED

1. By this Motion, the Equity Committee seeks entry of an order, substantially in the form attached hereto as Exhibit A (the "Order"), pursuant to Section 1121(d) of title 11 of the United States Code (the "Bankruptcy Code"): (a) terminating the Debtors' exclusive right to file a Chapter 11 plan and solicit acceptances thereof to allow the Equity Committee to file its own plan to be considered by this Court and parties in interest in parallel with the COH Plan, and (b) granting related relief.

2. In support of this Motion, the Equity Committee files contemporaneously herewith the *Declaration of Lorie R. Beers in Support of Motion of the Official Committee of Equity Securities Holders for Entry of an Order Terminating the Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances* (the "Beers Declaration" or "Beers Decl.").

JURISDICTION AND VENUE

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these Chapter 11 Cases and this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicate for the relief requested herein is Section 1121(d) of the Bankruptcy Code.

BACKGROUND

I. The Chapter 11 Cases

5. GMI is a Delaware corporation established in 2018 following a spin-off from Honeywell International Inc. ("Honeywell"), with its headquarters located in Rolle, Switzerland. The Debtors design, manufacture and sell highly engineered turbocharger, electric-boosting and connected vehicle technologies.

6. On September 20, 2020 (the "Petition Date"), each of the Debtors filed with the Court a voluntary petition for relief under the Bankruptcy Code. Each Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Court authorized joint administration of the Debtors' Chapter 11 cases (the "Chapter 11 Cases") by entry of an order on September 21, 2020 [Dkt. No. 27].

7. As of the Petition Date, the Debtors owed (i) $370 million in principal under a certain Revolving Credit Facility and approximately $1,077 million in principal under certain Term Loan Facilities (collectively, the "Secured Credit Facility Claims") [Dkt. No. 15 ¶ 42]; (ii) approximately $435 million under certain senior notes (the "Senior Notes") [Dkt. No. 15 ¶ 45]; and (iii) prepetition general unsecured trade claims ("General Unsecured Claims") [Dkt. No. 313 at 33-44].

8. The Debtors obtained the Court's approval of a $200 million post-petition financing facility, which is currently due and owing to the lenders under that facility (the "DIP Facility Claims"). [Dkt. No. 281].

9. On October 5, 2020, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors pursuant to Section 1102 of the Bankruptcy Code [Dkt. No. 161], which was reconstituted on November 19, 2020 [Dkt. No. 423]. On November 18, 2020, the U.S. Trustee appointed the Equity Committee pursuant to Section 1102 of the Bankruptcy Code [Dkt. No. 404].

10. Additional factual background relating to the Debtors' businesses and the commencement of the Chapter 11 Cases is set forth in detail in the *Declaration of Sean Deason in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Dkt. No. 15] (the "First Day Decl.").

11. From the Petition Date until the Debtors' announcement of their support of the COH Plan (as defined below), the Debtors pursued a sale of their assets in accordance with the bid procedures (the "Bid Procedures") approved by the Court on October 24, 2020, pursuant to which certain bid protections were given to the stalking horse bidder, AMP U.S. Holdings, LLC and AMP Intermediate B.V. (respectively, "KPS" and the "KPS Bid") [Dkt. No. 282].

II. The Honeywell Claims

12. At the outset of the Chapter 11 Cases, the Debtors claimed that they needed to restructure their unsustainable liability burden inherited from Honeywell following the 2018 spin-off. *See* First Day Decl. ¶ 3. The Debtors sought to restructure a "financially extraordinary indemnity contract" that Honeywell imposed on Garrett ASASCO Inc. ("ASASCO"), to reimburse Honeywell, among other things, for legacy asbestos exposure arising from an

unrelated Honeywell business, up to $5.25 billion over 30 years. *See id.* Central to the Debtors' strategy was an effort to liquidate and limit Honeywell's claims. The Debtors thus filed a motion to estimate Honeywell's claims pursuant to Section 502(c) of the Bankruptcy Code, which the Court scheduled for hearing in February 2021. [Dkt. No. 309]. The Debtors also commenced an adversary proceeding against Honeywell, asserting several theories of liability and seeking to invalidate or limit ASASCO's purported obligations to Honeywell. [Dkt. No. 1 in Case No. 20-01223]. As described below, the Debtors now seek to settle the Honeywell claims, and have obtained a stay of the estimation hearing and the adversary proceeding against Honeywell. [Dkt. No. 737].

III. <u>The COH Group's Motion to Modify Exclusivity</u>

13. Upon the filing of the Debtors' motion seeking approval of the Bid Procedures, two of the Debtors' shareholders, Centerbridge Partners, L.P. ("<u>Centerbridge</u>") and Oaktree Capital Management, L.P. ("<u>Oaktree</u>," and together with Centerbridge and Honeywell, the "<u>COH Group</u>"), announced an agreement with Honeywell that provided for (i) the settlement of Honeywell's claims against ASASCO; and (ii) the transfer of virtually all of the Debtors' equity value to Centerbridge, Oaktree and a select group of the Debtors' shareholders (the "<u>Additional Insider Shareholders</u>") in return for their support. The COH Group then filed a motion to terminate exclusivity to pursue a plan predicated on that agreement. [Dkt. No. 340].

14. In opposing the COH Group's motion to terminate exclusivity, the Debtors described the COH Group's proposal as a "coercive," "sweetheart deal" that would provide for the sale of "virtually all of the voting power and residual economic value of GMI to a handful of

institutional investors for cash."[7] The Debtors argued that "*the value of the left-behind common stock* . . . *is virtually nothing* . . . because that series A preferred [given to Centerbridge and Oaktree] represents the economic value of the company."[8]

15. After a hearing on November 23, 2020, the Court denied without prejudice the COH Group's motion to modify exclusivity. [*See* Dkt. No. 477]. The Court noted, however, that if following the auction "the only two options were [the KPS Bid] . . . and the Centerbridge/Oaktree proposal . . . I would probably be inclined to allow them both to be considered[.]"[9]

IV. <u>The Auction</u>

16. The Debtors commenced an auction in accordance with the Bid Procedures on December 21, 2020 [Dkt. No. 562]. In addition to the stalking horse bid submitted by KPS, two other bids were submitted: one by the COH Group and one by Owl Creek Asset Management, L.P., Warlander Asset Management, L.P., Jefferies LLC and other investors (the "<u>OWJ Group</u>" and the "<u>OWJ Group Bid</u>," respectively). *See* Beers Decl. ¶ 3.

17. During the course of the auction, KPS improved its bid from $2.6 billion (which at the time, the Debtor declared to be the highest and best, including over the COH Group's bid) to $2.9 billion – an increase in absolute value of $300 million, which value would have inured directly to the benefit of shareholders. *See id.* ¶ 4. The Debtors also received improved bids from the OWJ Group before the auction concluded. *See id.* The Equity Committee urged the Debtors to choose the OWJ Group Bid over the KPS Bid as one that offered greater value to

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7 *See* Oct. 21, 2020 Hr'g Tr. 44:21-22, 45:6-7 (Dietderich); Reply in Support of Debtors' Motion Pursuant to Sections 105(a) and 502(c) to Establish Procedures for Estimating the Maximum Amount of Honeywell's Claims and Related Relief ¶ 5 [Dkt. No. 384]; Debtors' Objection to Motion to Modify Exclusivity ¶ 9 [Dkt. No. 389].

8 *See* Oct. 21, 2020 Hr'g Tr. 46:23-47:2 (Dietderich) (emphasis added).

9 *See* Nov. 23, 2020 Hr'g Tr. 101:1-6.

shareholders and allowed for far greater shareholder participation (and thus was more fair and democratic) in the necessary new money investment. *See id.*

18. Notwithstanding the position of the Equity Committee, at the conclusion of the auction, the Debtors declared the KPS Bid the highest and best offer received in the auction and, on January 8, 2021, filed its plan and disclosure statement predicated upon the KPS bid (the "KPS Plan"). [Dkt. Nos. 711, 712, 713].

19. After the conclusion of the auction and the declaration of the KPS Bid as the highest and best bid, the Debtors received a modified proposal from the COH Group containing only minor enhancements to its original proposal, which, as described above, the Debtors had rejected. *See* Beers Decl. ¶ 5. The COH Group offered a cash-out option to shareholders of $6.25 per share, nominally lower than the value of its original proposal where it claimed the value to shareholders was $6.28 per share. *See id.* The only other purported improvement the COH Group offered in its revised proposal was an increase in the rights offering from $100 million to $200 million for all prepetition shareholders who do not exercise the cash-out option. *See id.* The "improvement" to the rights offering does not translate into significant value to shareholders as a whole because the shareholders in the COH Group may participate in the $200 million rights offering *pro rata* in addition to their participation in the balance of the $1.25 billion offering of preferred shares. Thus, the COH Group's bid remained highly dilutive to minority shareholders. *See id.* Moreover, the incremental cash raised through the increased rights offering is given directly to Honeywell through a higher upfront cash payment on emergence. *See id.*

20. Given those facts, the Equity Committee urged the Debtors to choose the KPS Bid over the COH Group bid because – as the Equity Committee's analysis showed – the KPS Bid

provided greater value to all shareholders. *See id.* ¶ 6. On January 11, 2021, however, the Debtors declared that they had signed a plan support agreement with the COH Group (the "PSA") and decided to pursue the COH Group bid. [Dkt. No. 717].

V. **The COH Plan and Plan Support Agreement**

21. The PSA among the Debtors and the COH Group incorporates a term sheet describing the terms of a Chapter 11 plan that the Debtors filed on January 22, 2021 [Dkt. No. 717, Ex. A, Dkt. No. 780] (the "COH Plan Term Sheet" and "COH Plan," respectively). The COH Plan Term Sheet sets forth the following principal terms:

- Treatment of Centerbridge, Oaktree and the Additional Insider Shareholders: Centerbridge, Oaktree and the Additional Insider Shareholders shall receive Convertible Series A Preferred Stock (the "COH Convertible Series A Preferred Stock") at a purchase price of $1,250,800,000, with a 11% per annum dividend payable in cash or PIK at the option of the reorganized GMI (subject to certain conditions). *Each holder of the COH Convertible Series A Preferred Stock shall have the right to convert its shares into common stock of the reorganized GMI based on a conversion right of $3.50 per common share* (subject to certain conditions). *See* COH Plan Term Sheet at 1-2.

- Treatment of Non-insider Shareholders: Each shareholder shall have the option to elect to either (i) retain its equity interest in the reorganized GMI (subject to dilution by the COH Convertible Series A Preferred Stock given to Centerbridge, Oaktree and the Additional Insider Shareholders), or (ii) receive $6.25 per share in cash (the "Cash-Out Option"). *See* COH Plan Term Sheet at 5.

- Rights Offering: Centerbridge, Oaktree, the Additional Insider Shareholders, and all other shareholders that have not exercised the Cash-Out Option shall receive subscription rights to purchase shares of the COH Convertible Series A Preferred Stock at a purchase price of $200 million in the aggregate in cash. *See* COH Plan Term Sheet at 3-4.

- Settlement with Honeywell: Honeywell shall receive $1.209 billion in payments, comprised of an initial payment of $375 million in cash, and new Series B Preferred Stock of the reorganized company, providing for $834.8 million in total payment, divided into yearly payments starting in 2022 through 2030. Honeywell shall further receive a "put" option whereby the Debtors are required to pay the full amount of Honeywell's claims in advance if certain EBITDA levels are achieved. *See* COH Plan Term Sheet at 7-9.

- Treatment of DIP Facility Claims: Payment in full in cash on the Effective Date. *See* COH Plan Term Sheet at 5.

- Treatment of Holders of Secured Credit Facility Claims: Payment in full in cash on the Effective Date of all outstanding principal and accrued interest at the contractual non-default rate. *See* COH Plan Term Sheet at 6.

- Treatment of Holders of Claims Under the Senior Notes: Payment in full in cash on the Effective Date of (i) all outstanding principal and accrued and unpaid interest under the Senior Notes at the contractual non-default rate; and (ii) $15 million on account of certain claims purportedly based on the Applicable Premium set forth in the Senior Notes' indenture. *See* COH Plan Term Sheet at 7.

- General Unsecured Claims: Each general unsecured creditor shall receive, at the option of Centerbridge and Oaktree: (i) reinstatement of its allowed General Unsecured Claim pursuant to Section 1124 of the Bankruptcy Code; or (ii) payment in full in cash on the Effective Date or when the claim is contractually due. *See* COH Plan Term Sheet at 10.

22. The PSA also includes a "no-shop" provision that purports to prevent the Debtors from actively exploring alternative, value-maximizing plans:[10]

> *During the Effective Period, (i) the Debtors shall, and shall instruct, direct and cause any person acting on the Debtors' behalf to, immediately cease and terminate any ongoing solicitation, discussions and negotiations with respect to any Alternative Transaction and (ii)* the Debtors shall not, and the Debtors shall instruct, direct and cause any person acting on the Debtors' behalf not to, directly or indirectly, initiate, solicit, engage in or participate in any discussions, inquiries or negotiations in connection with any proposal or offer relating to an Alternative Transaction, afford access to the business properties, assets, books or records of or provide any non-public information relating to the Debtors to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate, or encourage any effort by any entity or person with respect to any Alternative Transaction that such entity or person is seeking to make or has made, in each of cases (i) and (ii) unless with the consent of the Plan Sponsors, Honeywell and the Requisite Additional Investors *(such consent not to be unreasonably withheld, conditioned or delayed) or as the Court may order.*

23. The PSA further sets forth the following milestones, requiring the parties thereto to cooperate with one another in an effort to:[11]

- obtain entry of an order approving the PSA by February 19, 2021;

[10] *See* PSA § 5.04 [Dkt. No. 717] (emphasis added).

[11] *See* PSA § 4 [Dkt. No. 717].

- obtain entry of an order approving the disclosure statement for the COH Plan by March 8, 2021;
- obtain entry of an order confirming the COH Plan by April 29, 2021; and
- cause the effective date of the COH Plan to occur by May 7, 2021.

VI. **<u>The Equity Committee's Stand-Alone Plan</u>**

24. Since its formation, the Equity Committee has explored strategic alternatives to maximize value for its constituents and the Debtors' other stakeholders, including through a stand-alone Chapter 11 plan that would (i) reinstate the equity securities interests in GMI; (ii) refinance the Debtors' funded debt; and (iii) raise new capital through the issuance of redeemable preferred stock. *See* Beers Decl. ¶ 7. Before the Debtors announced their support of the COH Plan, they repeatedly assured the Equity Committee that they remained open to considering a stand-alone plan proposed by the Equity Committee (or other stakeholders). *See id.*

25. As part of that process, the Equity Committee's proposed investment banker, Cowen and Company, LLC, launched a marketing process, contacting potential financing sources to provide equity capital to sponsor a stand-alone plan that would be superior to the other bids submitted to the Debtors during the auction, including the COH Plan. *See id.* ¶ 8.

26. The Equity Committee's efforts have culminated in a viable, value-maximizing, Stand-Alone Plan with fully committed preferred stock, and senior debt financing offered on a "highly confident" basis, that provides *equal or better treatment to all the Debtors' stakeholders in comparison to the COH Plan*. *See id.* ¶ 9. The principal terms of the Stand-Alone Plan, as reflected in a term sheet attached as <u>Exhibit A</u> to the Beers Declaration (the "<u>Stand-Alone Plan Term Sheet</u>"), are as follows:

A. *Equity Financing*

- Atlantic Park Strategic Capital Fund, LP ("Atlantic Park") shall backstop $800 million of preferred stock financing (the "Series A Preferred Stock") to fund the Stand-Alone Plan. *See* Beers Decl., Exhibit A at 1, Exhibit B.

- The Series A Preferred Stock would be redeemable on or after three years and would not be convertible but would include at-the-money warrants for 15% of the reorganized GMI's equity – of which existing GMI shareholders can receive up to 7.6% – struck at the volume-weighted average price of the GMI common stock for the 30-day period preceding the Effective Date of the Stand-Alone Plan. *See* Beers Decl., Exhibit A at 1, 3, 7. Under the Stand-Alone Plan, after the exercising of warrants, assuming full participation by the GMI shareholders, existing GMI shareholders would own 95.2% of the post-reorganized equity, assuming cashless exercise. By contrast, under the COH Plan, existing GMI shareholders would own 30.7% of the post-reorganized equity, assuming the rights offering is fully subscribed, as a result of the allocation of the $1.25 billion of preferred stock in the COH Plan to Centerbridge, Oaktree and the Additional Insider Shareholders. *See* COH Plan Term Sheet at 2.

- The Series A Preferred Stock would be offered ratably to all eligible shareholders, other than a 25% backstop minimum for Atlantic Park (75% available to all shareholders), in contrast to the preferred stock in the COH Group Bid, in which only $200 million of $1.25 billion (16%) is open to all shareholders (inclusive of Centerbridge, Oaktree and the Additional Insider Shareholders). *See* Beers Decl., Exhibit A at 6; COH Plan Term Sheet at 3-4.

B. *Senior Debt Financing*

- Two major banks have offered to provide senior secured debt comprised of $1.5 billion in term loans and $350 million in a revolving credit facility, on a "highly confident" basis, which shall be used to repay the Secured Credit Facility Claims and DIP Facility Claims. They would also provide a revolver for working capital needs. *See* Beers Decl., Exhibits C, D.

C. *Treatment of Equity Interests*

- GMI common stock shall be reinstated and subject to dilution only by the warrants granted to Atlantic Park and the parties (including existing shareholders) exercising rights to participate in the Series A Preferred Stock for 15% of the reorganized GMI's equity. *See* Beers Decl., Exhibit A at 12.

D. *Treatment of Honeywell*

- The Stand-Alone Plan shall provide Honeywell with an identical treatment to that provided under the COH Plan. *See* Beers Decl., Exhibit A at 9-12.

E. ***Treatment of Other Claims***

- The Stand-Alone Plan shall provide all other claims – including the DIP Facility Claims, Secured Credit Facility Claims, claims under the Senior Notes, and General Unsecured Claims – with an identical treatment to that provided under the COH Plan. *See* Beers Decl., Exhibit A at 8-12.

F. ***Timeline***

- The Restructuring Support Agreement among the Debtors and holders of the Secured Credit Facility Claims (the "RSA") requires those lenders to vote in favor of any plan that provides for payment of principal and simple interest (they have waived default interest) – which would result in savings of $0.23 per share[12] – if the disclosure statement for such a plan is approved on or before February 22, 2021. The Equity Committee intends to comply with such deadlines (if not extended), subject to the Court's approval.

27. The following chart compares the recoveries of shareholders under the Stand-Alone Plan versus the COH Plan, assuming management projections and a 6.0x EBITDA TEV multiple:

Equity Value using Dec. STRAP Projections under COH and Standalone Plans assuming TEV at 6.0X LTM EBITDA

COH Plan				
Date	12/31/2021	12/31/2022	12/31/2023	12/31/2024
Equity Value Per Share	$ 3.62	$ 4.91	$ 6.48	$ 7.22
Equity Value to Pre-Petition S/H [1]	$ 274	$ 373	$ 491	$ 548

Standalone Plan				
Date	12/31/2021	12/31/2022	12/31/2023	12/31/2024
Equity Value Per Share	$ 3.82	$ 10.44	$ 18.13	$ 21.74
Equity Value to Pre-Petition S/H [1]	$ 290	$ 792	$ 1,374	$ 1,648

Note: (1) Total Equity Value for Pre-Petition Shareholders Not Participating in Rights Offering or Warrants

28. The clear superiority of the Stand-Alone Plan – and the coercive nature of the COH Plan – cannot be reasonably disputed. Assuming management projections and a consistent 6.0x LTM EBITDA multiple at the end of 2024, the shares allocated to Centerbridge, Oaktree and the Additional Insider Shareholders will be worth $7.22/share in 2024, which is an attractive return for those investors on their new money investment, who are buying the COH Convertible Series A Preferred Stock with a $3.50/share conversion price and earning an 11% coupon in the

12 Based on assumed default interest rate of $18 million divided by 75.8 million outstanding shares.

interim. *See* Beers Declaration ¶ 13, Exhibit E. The shares held by the non-insider shareholders, however, would be substantially diluted by the COH Convertible Series A Preferred Stock, effectively leading them to exercise the $6.25 Cash-Out Option instead of $7.22/share in potential value in nearly four years. *See id.*

29. Although the Cash-Out Option is better than the alternative offered to non-insider shareholders under the COH Plan, it materially undervalues the company. *See id.* ¶ 14, Exhibit E. Moreover, it is significantly worse than the Stand-Alone Plan, which gives all shareholders the ability to participate in the future growth of the Debtors – leading to a value of $21.74 a share *on the exact same set of assumptions of management projections and a 6.0x LTM EBITDA multiple* – in addition to the highly democratic ability to invest *pro rata* in the Series A Preferred Stock, if they so choose. *See id.* The COH Plan takes that value away from non-insider shareholders and gives it almost exclusively (93%) to Centerbridge, Oaktree and the Additional Insider Shareholders. *See id.*

30. The extent to which the Stand-Alone Plan is superior for shareholders is evidenced by *the COH Group's own valuation methodology*. Under the same methodology that the COH Group used to suggest that their original proposal was superior to the $2.6 billion KPS Bid, the net value distributable to shareholders under the Stand-Alone Plan is $14.97/share. *See id.* ¶ 15, Exhibit F. By contrast, the net value distributable to shareholders under the COH Plan is $7.41/share for those shareholders not electing the Cash-Out Option and $6.25/share for those who elect the Cash-Out Option. *See id.* In other words, the Stand-Alone Plan is far superior to the COH Plan *under their own hand-picked methodology*.

VII. <u>The Debtors' Refusal to Consider the Stand-Alone Plan</u>

31. On January 24, 2021, the Equity Committee provided the Debtors with the Stand-Alone Plan Term Sheet. *See* Beers Decl. ¶ 16. However, even though the Stand-Alone Plan

provides equal value to all stakeholders and substantially more value to shareholders, the Debtors will still proceed with the COH Plan, which has necessitated this Motion. *See id.*

32. The Debtors have repeatedly ignored the reasonable desires of their fulcrum security, the shareholders. Not only did the Debtors ignore the Equity Committee's well-reasoned position by choosing the COH Group's proposal over *three other superior bids*, they have also repeatedly hindered the Equity Committee's ability to pursue the Stand-Alone Plan. They have also ignored the preferences of unaligned shareholders. Following conversations with numerous shareholders, which represent virtually all unaligned shareholders the Equity Committee has been able to identify and collectively own 40-50% of the shares outside the COH Group, the Equity Committee believes that the overwhelming majority of that group opposes the COH Plan and supports the Stand-Alone Plan. *See id.* ¶ 17.

33. By this Motion, the Equity Committee seeks an order terminating the Debtors' exclusive periods to file and solicit acceptances of a plan pursuant to Section 1121 of the Bankruptcy Code, to allow the Equity Committee to file and solicit acceptances of the Stand-Alone Plan concurrently with the COH Plan.

BASIS FOR RELIEF

I. The Debtors' Exclusive Periods

34. Section 1121 of the Bankruptcy Code states, in relevant part:

> (b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.
>
> (c) Any party in interest, including . . . an equity security holders' committee . . . may file a plan if and only if –
>
> …
>
> (2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or

> (3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, ...
>
> (d) (1) . . . [O]n request of a party in interest . . . and after notice and a hearing, the court may for cause reduce . . . the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121. "This provision curbs the unfair disadvantage to creditors of giving the debtor perpetual exclusive rights to initiate a plan." *Jasik v. C.S. Conrad (In re Jasik)*, 727 F.2d 1379, 1382 (5th Cir. 1984); *see also In re Barker Estates, Inc.*, 14 B.R. 683, 685 (Bankr. W.D.N.Y. 1981) ("The granting of authority [under Section 1121] . . . to propose [competing] plans of reorganization and rehabilitation . . . democratizes the reorganization process.").

35. The Debtors filed the KPS Plan on January 8, 2021, within the 120-day period in which only the Debtors may file their plan, and the COH Plan on January 22, 2021, giving the Debtors until March 19, 2021, to solicit and obtain acceptances for the COH Plan (the 120-day and 180-day periods, collectively, the "<u>Exclusive Periods</u>").

II. The Debtors Have Forfeited Their Plan Exclusivity Rights by Purporting to Give a Subset of Shareholders the Exclusive Right to Purchase a Controlling Stake in the Reorganized Debtors

36. Section 1123(a)(4) of the Bankruptcy Code provides that any Chapter 11 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). Under the COH Plan, only Centerbridge, Oaktree and the Additional Insider Shareholders are eligible to invest in the COH Convertible Series A Preferred Stock (subject to the $200 million rights offering). The remaining, non-insider shareholders may only elect between having their shares reinstated (and substantially diluted by the COH Convertible Series A Preferred Stock) and the $6.25 Cash-Out Option.

37. The Debtors will undoubtedly argue that all shareholders are receiving the "same treatment" under the COH Plan because the shareholders that are members of the COH Group are providing "new value" to the Debtors in exchange for the COH Convertible Series A Preferred Stock. The Debtors cannot assert a "new value" exception to the equal treatment requirement, however, without allowing the COH Plan to be challenged by alternative plans in a competitive process.

38. In *Bank of America National Trust & Savings Ass'n v. 203 North LaSalle Street Partnership*, 526 U.S. 434 (1999) ("*North LaSalle*"), the Supreme Court held that a debtor's pre-bankruptcy equity holders could not, *without consideration of alternative plans* and over the objection of a senior class of impaired creditors, receive an exclusive opportunity to buy the reorganized debtor's new equity. *Id.* at 457-58.

39. The Supreme Court found it unnecessary to decide whether there is a "new value" corollary to the absolute priority rule, because even assuming that there is such a corollary, the plan did not satisfy it. *Id.* at 454. Critically, the plan in *North LaSalle* was proposed during the debtor's exclusive period under Section 1121 of the Bankruptcy Code and provided pre-petition equity holders of the debtor with the exclusive opportunity to obtain ownership interests in the reorganized debtor by contributing new value to the reorganized debtor. *Id.* at 438-40. The Supreme Court held that the plan was "doomed . . . by its provision for vesting equity in the reorganized business in the [d]ebtor's partners without extending an opportunity to anyone else either to compete for that equity *or to propose a competing reorganization plan*." *Id.* at 454.

40. Here, the Debtors are pursuing a plan that purports to give a select group of its shareholders the exclusive right to invest in the highly dilutive COH Convertible Series A Preferred Stock (subject only to the rights offering). Without affording other shareholders the

opportunity "to compete for that equity *or to propose a competing reorganization plan*," the COH Plan is already "doomed." *North LaSalle*, 526 U.S. at 454; *see also In re Situation Mgmt. Sys.*, 252 B.R. 859, 865 (Bankr. D. Mass. 2000) (terminating exclusivity pursuant to *North LaSalle*, reasoning that "the Debtor's exclusive right to propose and gain acceptance of a plan [that provided for the sale of the stock in the reorganized Debtor exclusively to old shareholders] *has effectively been forfeited*[.]") (emphasis added).

41. The transfer of control of the Debtors under the COH Plan must be subject to a continuing competitive process notwithstanding the auction by which the Debtors marketed their assets for sale. Critically, no party other than Centerbridge, Oaktree and the Additional Insider Shareholders was ever given the opportunity to purchase a controlling interest in the reorganized Debtors within the construct proposed under the COH Plan, including the settlement with Honeywell. Indeed, since the Petition Date until *after the auction* the Debtors vociferously opposed Centerbridge and Oaktree's settlement with Honeywell, describing it as a "gating" issue that must be litigated before the implementation of any restructuring alternative.[13] Accordingly, the Debtors' stalking horse agreement with KPS did not include a settlement with Honeywell (nor did the OWJ Bid). Moreover, the Debtors never marketed the COH Convertible Series A Preferred Stock to anyone other than the shareholders comprising the COH Group. The only way to test whether the proposed price for those securities is fair is through true competition in the open market. *See North LaSalle*, 526 U.S. at 457 ("[T]he best way to determine value is exposure to a market.").

42. The COH Plan must therefore be tested in a competitive process by allowing the Equity Committee to file and solicit acceptances of the Stand-Alone Plan, which incorporates an

13 [Dkt. No. 309 ¶¶ 28, 42].

identical treatment of Honeywell's claims while providing equal treatment to all shareholders. The Debtors' exclusivity rights cannot co-exist with their desire to give preferential treatment to a subset of their shareholders. *See In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 677 (Bankr. S.D.N.Y. 2006) ("*Adelphia I*") (courts have been "quite willing to terminate exclusivity where a debtor . . . has inappropriately sought to favor equity or another stakeholder group[.]"). The Debtors have therefore forfeited their exclusivity rights under Section 1121 of the Bankruptcy Code. The Court should grant the Motion for this reason alone.

43. Moreover, as a matter of Delaware law, when considering the approval of transactions that involve a sale of control of a corporation, courts apply an enhanced scrutiny standard to the fiduciary duties of directors. *See Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 184 (Del. 1986); *Huff Energy Fund, L.P. v. Gershen*, Case No. 11116-VCS, 2016 WL 5462958, at *13 (Del. Ch. Sept. 29, 2016). Specifically, in such circumstances directors must seek the best value reasonably available for shareholders. *See Revlon*, 506 A.2d at 182 (holding the duty of board changed in sale context "from the preservation of Revlon as a corporate entity to the maximization of the company's value at a sale for the stockholders' benefit"). While these decisions were made in the context of transactions outside of bankruptcy, the reasoning behind the decisions is applicable here because the Debtors are pursuing a sale of control to a subset of their shareholders. Terminating exclusivity is necessary to protect GMI shareholders from the Debtors' support of the value-dilutive COH Plan, in violation of their fiduciary duties under *Revlon*.

III. The Court Should Terminate the Exclusive Periods for "Cause"

44. The Court should terminate the Exclusive Periods to allow the Equity Committee to file and solicit acceptances of the Stand-Alone Plan for the additional reason that "cause" exists to grant this relief pursuant to Section 1121(d) of the Bankruptcy Code.

45. The legislative history of Section 1121(d) makes clear that a debtor's exclusive right to propose and solicit acceptances of a plan "should not be employed as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory." S. Rep. No. 95-989; *see also In re Curry Corp.*, 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992) (denying debtors' motion to extend exclusivity pursuant to Section 1121(d), holding that exclusivity "should not be employed as a tactical device to put pressure on creditors to yield to a plan that they might consider unsatisfactory."). Section 1121 amended the prior practice under the Bankruptcy Act that gave debtors undue bargaining leverage to extract a settlement out of otherwise unwilling stakeholders by delay. *See In re Timbers of Inwood Forest Assocs.*, 808 F.2d 363, 372 (5th Cir. 1987) ("The limited exclusivity period which is a feature of Chapter 11 proceedings under the Bankruptcy Code contrasts with the procedure under Chapter XI of the Bankruptcy Act which gave the debtor the exclusive right, throughout the Chapter XI proceedings, to propose a plan."). Congress codified Section 1121(d) to place limits on the debtor's exclusive right to propose a plan in recognition of stakeholders' interests in the debtor's business. *See In re Curry*, 148 B.R. at 755 ("Section 1121 was designed, and should be faithfully interpreted, to limit the delay that makes creditors the hostages of Chapter 11 debtors.") (citation omitted).

46. Under Section 1121(d), the court "may for cause reduce" the Debtors' exclusive period to file and solicit acceptance of a plan. 11 U.S.C. § 1121(d). Although the term "cause" is not defined in the Bankruptcy Code, it is well established that "cause" is a flexible standard designed to balance the competing interests of debtors and their stakeholders, in light of the facts and the totality of circumstances of the case. *See In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006) ("*Adelphia II*") ("A decision to extend or terminate exclusivity for cause is within the discretion of the bankruptcy court, and is fact-specific."); *In re Excel Mar.*

Carriers Ltd., Case No. 13-23060 (RDD), 2013 WL 5155040, at *2 (Bankr. S.D.N.Y. Sept. 13, 2013) ("*Excel*") ("The ultimate test is left to considerable discretion by the Court, and it is very fact driven.").

47. Courts have defined "cause" as the ability of the movant to provide alternative plan options for stakeholders of a debtor, to foster a competitive dynamic and move the case towards a successful resolution. *See Excel*, 2013 WL 5155040, at *2 ("[T]he ultimate consideration for the Court was what will best move the case forward in the best interest of all parties."); *Adelphia II*, 352 B.R. at 590 ("[T]he test is . . . whether terminating exclusivity would move the case forward materially, to a degree that wouldn't otherwise be the case.").

48. As explained above, the Stand-Alone Plan provides shareholders, *as a whole*, a better recovery than provided under the COH Plan, while providing identical treatment to all other stakeholders. *See* Beers Decl., Exhibit E. As such, allowing the Equity Committee to file and solicit acceptances of the Stand-Alone Plan would clearly benefit the Debtors' estates. At a minimum, stakeholders would benefit from the opportunity to choose between two competing plans. "Cause" exists to terminate the Exclusive Periods on this basis alone. *See North LaSalle*, 526 U.S. at 457 ("Under a plan granting an exclusive right, making no provision for competing bids or competing plans, any determination that the price was top dollar would necessarily be made by a judge in bankruptcy court, whereas the best way to determine value is exposure to a market."); *Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 102 (3d Cir. 1988) ("The ability of a creditor to compare the debtor's proposals against other possibilities is a powerful tool by which to judge the reasonableness of the proposals."); *In re Dave's Detailing, Inc.*, Case No. 13-08077 (RLM), 2015 Bankr. LEXIS 2528, at *59-60 (Bankr. S.D. Ind. July 30, 2015) ("[T]ermination of exclusivity provides an open market for competition in the form of competing

plans."); *In re Situation Mgmt. Sys.*, 252 B.R. at 865 (terminating exclusivity to give stakeholders the option to choose between competing plans); *In re Rook Broad. of Idaho, Inc.*, 154 B.R. 970, 976 (Bankr. D. Idaho 1993) ("It is in the interest of the creditors that they have a choice between competing plans.").

49. At this juncture, it is not necessary for the Court to determine whether or not stakeholders will receive better treatment under the Stand-Alone Plan; rather, "it is sufficient for [the Court] to recognize and express the judgment that opening up the process to those alternative approaches in this particular case is desirable. The market will tell us the answer and I think that is appropriate on the facts of this case." *In re EUA Power Corp.*, 130 B.R. 118, 119 (Bankr. D.N.H. 1991). Similarly, when considering the COH Group's motion to modify exclusivity, the Court noted that if following the auction "the only two options were [the KPS Bid] . . . and the Centerbridge/Oaktree proposal . . . I would probably be inclined to allow them both to be considered[.]"[14] The same result should obtain here, especially because the choice is between a "sweetheart" deal with a handful of insider shareholders and the Stand-Alone Plan, which benefits all shareholders. If competition was critical when the Debtors supported a transaction with KPS, an outsider, it is all the more crucial now.

50. That the Equity Committee has secured fully committed preferred equity financing and senior debt financing offered on a "highly confident" basis for the Stand-Alone Plan further militates in favor of terminating the Exclusive Periods. *See In re TCI 2 Holdings, LLC* (*a/k/a Trump Entm't Resorts*), Case No. 09-13654 (JHW) (Bankr. D.N.J. Aug. 31, 2009) [Dkt. Nos. 530, 613] (terminating exclusivity at the request of noteholders to permit the filing of a plan based on a "definitive" offer with "committed financing" for a new investment); *In re*

[14] *See* Nov. 23, 2020 Hr'g Tr. 101:1-6.

Pliant Corp., Case No. 09-10443 (MFW) (Bankr. D. Del. July 2, 2009) [Dkt. Nos. 498, 746] (granting the second lien holders the right to file a competing plan where all equity was being given to one creditor group).[15]

51. Moreover, while continuing exclusivity would prevent the Equity Committee from pursuing the Stand-Alone Plan and thus harm shareholders as a whole, the reverse is not true, particularly here, where the Debtors have already filed the COH Plan and are committed under the PSA to pursue it. *See In re Grossinger's Assocs.*, 116 B.R. 34, 36 (Bankr. S.D.N.Y. 1990) (termination of exclusivity in no way "foreclose[s] [the debtor] from promulgating a meaningful plan of reorganization," but merely grants others the right to file a chapter 11 plan alongside the debtor); *In re Sw. Oil Co. of Jourdanton, Inc.*, 84 B.R. 448, 454 (Bankr. W.D. Tex. 1987) (ending exclusivity "does not prejudice the debtors' coexistent right . . . to file a plan").

52. In addition to the foregoing considerations, courts typically examine nine factors when determining whether to terminate the exclusive periods under Section 1121. These factors are: (a) the size and complexity of the case, (b) the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information, (c) the existence of good faith progress toward reorganization, (d) the fact that the debtor is paying its bills as they become due, (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan, (f) whether the debtor has made progress in negotiations with its creditors, (g) the amount of time which has elapsed in the case, (h) whether the debtor is seeking an extension of the exclusive periods in order to pressure creditors to submit to the debtor's reorganization demands, and (i) whether an unresolved contingency exists. *See Adelphia II*, 352 B.R. at 587; *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997).

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[15] The unpublished orders and motions cited in this paragraph are attached to this Motion as Exhibit B.

53. Not all of the foregoing factors are relevant in every case and courts limit their analysis to the relevant factors in a particular case. Indeed, "the context [of the case] is what is most important" in the Section 1121 analysis. *See Excel*, 2013 WL 5155040, at *2; *see also In re Hoffinger Indus., Inc.*, 292 B.R. 639, 644 (B.A.P. 8th Cir. 2003) ("[It is not] simply a question of adding up the number of factors which weigh for and against an extension.").

54. As shown below, many of the foregoing factors weigh in favor of terminating the Exclusive Periods in this case.

A. The Debtors Have Not Progressed in Good Faith Toward Reorganization

55. When evaluating whether a debtor has made "good faith progress toward reorganization," courts consider a debtor's cooperation with its stakeholders and good faith efforts to achieve emergence from bankruptcy. *Adelphia II*, 352 B.R. at 588. Courts terminate exclusivity "where a debtor has been unduly intransigent in dealing with its creditors; has inappropriately sought to favor equity or another stakeholder group; has sought to feather the nest of incumbent management; or has caused the Court to lose confidence that it could ever come up with a confirmable plan." *Adelphia I*, 336 B.R. at 677.

56. Far from "progressing in good faith toward reorganization," the Debtors have rejected the Stand-Alone Plan despite the fact that it provides equal or better treatment than the COH Plan to all creditors, while eliminating the massive dilution to existing GMI shareholders proposed by the COH Plan. Furthermore, the Debtors have repeatedly shown bad judgment since the Petition Date. Thus, the Debtors commenced the Chapter 11 Cases with an agreement to an *$84 million* break-up fee to secure a stalking horse bid that the Debtors now acknowledge was far from sufficient, and with a strategy of limiting and liquidating Honeywell's claims, which the Debtors described as a "gating" issue that must be resolved to facilitate the Debtors' restructuring. The Debtors have now abandoned that strategy – having already spent significant

legal fees on litigation – only to support a plan that the Debtors themselves have previously described as a "coercive," "sweetheart" deal that would provide for the sale of "virtually all of the voting power and residual economic value of GMI to a handful of institutional investors for cash."[16]

57. The Debtors have chosen the COH Plan despite the fact that multiple other parties – including Atlantic Park, the OWJ Group and other investors with whom the Equity Committee has negotiated – have proposed a preferred stock investment that is far more democratic and better for non-insider shareholders than the highly dilutive COH Convertible Series A Preferred Stock. *See* Beers Decl. ¶ 4. In short, the Debtors have rejected multiple potential paths forward only to endorse the worst one available.

58. Moreover, the Debtors have hindered the Equity Committee's efforts to pursue a stand-alone plan. Thus, the Debtors initially consented to the Equity Committee's motion to authorize reimbursement of Atlantic Park's reasonable, out-of-pocket fees and expenses, only to abruptly withdraw that consent despite the fact that Atlantic Park had incurred substantial costs in reliance on the Debtors' representation.[17] That is the antithesis of the behavior expected of a debtor in possession when dealing with its stakeholders. *See In re Adler*, 329 B.R. 406, 410 (Bankr. S.D.N.Y. 2005) ("[A] debtor must exhibit good faith at each stage of a bankruptcy case: in its commencement, during its prosecution, and at confirmation.").

59. The Debtors also sought to terminate due diligence, including an already-scheduled meeting with Atlantic Park, in purported reliance on the impermissible no-shop

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[16] *See* Oct. 21, 2020 Hr'g Tr. 44:21-22, 45:6-7 (Dietderich); Debtors' Estimation Reply ¶ 5; Debtors' Objection to Motion to Modify Exclusivity ¶ 9 [Dkt. No. 389].

[17] Motion of the Official Committee of Equity Securities Holders for Entry of an Order Authorizing Reimbursement of Certain Fees and Expenses Incurred by Potential Equity Financing Parties ¶ 15 [Dkt. No. 678]; Reply in Support of Motion of the Official Committee of Equity Securities Holders for Entry of an Order Authorizing Reimbursement of Certain Fees and Expenses Incurred by Potential Equity Financing Parties at 2-3 [Dkt. No. 725].

provision in the PSA, which they agreed to reschedule only after the Court directed them to do so. The Debtors' agreement to subject themselves to a draconian, unenforceable "no-shop" provision with the COH Group (even though none of the rival bids had a comparable provision) further hampers the Debtors' ability to consider alternative proposals in good faith. *See In re L.A. Dodgers LLC*, 468 B.R. 652, 660 (Bankr. D. Del. 2011) (a "no-shop" provision "is not enforceable against a bankruptcy entity. The same is true under Delaware law which prohibits such clauses where, as here, the clause would prevent the exercise of the fiduciary duty to maximize value."); *see also In re Innkeepers USA Tr.*, 442 B.R. 227, 235 (Bankr. S.D.N.Y. 2010) (denying debtor's motion to assume a plan support agreement with a "flawed" fiduciary out that "prohibit[ed] the Debtors from taking action consistent with their fiduciary obligations.").

60. Notwithstanding the no-shop provision in the PSA, the Debtors' fiduciary duties require them to engage the Equity Committee on its Stand-Alone Plan. Indeed, for the Debtors to assert credibly that the COH Group's bid is the highest and best of all proposals, and maximizes the value of the Debtors' estates and stakeholder recoveries, they must purposefully engage the Equity Committee on the Stand-Alone Plan. The Debtors have not done so.

61. In light of the foregoing, the Debtors have not progressed in good faith toward reorganization.

B. The Debtors Have Not Demonstrated Reasonable Prospects for Filing a Confirmable Plan

62. Courts have found "cause" to terminate a debtor's exclusivity period where the debtor was unable or unlikely to propose a confirmable plan. *In re Situation Mgmt. Sys.*, 252 B.R. at 863 (exclusivity may be terminated based on the "debtor's use of exclusivity period to force creditors to accept an unsatisfactory or unconfirmable plan"); *In re Standard Mill Ltd.*

P'ship, Case No. BKY 4-96-2656, 1996 WL 521190, at *1 (Bankr. D. Minn. Sept. 12, 1996) (debtor's use of exclusivity period to force creditors to accept an unconfirmable plan may be "cause" to terminate exclusivity period); *In re Texaco, Inc.*, 81 B.R. 806, 812-13 (Bankr. S.D.N.Y. 1988) (debtor's exclusivity period may not be used to pressure creditors to agree to unsatisfactory plan).

63. Here, the COH Plan is unconfirmable because it fails to afford all shareholders "equal treatment" in accordance with Section 1123(a)(4) of the Bankruptcy Code. 11 U.S.C. § 1123(a)(4) (Chapter 11 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."). Instead, it grants only a select group of shareholders – Centerbridge, Oaktree and the Additional Insider Shareholders – the right to purchase the COH Convertible Series A Preferred Stock (subject to the rights offering). Furthermore, any purported new value provided by the COH Group cannot justify the preferential treatment of those shareholders without a competitive process to determine the fair market value of those securities. *See North LaSalle*, 526 U.S. at 454 (plan was "doomed . . . by its provision for vesting equity in the reorganized business in the [d]ebtor's partners without extending an opportunity to anyone else either to compete for that equity or to propose a competing reorganization plan."); *In re 18 RVC, LLC*, 485 B.R. 492, 494 n.1 (Bankr. E.D.N.Y. 2012) ("Although [debtor's principal] is proposing to contribute 'new value' in the form of a cash contribution to distribution under the Plan, any such 'new value' must be subject to competitive bidding under the rule set forth in [*North LaSalle*].").

64. As this Court has observed, "[t]he problem with special allocations in rights offering, or with private placements that are limited to the bigger creditors who sat at the

negotiating table, or big backstop fees that are paid to the bigger creditors who sat at the negotiating table but that are not even open to other creditors (and in particular to other creditors in the same class), is that it is far too easy for the people who sit at the negotiating table to use those tools primarily to take for themselves a bigger recovery than smaller creditors in the same classes will get." *In re Pac. Drilling S.A.*, Case No. 17-13193 (MEW) (Bankr. S.D.N.Y. Oct. 1, 2018) at 5.[18]

65. The Equity Committee reserves all rights to object, at the proper time, to the confirmation of the COH Plan based on the foregoing and on any other basis, and move to designate the votes of Centerbridge, Oaktree and the Additional Insider Shareholders pursuant to Section 1126(e) of the Bankruptcy Code. However, even if the Court were to determine that the COH Plan is confirmable, cause exists to allow the Equity Committee to file and solicit acceptances of its fair, equal and value-maximizing Stand-Alone Plan. *See In re PG&E Corp.*, Case No. 19-30088 (DM), 2019 Bankr. LEXIS 3218, at *5 (Bankr. N.D. Cal. Oct. 9, 2019) (terminating exclusivity, reasoning that "[o]ne plan emerging as confirmable is a very acceptable outcome. And if both plans pass muster, the voters will make their choice or leave the court with the task of picking one of them.").

66. In light of the foregoing, the Debtors have not demonstrated reasonable prospects for filing a confirmable plan.

C. <u>Other Relevant Factors</u>

i. *Size and Complexity of the Case*. This factor weighs in favor of terminating exclusivity because the Debtors have already filed the COH Plan and the Stand-Alone Plan generally mirrors the COH Plan, except that the Stand-Alone Plan does not give preferential treatment to Centerbridge, Oaktree, and the Additional Insider Shareholders. As such, notwithstanding the size and complexity of the Chapter 11 Cases, the Stand-Alone Plan will present stakeholders with a straightforward choice between two competing plans.

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[18] This unpublished order is attached to this Motion as <u>Exhibit C</u>.

ii. *Sufficient Time to Negotiate Plan and Prepare Adequate Information*. This factor weighs in favor of terminating exclusivity because the Debtors have already filed the COH Plan and the filing of the Stand-Alone Plan will run a parallel path with the Debtors' plan process.

iii. *Debtors' Progress in Negotiating with Stakeholders*. While the Debtors have negotiated and reached an agreement with a subset of their shareholders – those who stand to benefit from the COH Plan – they have made no progress in negotiating with the non-insider shareholders, which are the undisputed fulcrum class in the Chapter 11 Cases. This failure weighs in favor of terminating exclusivity to allow consideration of the Stand-Alone Plan.

iv. *Time Elapsed in the Case*. The Chapter 11 Cases have been pending for over four months and the Debtors' 120-day exclusive period to file a plan has elapsed. Furthermore, the RSA among the Debtors and their secured lenders requires those lenders to vote in favor of any plan that provides for payment of principal and simple interest (they have waived default interest), if the disclosure statement for such a plan is approved on or before February 22, 2021. Time is therefore of the essence. The Court should terminate exclusivity to allow the Equity Committee to meet this deadline.

67. Accordingly, "cause" exists to terminate the Exclusive Periods pursuant to Section 1121(d) to allow the Equity Committee to file and solicit acceptances of the Stand-Alone Plan.

MOTION PRACTICE

68. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of its application to this Motion. Accordingly, the Equity Committee submits that the Motion satisfies Local Rule 9013-1(a).

NOTICE

69. The Equity Committee will provide notice of this Motion in accordance with the Case Management Order [Dkt. No. 475]. The Equity Committee submits that no other or further notice need be given.

NO PRIOR REQUEST

70. The Equity Committee has not made a prior request for the relief sought in this Motion in this or any other court.

CONCLUSION

WHEREFORE, the Equity Committee respectfully requests that the Court enter the proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: January 26, 2021
New York, New York

KASOWITZ BENSON TORRES LLP

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Proposed Counsel to the Official Committee of Equity Securities Holders

EXHIBIT A

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
	)	
GARRETT MOTION INC., *et al.*,[1]	)	Case No. 20-12212 (MEW)
	)	
Debtors.	)	Jointly Administered
	)	

ORDER TERMINATING THE DEBTORS' EXCLUSIVE
PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES

Upon the Motion[2] of the Official Committee of Equity Securities Holders (the "Equity Committee") of Garrett Motion Inc. and its affiliated debtors and debtors-in-possession (the "Debtors") for entry of an order pursuant to Section 1121(d) of title 11 of the United States Code (the "Bankruptcy Code"): (a) terminating the Debtors' exclusive right to file a Chapter 11 plan and solicit acceptances thereof to allow the Equity Committee to file its own plan to be considered by the Court and parties in interest in parallel with the COH Plan, and (b) granting related relief; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of these cases and this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the particular circumstances, and it appearing that no other or further notice is necessary; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the

[1] 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.

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

"Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED THAT**:

1. The Motion is GRANTED.

2. The Debtors' exclusive right to file a Chapter 11 plan and solicit acceptances is hereby terminated pursuant to Section 1121(d) of the Bankruptcy Code.

3. The Equity Committee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

4. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the interpretation, implementation and enforcement of this Order.

New York, New York
Dated: ________________, 2021

____
THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)

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Co-Counsel to the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015

In re: TCI 2 HOLDINGS, LLC, et al.,[1] Debtors.	Chapter 11 Case No.: 09-13654 (JHW) (Jointly Administered)

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: TCI 2 Holdings, LLC (0526); Trump Entertainment Resorts, Inc. (8402); Trump Entertainment Resorts Holdings, L.P. (8407); Trump Entertainment Resorts Funding, Inc. (8405); Trump Entertainment Resorts Development Company, LLC (2230); Trump Taj Mahal Associates, LLC, d/b/a Trump Taj Mahal Casino Resort (6368); Trump Plaza Associates, LLC, d/b/a Trump Plaza Hotel and Casino (1643); Trump Marina Associates, LLC, d/b/a Trump Marina Hotel Casino (8426); TER Management Co., LLC (0648); and TER Development Co., LLC (0425).

EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ACCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION

The ad hoc committee (the "Ad Hoc Committee") of certain holders of the 8.5% Senior Secured Notes Due 2015 (the "Senior Secured Notes") issued by Trump Entertainment Resorts Holdings, L.P. ("TER Holdings") and Trump Entertainment Resorts Funding, Inc., (together with the above-captioned debtors and debtors-in-possession, the "Debtors"), by and through their undersigned counsel, submits this emergency motion (the "Motion") seeking entry of an order (a) pursuant to section 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), terminating the Debtors' exclusive periods (the "Exclusive Periods" or "Exclusivity") to file a plan of reorganization and solicit acceptances thereof, in connection with the Debtors' chapter 11 cases (the "Chapter 11 Cases"), and (b) pursuant to sections 105(a) and 1125 of the Bankruptcy Code, adjourning the hearing (the "Disclosure Statement Hearing") to consider the Debtors' proposed disclosure statement dated August 3, 2009 in respect of the Debtors' proposed plan of reorganization dated August 3, 2009. In support hereof, the Ad Hoc Committee respectfully represents as follows:

PRELIMINARY STATEMENT

1. With two hours left to Exclusivity, the Debtors filed a plan of reorganization (the "Insider Plan") that offers Beal Bank and Donald Trump—a substantial equity holder, former Chairman of the Board of Directors, and insider—the exclusive right to acquire 100% of the new equity of the Reorganized Debtors, reinstates the full pre-petition balance of Beal Bank's claim even though the Insider Plan fixes the collateral value below the face amount of its debt, and wipes out the claims of everyone else in the case. On its face, the Insider Plan violates the absolute

priority rule and cannot be reconciled with the Debtors' fiduciary obligation to maximize recoveries to creditors. For these reasons alone Exclusivity should be terminated.

2. The case for terminating Exclusivity is made even more compelling by the alternative competing plan co-sponsored by the Ad Hoc Committee and Coastal Development, LLC (the "Noteholder Plan"), filed under seal as Exhibit A, which is fully documented and financed and ready to go. In stark contrast to the Insider Plan, the Noteholder Plan, proposed by the largest creditor constituency (by a wide margin) of these estates, would deliver far more value to all constituencies, as follows:

- The Noteholder Plan contemplates a capital contribution of $175 million in new equity capital in the form of a rights offering backstopped by certain holders of the Senior Secured Notes.
- The Noteholder Plan further contemplates the sale of the Trump Marina Hotel Casino (the "Trump Marina") to Coastal Marina, LLC for $75 million, net of certain deposits (the "Marina Sale") and the dismissal of the Florida Litigation and Coastal Adversary Proceeding (defined below), resulting in the infusion of immediate value to the estate in exchange for the elimination of the huge cash drain caused by the Trump Marina's losses and ongoing litigation.
- Beal Bank would receive a cash pay down equal to the proceeds from the Marina Sale, plus $75 million from the proceeds of a rights offering. In addition, Beal Bank would receive new debt at an interest rate to be determined by the Court sufficient to provide Beal Bank with the present value of Beal's allowed secured claim. Contrary to statements made in the Debtors' disclosure statement in respect of the Insider Plan (the "Insider Disclosure Statement"), the Debtors would emerge with materially less leverage and interest expense under the Noteholder Plan.
- Holders of the Senior Secured Notes, together with eligible holders of general unsecured claims, will be entitled to receive their pro rata share of (a) 5% of the common stock of the reorganized Debtors (the "New Common Stock"), and (b) subscription rights to acquire 95% of the New Common Stock. In addition, holders of general unsecured claims that are not eligible to receive subscription rights would be entitled to receive their pro rata share of a fixed pool of cash.

3. The Noteholder Plan is plainly superior to the Insider Plan for all parties in interest. First, it provides for $175 million of new, committed equity capital sufficient to fund debt service, capital expenditures and working capital needs of the Debtors (even under the Debtors'

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projections). Second, it provides for the sale of the Trump Marina, currently a negative EBITDA business for the Debtors that the Debtors and Mr. Trump have been unable or unwilling to sell to date. In addition, unlike the Insider Plan, the Noteholder Plan is consistent with the absolute priority rule, affords the senior lender with the benefit of its bargain, provides for a meaningful recovery to holders of $1.25 billion in Senior Secured Notes and offers a recovery to general unsecured creditors. Simply stated, the Noteholder Plan is real, confirmable and clearly better for creditors than the Insider Plan. Creditors should have the opportunity to vote on that plan rather than have the Insider Plan foisted upon them.

4. Importantly, the Debtors did not craft their own plan of reorganization. Instead, the Debtors asked each of their two major creditor constituents to provide the Debtors with a plan proposal. Given that the Debtors were just choosing between two competing plans and not formulating their own plan, the Debtors could have allowed Exclusivity to lapse so that competing plans could be solicited on a dual track at minimal incremental expense to the Debtors. Instead, the Debtors waited until the very last day of their Exclusive Period to file a cram down/new value plan and quickly scheduled a Disclosure Statement Hearing in the hope that effective opposition could not be mounted. The reason is apparent: Contrary to the numerous representations made by the Debtors and their advisors to this Court, the Ad Hoc Committee and the investing public, the plan process has been locked in for months, as reflected in the Debtors' astounding disclosure that the Debtors had decided to proceed with the Beal/Trump proposal as early as April 28, 2009.[1] The manner in which the Debtors have conducted what has turned out to be a sham plan process, as well as the Debtors' failure to explore restructuring alternatives embodied in the Noteholder Plan that would truly maximize recoveries to creditors, warrant termination of their Exclusivity.

[1] *See* Insider Disclosure Statement at VI.C3.

Fundamental notions of fairness demand that Noteholders be given the opportunity to solicit the economically superior Noteholder Plan to ensure the integrity of the bankruptcy process.

5. No prejudice would befall the Debtors were this Court to terminate Exclusivity. There are only two constituents active in these cases, and therefore only two potential plans that would likely be considered by this Court at confirmation. The Debtors have no other construct for emerging from bankruptcy. Those two plans could be solicited simultaneously, at minimal expense, together with court-approved disclosure statements to provide creditors with the opportunity to make an informed decision as to which plan they prefer. In contrast, allowing the Debtors to exploit Exclusivity and proceed to confirmation of a new value plan that will inevitably face opposition from the Ad Hoc Committee would only prolong these cases—a dangerous proposition given the state of the Atlantic City economy—and severely prejudice parties in interest. If anything, the termination of Exclusivity will move these cases toward a fair and equitable resolution for all parties in interest—something the Debtors have so far been unable to achieve.

6. The Noteholder Plan is fully formed and backed by committed financing.[2] The Ad Hoc Committee stands ready, willing and able to move forward with the Noteholder Plan today.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for terminating the Debtors' Exclusive Periods are 11 U.S.C. §§ 105(a) and 1121(d). The statutory predicates for the adjournment of the Disclosure Statement Hearing are 11 U.S.C. §§ 105(a) and 1125.

[2] Filed under seal are the Noteholder Plan (Exhibit A), a blackline comparison of the Noteholder Plan against the Insider Plan (Exhibit B), a definitive commitment letter signed by certain holders of the Senior Secured Notes for $175 million in backstop financing to the Debtors in connection with the Noteholder Plan (Exhibit C), a letter of intent from Coastal Development, LLC to purchase the Trump Marina as a component of the Noteholder Plan (Exhibit D), and a disclosure statement in respect of the Noteholder Plan ("Noteholder Disclosure Statement") (Exhibit E).

BACKGROUND

A. Debtors' Capital Structure

8. The Debtors' capital structure is simple. The Debtors have incurred approximately $488.8 million in secured debt held by Beal Bank. In addition, as part of the Debtors' prior restructuring,[3] the Debtors issued approximately $1.25 billion in Senior Secured Notes pursuant to that certain indenture dated as of May 20, 2005 (the "Indenture"), by and among TER Holdings and Trump Entertainment Resorts Funding, Inc., the Guarantors (as defined in the Indenture), and U.S. Bank National Association, as indenture trustee.[4] Most of the general unsecured creditors have been paid under an extensive critical trade program (in large part because of the support of the Ad Hoc Committee) that was approved by this Court at the inception of the Chapter 11 Cases. It is beyond dispute that equity holders are out of the money. Consequently, the only impaired creditor constituencies with an economic stake in the outcome of these proceedings are Beal Bank and the holders of the Senior Secured Notes.

9. Donald Trump, a major equity holder and contract counter-party, has also been active in these Chapter 11 Cases, and is a co-proponent of the Insider Plan. Prior to the Petition Date, in addition to serving as Chairman of the Board of Trump Entertainment Resorts, Inc. ("TER"), the ultimate parent company of the Debtors, Mr. Trump was also a limited partner of TER Holdings. Mr. Trump is also a party to a number of agreements with certain of the Debtors, including, among others, a Services Agreement, dated as of May 20, 2005, an Amended and Restated Trademark License Agreement, dated as of May 20, 2005, and the Right of First Offer

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[3] The Debtors are no strangers to bankruptcy proceedings. These Chapter 11 Cases represent the third bankruptcy filing for certain of the Debtors or their predecessors-in-interest while under Mr. Trump's watch.

[4] The Debtors, in prior pleadings, incorrectly described the Senior Secured Notes as "subordinated notes." See Motion for an Order Extending for 90 Days the Debtors' Exclusive Periods in Which to File a Plan of Reorganization and Solicit Acceptances Thereto Pursuant to Section 1121(d) of the Bankruptcy Code ¶ 15(A) [D.I. 343] (the "Exclusivity Extension Motion"). The Senior Secured Notes are secured by a second lien on and security interests in real property and certain personal property of the Debtors.

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Agreement, dated as of May 20, 2005 (as amended on September 22, 2006). On February 13, 2009, just four days before the bankruptcy filing, Donald Trump, together with his daughter, Ivanka Trump, resigned from the TER Board of Directors and purported to abandon his partnership interests in TER Holdings. Mr. Trump publicly disassociated himself from management[5] and declared that "my investment in [the Debtors] is worthless to me now." Kyle Peterson, *Trump Entertainment Files for Bankruptcy*, Reuters.com, Feb. 17, 2009, attached hereto Exhibit F.

B. Purported Plan Process

10. On December 1, 2008, after the Debtors failed to make their interest payment on the Senior Secured Notes and entered into the grace period with respect thereto, the Ad Hoc Committee formed to negotiate a restructuring of the Debtors' liabilities and equity interests. The Ad Hoc Committee then entered into a number of forbearance agreements with the Debtors so that negotiations among the parties could continue without the cost and expense of chapter 11 proceedings.

11. Starting in December 2008 and continuing through the weekend prior to the bankruptcy filing date, the Ad Hoc Committee strove to find a consensus with the Debtors and Donald Trump. In early January 2009, the Debtors presented a restructuring proposal at a meeting with the Ad Hoc Committee where the Debtors acknowledged that the Senior Secured Notes were the fulcrum security and entitled to receive 95% of the new stock. The Ad Hoc Committee responded to the restructuring proposal on January 19, 2009, and, despite the fact that the Ad Hoc Committee's proposal was quite close to the Debtors', the Debtors never responded. Instead, prior to the filing date, the Debtors requested that the Ad Hoc Committee negotiate directly with Donald Trump, the Chairman of the Debtors' board of directors during most of the negotiations, and with

[5] Despite Mr. Trump's public statements disassociating himself from the history of these Debtors, Mr. Trump has been an integral part of the Trump hotels and casinos in his varying capacities, including substantial (and at times, sole) equity holder, chairman of the Board of Directors, and president and/or CEO.

his daughter, Ivanka Trump, also a director at the time. Those negotiations failed. Seeing that there was no way to bridge the gap between their own position and that of Donald Trump as an out-of-the-money equity holder who demanded control of the reorganized company, the Ad Hoc Committee chose not to extend their forbearance agreement past February, and the Debtors subsequently commenced these Chapter 11 Cases.

12. On February 17, 2009 (the "Petition Date"), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have remained in possession of their assets and continued management of their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No official committee has been appointed in the Chapter 11 Cases.

13. Immediately after the Petition Date, recognizing that Donald Trump's requests and negotiating position were vastly out of line with the economic reality of the Debtors' operations (past and present), the Ad Hoc Committee sought to negotiate directly with Beal Bank, the sole holder of the Debtors' approximately $488.8 million secured bank debt. As in its abortive attempts to negotiate with the Debtors, the Ad Hoc Committee delivered a number of term sheets to Beal Bank in the hope of generating a negotiating dialogue that would lead to an expeditious resolution. Each one of those term sheets successively improved the restructuring terms presented to the Debtors and Beal Bank by, among other things, increasing the amount of the proposed rights offering and proposing DIP financing to the Debtors. Beal Bank, however, chose not to respond to any of the Ad Hoc Committee's proposals.

14. Proposals from the Ad Hoc Committee, and, upon information and belief, Beal Bank and Donald Trump, were delivered to the Debtors in April 2009. Specifically, the Ad Hoc Committee delivered to the Debtors a detailed plan term sheet, a draft DIP commitment letter and comprehensive DIP financing term sheet, and a draft rights offering backstop agreement.

Throughout the process, the Ad Hoc Committee urged the Debtors to attempt to bring all the players into one room to attempt to negotiate a settlement.

15. In the six weeks since the Debtors have had what amounts to the final proposals from the only two creditor constituents, the Debtors have done little to advance a plan process other than perfunctorily ask the Noteholders to negotiate with Beal Bank to see if a joint resolution could be reached. The Debtors have not scheduled any meetings or teleconferences among all constituents since the commencement of the Chapter 11 Cases and have been sparing in their communication with the Ad Hoc Committee, only calling infrequently when they needed support on motions (*i.e.*, the critical vendor support motion). The Debtors have done little more than barely respond to inquiries and information requests from Noteholders with near complete radio silence over the last few weeks, all the while revising projections continually downward. Nor did the Debtors prepare a draft plan amalgamating the two camps' positions in an attempt to encourage the parties to come together.

16. The Debtors' initial Exclusive Period to file a plan of reorganization was set to expire on June 17, 2009, prompting the Debtors to seek a 90-day extension. The Debtors assured this Court, in the Exclusivity Extension Motion filed at the end of May, that progress was being made and that additional time was needed to formulate a plan of reorganization. Indeed, co-counsel to the Debtors unequivocally declared that the Board was considering two competing plans and that no decision had been made.[6] Despite serious misgivings regarding the stalemate in the case, the Ad Hoc Committee consented to a 45-day extension of Exclusivity in the hope that additional time would afford the Debtors an opportunity to take some steps to forge consensus. Consequently, on

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[6] Charles Stanziale, co-counsel to the Debtors, is quoted in a media article dated June 6, 2009, as follows: "Are the plans being reviewed by the company's financial consultant, management and legal counsel? The answer to that is yes," Stanziale said. "Has the board acted on any of these plans? No. Has there been a recommendation on either one? The answer is no." Donald Wittkowski, *Trump Plots Comeback for Casino Ownership*, PressofAtlanticCity.com, June 6, 2009, attached hereto as Exhibit G.

June 16, 2009, this Court entered an order extending the Debtors' Exclusive Periods to file and solicit a plan of reorganization until August 3, 2009, and October 1, 2009, respectively.

17. However, as the Insider Disclosure Statement makes clear, the Debtors had already decided on a plan as far back as April 28, 2009, nearly a month prior to the filing of the Debtors' Exclusivity Extension Motion. The Debtors' "plan process" was, in hindsight, nothing more than a charade and a stall tactic. The Insider Disclosure Statement now reveals that, contrary to what the Debtors were telling the Court, creditors and investors, the Debtors months ago chose to hand over the Debtors to Mr. Trump and his bank as part of a brazen insider deal. The Debtors' failure to craft their own plan of reorganization—a course of inaction that would be strange in any other context—now makes sense. It is now clear that the Debtors never intended to seriously consider any plan but the one presented by Beal Bank and Donald Trump.[7]

18. The Insider Plan is a "new value" plan that inures to the exclusive benefit of a single bank debt holder and an out-of-the-money shareholder/insider and that provides no recovery to Noteholders or general unsecured creditors. Specifically, the Insider Plan provides for a $100 million contribution from Beal Bank and Donald Trump in exchange for 100% of the new equity. In addition, the balance of Beal Bank's pre-petition debt is reinstated on modified terms (even though the Debtors value the collateral as being worth less than the face amount of the debt), including a higher coupon rate.

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[7] The Debtors will likely respond, irrelevantly, that the Noteholder Plan is significantly improved over prior proposals made by the Ad Hoc Committee. Any such argument would forget the fact that the Debtors abdicated their responsibility to negotiate with the Ad Hoc Committee. The Ad Hoc Committee pressed the Debtors to arrange for an in-person negotiating session among all the parties in the hope that such discourse would spark meaningful negotiations. In the absence of such a forum, and without the benefit of a fair and open plan process, the Ad Hoc Committee was effectively precluded from presenting its highest and best offer at the time.

C. Trump Marina Sale / Coastal Litigation

19. Another aspect of the Debtors' conduct that invites termination of Exclusivity is the manner in which the Debtors failed to consummate a sale of the Trump Marina on terms in line with economic reality and refused to seriously consider recent renewed expressions of interest for the sale. By way of background, in 2004, the Debtors commenced an action in Florida state court (the "Florida Litigation") against, among others, Richard T. Fields and Coastal Development, LLC, alleging that the defendants defrauded the Debtors of the opportunity to construct, operate and ultimately reap the proceeds of the sale of Hard Rock casino and hotel projects on Seminole land in Hollywood and Tampa, Florida. The central witness for the Debtors, and perhaps the principal architect of that litigation, was Donald Trump. Eventually, the Florida Litigation was placed on hold after the Debtors entered into an agreement (the "Marina Sale Agreement") for the sale of the Trump Marina to Coastal Development, LLC and Coastal Marina, LLC (together, "Coastal"). That agreement provided for the dismissal of the Florida Litigation upon consummation of the sale. Initially, the Marina Sale Agreement provided for a purchase price of $316 million, subject to a working capital adjustment and EBITDA-based adjustment. While the Debtors' prepetition credit agreement with Beal Bank provides for the payment of proceeds from the sale of the Debtors' assets to Beal Bank, the Ad Hoc Committee believes that a significant portion of the proceeds from that sale were slated to be given directly to Mr. Trump as some form of finder's fee.

20. The Marina Sale Agreement was then amended on October 28, 2008, to reduce the purchase price to $270 million and eliminate the EBITDA-based adjustment in exchange for Coastal agreeing to post an additional $2 million deposit and to consent to the release of $15 million in deposits to the Debtors. Even though the price was reduced, it is believed that Mr. Trump was still slated to receive a significant portion of the sale proceeds.

21. Ever since it formed in December 2008, one of the objectives of the Ad Hoc Committee has been to facilitate a successful close of the Trump Marina. In January 2009, although the Debtors forecast that the Trump Marina would generate only $2.4 million in EBITDA for 2009, the property was under contract to be sold for $270 million, a price widely acknowledged by the market as far in excess of the property's actual worth. Given the Debtors' projections for the property and the immaterial benefits inuring to the estate upon the contract's termination (*i.e.*, a $2 million deposit and the right to proceed with a precarious litigation that is the brainchild of Mr. Trump), the Ad Hoc Committee urged the Debtors to engage in a full court press to try to sell the Trump Marina and close a deal that was more in line with economic reality.[8] The outside date on that contract was allowed to expire and the sale terminated, without the parties reaching a deal on a revised purchase price that would have reduced the debt owed to Beal Bank. At the urging of the Ad Hoc Committee, Coastal has since provided the Debtors with a renewed proposal for the acquisition of the Trump Marina—one that would inject substantial value into the Debtors' estates in exchange for a property that loses money every day for the Debtors. The Debtors, however, have not responded to that proposal, even after Coastal revised its offer to reasonably address the Debtors' concerns.[9] Exasperated by the Debtors' conduct, Coastal commenced an adversary proceeding on July 28, 2009 (the "Coastal Adversary Proceeding") against the Debtors and their CEO and General Counsel, Messrs. Mark Juliano and Robert Pickus, respectively, seeking the

[8] Although the Debtors claim to have had their financial advisor conduct a "comprehensive marketing effort to seek one or more investors in the Debtors" (Insider Disclosure Statement at V.D.), that effort appears to have been half-hearted at best. Prospective investors have reported that, despite their requests, they have been unable to obtain marketing materials or due diligence information from the Debtors and their financial advisors.

[9] Indeed, in a press article dated July 24, 2009, Mark Juliano, the CEO of the Debtors, was quoted as saying "There's nothing credible out there," referring to the offers for the Trump Marina, and that "we're not really talking right now" with Coastal, even though Coastal had submitted a written expression of interest. Donald Wittkowski, *Trump Marina Still Looking for a Buyer*, PressOfAtlanticCity.com, July 24, 2009, attached hereto as Exhibit H.

return of its deposits, alleging fraud and misrepresentations in connection with the Marina Sale Agreement.[10]

RELIEF REQUESTED

22. By this Motion, the Ad Hoc Committee respectfully requests that this Court terminate the Debtors' Exclusive Periods, permit the Ad Hoc Committee to file a disclosure statement in connection with the Noteholder Plan forthwith and schedule a hearing on that disclosure statement on a date such that the two competing plans—the Insider Plan and the Noteholder Plan—can be sent to creditors simultaneously. The Ad Hoc Committee further requests that the Court adjourn the hearing to consider the disclosure statement in respect of the Insider Plan until after this Motion has been heard and decided by the Court.

ARGUMENT

I.

CAUSE EXISTS TO TERMINATE EXCLUSIVITY

23. Pursuant to section 1121(d)(1) of the Bankruptcy Code, the Court "may for cause reduce" the Debtors' Exclusive Periods. 11 U.S.C. § 1121(d)(1). Section 1121(d)(1) of the Bankruptcy Code "grants great latitude to the Bankruptcy Judge in deciding, on a case-specific basis, whether to modify the exclusivity period on a showing of 'cause.'" *In re Geriatrics Nursing Home, Inc.*, 187 B.R. 128, 132 (D.N.J. 1995). The Bankruptcy Code does not define the term "cause" for purposes of section 1121(d), and courts have held that "cause" is determined by the facts and circumstances of each individual case. *In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006) (citing *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997)). In assessing a motion to terminate exclusivity, "a transcendent consideration is

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[10] Concurrently with this Motion, the Ad Hoc Committee has filed a motion seeking appointment of an examiner to monitor and review the allegations set forth in the complaint against the Debtors.

whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution." *In re Henry Mayo Newhall Mem'l Hosp.*, 282 B.R. 444, 453 (B.A.P. 9th Cir. 2002).

24. Courts have modified exclusivity to "avoid allowing the debtor to hold the creditors and other parties in interest 'hostage' so that the debtor can force its view of an appropriate plan upon the other parties." *In re Pub. Serv. Co. of N.H.*, 88 B.R. 521, 537 (Bankr. D.N.H. 1988); *see also Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d 1142, 1160-61 (5th Cir. 1988) (finding no error in bankruptcy court's decision to terminate the initial exclusive periods); *In re Lake in the Woods*, 10 B.R. 338, 345-46 (E.D. Mich. 1981) (denying motion to extend exclusivity because debtor was attempting to prolong reorganization by refusing to negotiate with creditor); *In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 488 (Bankr. D. Conn. 2007) (denying motion to extend exclusivity because negotiations between debtor and creditor had broken down and extension was not likely to improve the progress of the case); *In re Curry Corp.*, 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992) (denying debtors' motion to extend exclusive periods, noting that extensions "should not be employed as a tactical device to put pressure on creditors to yield to a plan that they might consider unsatisfactory"); *In re Grossinger's Assocs.*, 116 B.R. 34, 36 (Bankr. S.D.N.Y. 1990) (refusing to extend exclusivity where debtor had not yet filed a plan of reorganization which offered any serious reorganization possibilities for creditors to consider); *In re Crescent Beach Inn, Inc.*, 22 B.R. 155, 160 (Bankr. D. Me. 1982) (terminating the initial exclusive periods and noting that doing so was the only way for "the parties to put aside their . . . differences and unite in a common effort to successfully reorganize the debtor for the benefit of all creditors").[11]

[11] It should be noted that the Noteholder Plan is not a hypothetical or potential alternative plan based on mere speculation or conjecture. *See, e.g.*, *Geriatrics Nursing Home, Inc.*, 187 B.R. at 134 (denying motion to terminate the debtor's exclusivity to allow creditors to pursue an indefinite hypothetical alternate plan if only

25. As described above, not only have the Debtors failed to negotiate in good faith with the Ad Hoc Committee, but they have failed to negotiate with the Ad Hoc Committee at all. Instead, the Debtors have chosen to file and attempt to ram through a cram-down plan that wipes out all but a single creditor and allows an existing insider equity holder to buy back his ownership. Accordingly, cause to terminate the Debtors' Exclusivity exists because of the Debtors intransigence in their negotiations with the Ad Hoc Committee and their attempt to use their Exclusivity to force an inequitable and unconfirmable plan on creditors.

26. Cause to terminate exclusivity also exists as a matter of law because, as discussed below, the Insider Plan cannot be confirmed unless the exclusive right of current equity holders to provide new value is subjected to a market test. Moreover, in a case such as this, where the Debtors have abdicated their duty to file a stand-alone plan in favor of adopting a creditor/insider-sponsored plan, fundamental fairness and the absence of any prejudice to the Debtors dictates that the plan process be opened up so that the ultimate resolution of these cases can be determined by the preference of creditors, as contemplated by Bankruptcy Code section 1129(c).

27. As courts in the Third Circuit and elsewhere have increasingly found, where a debtor is content to file a plan that leaves a creditor constituency out of the money and there exists a viable alternative plan that could provide a greater recovery to a greater group of creditors, exclusivity should be terminated to permit a fair process where the preferences of creditors are paramount. *See In re Pliant Corp., et. al.*, Case No. 09-10443 (Bankr. D. Del. June 29, 2009) (relevant transcript excerpts attached hereto as Exhibit I) (granting the second lien holders the right to file a "fully-

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the court terminated exclusivity). Rather, it is a definitive proposal with committed financing. Moreover, as described above, the facts of these cases bear no similarity to those of the *Geriatrics* case. The concerns raised by this Motion are far beyond "mere dissatisfaction" with the Insider Plan. The Insider Plan (1) provides for no recovery to holders of over $1.25 billion in notes, (2) represents a new value plan in violation of the absolute priority rule, (3) fails to include restructuring alternatives, including the sale of the Trump Marina to Coastal, that would provide substantial net present value to the Debtors' estates, and, (4) in effect, benefits only two parties, the bank debt holder and Donald Trump.

baked” competing plan and noting that “the case [was] sufficiently similar to [the *LaSalle* and *Global Ocean* cases] because all of the equity [was] being given to one creditor group” and “if there is an upside [to the value of the company] then I think the other creditor constituents have a right to test that”); *In re Seitel, Inc*., Case No. 03-12227 (Bankr. D. Del. 2003) (relevant transcript excerpts attached hereto as Exhibit J) (approving motion to terminate exclusivity in order to provide equity holders with information regarding alternative plan with a potentially higher recovery for all creditors). *See also In re Haw. Telecom Commcn’s, Inc., et. al.*, Case No. 08-02005 (Bankr. D. Haw. July 1, 2009) (relevant transcript excerpts attached hereto as Exhibit K) (denying debtor’s motion to extend exclusive periods to allow other parties in interest, including a potential acquirer of the debtor, to file a competing plan where public interest was best served by terminating exclusivity); *In re Fremont Gen. Corp.*, Case No. 08-13421 (Bankr. C.D. Cal. July 16, 2009) (relevant transcript excerpts attached hereto as Exhibit L) (terminating exclusivity period where debtor’s stand-alone plan was filed on exclusivity expiration date and provided for retention of interests of equity holders without providing full recovery to unsecured creditors); *In re Magnachip Semiconductor Fin. Co.*, Case No. 09-12008 (Bankr. D. Del. Aug. 3, 2009) (order terminating exclusivity attached hereto as Exhibit M).

A. The Filing of a New Value Plan Constitutes Per Se Grounds for Termination of Exclusivity

28. However the Debtors seek to characterize the Insider Plan, that plan is a “new value” plan by an existing equity holder that mandates the immediate termination of exclusivity. In *Bank of America National Trust and Savings Association v. 203 North LaSalle Street Partnership*, 526 U.S. 434 (1999) (“*LaSalle*”), the Supreme Court held that an equity holder’s exclusive right to file a “new value” plan was a property right subject to the absolute priority rule. The *LaSalle* Court stated that:

> [I]t is that the exclusiveness of the opportunity, with its protection against the market's scrutiny of the purchase price by means of competing bids or even competing plan proposals, renders the [equity holder's] right a property interest extended 'on account of' the old equity position and therefore subject to an unpaid senior creditor class's objection.

LaSalle, 526 U.S. at 457-58. As described in *LaSalle,* the genesis of the "fair and equitable" requirement and the absolute priority rule lies with Congressional intent to counter-balance the ability of insiders, whether they be representatives of management or major creditors, to use the reorganization process to gain an unfair advantage. *Id*. Accordingly, the Supreme Court held that a "new value" plan would be non-confirmable in the absence of competitive bidding for the equity interests to determine the adequacy of the new value contribution. *Id*.

29. Since *LaSalle*, courts have held that the termination of exclusivity is justified when persons controlling the debtor "determine, without the benefit of a public auction or competing plans, who will own the equity of [the reorganized debtor] and how much they will pay for that privilege." *In re Global Ocean Carriers, Ltd.*, 251 B.R. 31, 49 (Bankr. D. Del. 2000); *see also In re Situation Mgmt. Sys., Inc.*, 252 B.R. 859, 864-65 (Bankr. D. Mass. 2000) (terminating exclusivity on motion from a creditors' committee because "new value" provision, which provided for sale of stock in reorganized debtor, exposed debtor's equity interests to competitive bidding, such that, as a practical matter, debtor's exclusive right to propose and gain acceptance of plan was effectively forfeited).

30. The Debtors' marketing activities, conducted outside creditor and judicial oversight and without the benefit of supervision by an official creditors' committee, cannot substitute for the transparency and fairness associated with a dual track competing plan process. Indeed, courts have viewed the competing plan process as the preferred method for valuation of reorganized equity interests when new value plans are proposed because the Bankruptcy Code's disclosure

requirements generate informed competing bids for the new equity. *See Situation Mgmt. Sys.*, 252 B.R. at 864-65 ("[W]here as here, there is a party interested in acquiring the Debtor, the opportunity to offer a competing plan is a preferable procedural mechanism to auction . . . .") (citing *In re SM 104, Ltd.*, 160 B.R. 202, 225-27 (Bankr. S.D. Fla. 1993)). Accordingly, the termination of the Debtors' Exclusivity is mandated in this case so that the Insider Plan is subject to a market test by being measured against the Noteholder Plan, based on the preference of creditors.

B. The Lack of a Debtor-Sponsored Plan Warrants Termination of Exclusivity

31. The absence of a debtor-sponsored plan of reorganization and the Debtors' failure to consider restructuring alternatives that would maximize value also warrants termination of Exclusivity. The Debtors have had more than ample time to negotiate with their constituents, formulate a consensual plan of reorganization and present a plan to stakeholders. However, the Debtors have abdicated their duty to formulate a plan of reorganization of their own or meaningfully attempt to foster consensus. *See Donald Trump Aims to Retake Control of Casinos*, USA Today, June 16, 2009 ("Mark Juliano, the company's CEO, said Tuesday the board will weigh the two competing offers for the company and does not plan to formulate one of its own."), attached hereto as Exhibit N. If the Board had seriously considered the Noteholder Plan, they would have allowed Exclusivity to lapse so that the competing plans might be filed. Instead, the Debtors have simply abdicated their fiduciary duties to creditors by adopting a plan formulated by an out-of-the-money shareholder (and former Chairman of the Board of the Debtors who quite publicly resigned from the Board and simultaneously attempted to abandon his interests in the Debtors) and Beal Bank. In doing so, the Debtors unashamedly seek to wipe out the claims of over $1.25 billion in Senior Secured Notes.

32. Moreover, the Debtors have rejected repeated offers for the purchase of the Trump Marina at values that far exceed the Debtors' own view of the Trump Marina's value, all in

contravention of their fiduciary duties to explore all restructuring alternatives in an attempt to reorganize on a going concern basis and maximize recovery for all creditors. *See, e.g.*, *In re Lionel Corp.*, 722 F.2d 1063, 1071-72 (2d Cir. 1983); *In re Encore Healthcare Assocs.*, 312 B.R. 52, 57 (Bankr. E.D. Pa. 2004). At a minimum, the Debtors have a fiduciary obligation to refrain from acting in a manner that could damage the estate. *See In re Marvel Entm't Group, Inc.*, 140 F.3d 463, 471 (3d Cir. 1988). In addition, any argument by the Debtors that the Trump Marina is important to their future plans is belied by the fact that the property would require significant capital expenditure improvements and marketing dollars just to get customers back who have all but deserted the Trump Marina. The property constitutes a significant drain on resources and would be better off sold. The Debtors' failure to successfully negotiate a sale is reflective of the same inability to put together a comprehensive plan proposal.[12] Any attempt by the Debtors to describe the sham plan process as adequate or truly competitive would be disingenuous. Thus, terminating Exclusivity is necessary so that a competing plan that contemplates value-maximizing restructuring alternatives, such as the Marina Sale, may be explored.

33. The case for termination of Exclusivity here is all the more compelling because no official committee has been appointed that could have actively championed the interests of creditors. Indeed, it appears that the Debtors, Mr. Trump and Beal Bank are attempting to capitalize on the absence of an official committee by trying to ram through the Insider Plan, a plan that no creditor other than Beal Bank could possibly support. The one obvious way to redress this imbalance in the plan process is to terminate Exclusivity and to give creditors a true choice between competing plans.

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12 The Ad Hoc Committee's contemporaneously-filed motion seeking the appointment of an examiner requests that the examiner investigate, among other things, the Trump Marina sale negotiations.

C. The Insider Plan Cannot Meet Section 1129 Confirmation Standards

34. Faced with the obvious superiority of the Noteholder Plan, and in an attempt to obfuscate the deficiencies in the Insider Plan, the Debtors offer a number of weak—and premature—arguments as to why the Insider Plan was selected. *See* Insider Disclosure Statement at XI.B. The Ad Hoc Committee looks forward to its day in Court to demonstrate the viability and confirmability of the Noteholder Plan, but now is not the time to adjudicate confirmation objections to either the Insider Plan or the Noteholder Plan. Just as confirmation objections should not generally be heard at a disclosure statement hearing, no mini-trial on the confirmability of the Noteholder Plan is needed to establish that the proposal should be allowed to go to the creditors for vote. If the Court terminates Exclusivity and allows the Noteholder Plan to be solicited, there will be enough time for a confirmation hearing and the creditors' vote; mere opposition from Beal Bank to a potential cram-up plan does not warrant depriving the creditors of the opportunity to vote on the Noteholder Plan.

35. To the extent the Court considers a comparison of the two plans at this stage, it is abundantly clear that, contrary to the Debtors' assertions, the Insider Plan cannot survive the absolute priority test and is not fair and equitable to creditors. Moreover, it is clear that the Noteholder Plan provides significantly more capital for the Debtors' business operations, results in a less leveraged structure that provides the first lien lender with an enhanced recovery in the form of a significant cash pay-down, and offers enhanced recoveries to creditors (not just the single holder of first lien debt and Mr. Trump). While the Debtors invoke "valuable" licensing rights to use certain "Trump" trademarks and Mr. Trump's likeness and other intangible consideration to be contributed by Mr. Trump, the Debtors do not offer any analysis or quantification of such value (if any). Indeed, the Debtors lose sight of the fact that the Trump brand has been unsuccessful in staving off what is now the third bankruptcy filing.

36. In addition, there are many critical facts and issues regarding the Insider Plan that are not adequately described in the Insider Disclosure Statement, including the following:

- No mention is made of Mr. Trump's personal guarantee of the Senior Secured Notes;

- No mention is made of the Florida Litigation or the complaint filed by Coastal alleging fraud and misrepresentations in connection with the Marina Sale described above. No analysis is provided to enable creditors or this Court to determine the potential merits or weaknesses of the Florida Litigation or how the Debtors concluded, on balance, that the benefits and potential value of that litigation exceeded the benefits of proceeding with Coastal's renewed offer;

- No mention is made of Mr. Trump's purported abandonment of his partnership interests on the eve of bankruptcy, and no analysis of its potential impact on the enterprise is provided;

- No explanation is given as to the basis and need for the complex series of restructuring transactions set forth in the Insider Plan and whether such restructuring transactions are intended primarily to preserve valuable tax treatment for Mr. Trump (and if so, to establish the basis for such consideration flowing to Mr. Trump);

- The Insider Disclosure Statement makes no suggestion that the Board conducted any analysis or investigation whatsoever into whether any causes of action may exist against Mr. Trump and his daughter Ivanka Trump in connection with their negotiating for control of the Company with the Noteholders while serving as directors, their resignation from the Board on the eve of bankruptcy, or the value of the releases being provided to Mr. Trump and Ivanka Trump;

- No analysis is provided with respect to the nature, type and merits of the purported claims asserted by Mr. Trump;

- The Insider Disclosure Statement does not disclose the source of financing for the $100 million cash contribution to be made by each of Donald Trump and Beal Bank;

- The Insider Disclosure Statement does not provide any description of the potential regulatory issues or confronting the Insider Plan;

- No justification is given for the Debtors' apparent decision to continue to pay Beal Bank post-petition interest, fees and expenses under the Final Cash Collateral Order, where the Debtors have asserted in the Insider Disclosure Statement that Beal Bank is under-secured;

- No basis is given for providing Beal Bank with new debt in a principal amount that exceeds the value of its collateral under the Insider Plan;

- No detail is provided to explain the amount of "additional capital [needed] to remain competitive in the Atlantic City gaming market." *See* Insider Disclosure Statement at II.A., p. 3;

- The Debtors fail to highlight the fact that the Insider Plan rises and falls with the casting of a single ballot by a single holder of the first lien debt;

- The Debtors do not disclose the sources and uses of cash on the assumed effective date of the Insider Plan, including estimates of administrative expenses, professional fees and Other Priority Claims;

- The Debtors do not disclose the terms of the Fifth Amended and Restated Agreement of Limited partnership of TER Holdings, or whether such partnership agreement will reinstate Mr. Trump's rights of indemnification (which would render misleading the Insider Disclosure Statement's assertion that Mr. Trump's waiver of claims against the Debtors confers value on the Debtors' estates);

- The Insider Disclosure Statement fails to note that certain conditions precedent in the Beal Bank commitment letter are far too ambiguous and could allow the Beal Bank to walk away from the Insider Plan; and

- The Insider Disclosure Statement fails to describe certain affiliate relationships, including, upon information and belief, the fact that certain of the Debtors' officers and directors also serve as officers or directors in Ace Entertainment Holdings, a limited partner in TER Holding and wholly-owned by Donald Trump; and

37. Given all the uncertainty and confirmation risk associated with the Insider Plan, it is clear that the Noteholder Plan constitutes the better, safer alternative.

D. Fairness to Creditors and the Lack of any Prejudice to the Debtors Strongly Supports Termination of Exclusivity

38. Even setting aside the many legal infirmities of the Insider Plan, were the Court to be persuaded that both competing plans are confirmable, then the Court would be required by statute to consider the preferences of creditors.[13] As observed in the *Situation Management* case, allowing

[13] Section 1129(c) of the Bankruptcy Code provides as follows:

> Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127 (b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under

competing plans to be filed permits the Court to evaluate the competing bids for purposes of determining the preferences of creditors under section 1129(c) of the Bankruptcy Code:

> Where the Court is required to consider the preference of creditors in choosing which competing plan to confirm, *see* 11 U.S.C. § 1125(c) [sic], and under the circumstances of this case where LMA has indicated its intent to purchase the Debtor's equity interests, the competing plan approach provides for a more informed process for creditors and to interested bidders than an auction of equity interests in the context of a Debtor's plan.

Situation Mgmt. Sys., 252 B.R. at 865-66 (footnotes omitted); *see also In re Holley Garden Apartments, Ltd*., 238 B.R. 488, 496 (Bankr. M.D. Fla. 1999). As the Court of Appeals for the Third Circuit has noted, "the ability of a creditor to compare the debtor's proposals against other possibilities is a powerful tool by which to judge the reasonableness of the proposals. An ovebroad interpretation of exclusivity provision, holding that only "the debtor's plan may be 'on the table,' takes this tool from creditors." *Century Glove, Inc. v. First Am. Bank*, 860 F.2d 94, 102 (3rd Cir. 1988).

39. Allowing creditors to submit ballots for multiple plans "encourages a chapter 11 policy of 'creditor democracy'" and allows "each individual creditor to decide which plan best comports with its respective economic interests." *In re Mother Hubbard, Inc.,* 152 B.R. 189, 195-96 (Bankr. W.D. Mich. 1993). If anything, the existence of competing plans commonly results in a higher and more expeditious recovery for the parties. *See, e.g.*, *LaSalle*, 526 U.S. at 457 (explaining that allowing competing plans is one method of ensuring that property is exposed to the marketplace and tends to increase creditor dividends); *In re Sound Radio, Inc.*, 93 B.R. 849, 856-59 (Bankr. D.N.J. 1988) (after court modified exclusivity to authorize filing of three competing plans, plan

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section 1144 of this title. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

11 U.S.C. § 1129(c).

ultimately confirmed paid more per share to equity, paid creditors in full and allowed debtor to go forward as reorganized company). Allowing the Noteholder Plan to be solicited on a dual track and at minimal incremental expense to the estate affords creditors the opportunity to vote for a superior alternative and fosters progress in these cases.

40. The creditor constituencies also stand to gain from being allowed to choose between two competing plans. As described above, the Noteholder Plan clearly provides for greater recovery to creditors, while the Insider Plan inures only to the benefit of Beal Bank, the single holder of the bank debt, together with Donald Trump, an out-of-the-money shareholder who publicly abandoned his partnership interests in the Debtors and resigned from the Debtors' board of directors, while offering no recovery to holders of over $1.25 billion in Senior Secured Notes or general unsecured creditors. Thus, upon the casting of a single ballot by the sole holder of the first lien debt, the claims of holders of $1.25 billion in publicly-traded notes, together with the claims of general unsecured creditors, will be eliminated. The Noteholder Plan, by contrast, provides for a meaningful recovery to holders of the Senior Secured Notes and provides consideration to out-of-the-money general unsecured creditors.

41. The Debtors will not be prejudiced by the termination of Exclusivity. The termination of Exclusivity in no way "foreclose[s] [the debtor] from promulgating a meaningful plan of reorganization" but merely grants others the right to file a chapter 11 plan alongside the Debtors. *In re Grossinger's Assocs.*, 116 B.R. at 36; *see also In re Southwest Oil Co.*, 84 B.R. 448, 454 (Bankr. W.D. Tex. 1987) ("[B]y denying the extension, the Court does not prejudice the debtors' coexistent right, nor dilute the debtors' duty to a file a plan."). The filing of a competing plan might even facilitate settlement discussions and, perhaps, facilitate a consensual plan. *See, e.g.*, *In re Pub. Serv. Co. of N.H.*, 99 B.R. at 176 (termination of the exclusive period created a level playing field and fostered the negotiation of a consensual plan of reorganization); *see also In re*

Mother Hubbard, Inc., 152 B.R. at 195-96 (observing that competing plans "may additionally motivate the debtor to more earnestly negotiate an acceptable consensual plan").

42. Nor would the submission of competing plans result in significant incremental expense to the estate. Appropriate procedures may be implemented so that the competing plans and disclosure statements could be filed, solicited and presented for confirmation simultaneously. In addition, allowing the key parties in this case to file competing plans would not result in incremental costs to the estate on account of discovery or confirmation-related litigation. Given that the two main creditor constituencies remain diametrically opposed, litigation will inevitably ensue. Each competing plan would seek confirmation under section 1129(b) and would involve identical issues of fact and expertise, including valuation, debt capacity and feasibility issues.

43. Accordingly, for the reasons stated herein, the Ad Hoc Committee respectfully requests that this Court permit the Ad Hoc Committee to file the Noteholder Disclosure Statement forthwith and schedule a hearing on that disclosure statement prior to or on the date that the Court considers the adequacy of the Insider Disclosure Statement. The Ad Hoc Committee further requests that the Court enter an order immediately terminating the Debtors' exclusive right to propose and solicit votes on a plan of reorganization.

II.

THE DISCLOSURE STATEMENT HEARING SHOULD BE ADJOURNED

44. The strategy being pursued by the Debtors at the behest of the senior lender and former insiders is evident: run the clock out on the Noteholders and seek approval of the Insider Disclosure Statement before this Motion can be heard so that the Insider Plan can be foisted upon creditors without an opportunity to vote on an economically superior plan. This Court should not allow the Debtors to exploit Exclusivity in such a manner. As shown above, this case presents

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multiple legal grounds to terminate Exclusivity. The Debtors' intent to squeeze the Noteholders is evidenced by the fact that they waited until almost the last day of Exclusivity to file the Insider Plan (without having done anything to formulate their own plan of reorganization since last December). The Noteholders have prepared and executed final documentation, including the Noteholder Plan and an executed financial commitment agreement. As described above, no prejudice would befall the Debtors in allowing this Court to consider the proposition of dual-tracking two competing plans before ruling upon the adequacy of the Insider Disclosure Statement. Accordingly, the Ad Hoc Committee respectfully requests that the Court adjourn the hearing to consider the Insider Disclosure Statement so that this Motion may be heard contemporaneously therewith.

45. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Ad Hoc Committee respectfully requests that the Court grant the Ad Hoc Committee's Motion, terminate Exclusivity, permit the Ad Hoc Committee to file the Noteholder Plan and Disclosure Statement in respect thereof, authorize the dual track solicitation process in respect of the competing plans, and grant the Ad Hoc Committee such other and further relief as the Court deems appropriate.

Dated: August 11, 2009

Respectfully submitted,

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Exhibit A

FILED UNDER SEAL PURSUANT TO THE AD HOC COMMITTEE'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE AD HOC COMMITTEE TO FILE UNDER SEAL EXHIBITS TO THE EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ACCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR THE DEBTORS' JOINT PLAN OF REORGANIZATION

Exhibit B

FILED UNDER SEAL PURSUANT TO THE AD HOC COMMITTEE'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE AD HOC COMMITTEE TO FILE UNDER SEAL EXHIBITS TO THE EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ACCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR THE DEBTORS' JOINT PLAN OF REORGANIZATION

Exhibit C

FILED UNDER SEAL PURSUANT TO THE AD HOC COMMITTEE'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE AD HOC COMMITTEE TO FILE UNDER SEAL EXHIBITS TO THE EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ACCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR THE DEBTORS' JOINT PLAN OF REORGANIZATION

Exhibit D

FILED UNDER SEAL PURSUANT TO THE AD HOC COMMITTEE'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE AD HOC COMMITTEE TO FILE UNDER SEAL EXHIBITS TO THE EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ACCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR THE DEBTORS' JOINT PLAN OF REORGANIZATION

<u>Exhibit E</u>

FILED UNDER SEAL PURSUANT TO THE AD HOC COMMITTEE'S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE AD HOC COMMITTEE TO FILE UNDER SEAL EXHIBITS TO THE EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ACCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR THE DEBTORS' JOINT PLAN OF REORGANIZATION

Exhibit F

REUTERS

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Trump Entertainment files for bankruptcy

Tue Feb 17, 2009 6:16pm EST

By Kyle Peterson

CHICAGO (Reuters) - Trump Entertainment Resorts Inc, the casino operator named for Donald Trump, filed for bankruptcy protection on Tuesday as recession and declining gambling revenues battered the company and its rivals.

The Chapter 11 filing marks the third plunge into bankruptcy for the company, which was created out of a restructuring in 2005. It also underscores the struggles facing the casino business as recession squeezes casino gambling.

Trump Entertainment owns and operates three casino hotels in hard-hit Atlantic City, New Jersey, including the Trump Taj Mahal, Trump Plaza and Trump Marina.

The company did not request debtor-in-possession financing to operate during its restructuring and said it would continue to run as normal.

"This filing will result in no immediate change in our daily operations, and we expect to make no changes regarding our operating structure or philosophy," Trump Chief Executive Mark Juliano said in a statement.

Nine affiliates of the casino operator including Trump Plaza Associates, Trump Plaza Associates, Trump Marina Associates and Trump Taj Mahal Associates simultaneously sought protection, according to the filing.

Trump had assets of about $2.1 billion and total debts of about $1.74 billion on December 31, 2008, it said in its filing with the U.S. Bankruptcy Court for the District of New Jersey.

The company, eager to conserve cash, missed a $53.1 million bond interest payment due on December 1 as a sharp downturn in consumer spending hit casino revenue, prompting bondholders to push for bankruptcy.

WIDELY EXPECTED

Experts had been looking for a Chapter 11 filing from Trump since it missed the December 1 bond interest payment.

"It had been moving in this direction for two months," said KeyBanc gaming industry analyst Dennis Forst.

"I think (restructuring) could take a while," he said. "Obviously, they weren't able to restructure it with the debt holders in the two months they had."

The filing comes days after the casino operator's namesake founder said he would resign from the board over disagreements with bondholders who wanted the company to file for bankruptcy.

Friday's statement did not say when Trump's resignation would be offered or take effect. His daughter Ivanka Trump also said she was resigning.

Trump, a very public and flamboyant figure in an industry filled with colorful, headstrong executives, said the company represents less than 1 percent of his net worth, and that "my investment in it is worthless to me now."

No stranger to bankruptcy, Trump Entertainment Resort Holdings went into Chapter 11 in 2004, from which it emerged a year later with Trump having relinquished the position of CEO.

Casino companies have been hurt in the last year as the gambling boom fizzled and tight credit markets stifled growth plans. Meanwhile, the Chinese government has made efforts to slow down the Macau gambling market.

The sector now faces a wave of restructurings. In May, the privately held casino operator Tropicana Entertainment LLC filed for Chapter 11.

The Dow Jones U.S. Gambling Index has fallen some 83 percent since its lifetime high reached in October 2007.

(Reporting by Kyle Peterson in Chicago, Chelsea Emery and Christopher Kaufman in New York and Ajay Kamalakaran in Bangalore, editing by Dave Zimmerman)

Exhibit G

pressofAtlanticCity.com

Trump plots comeback for casino ownership

By DONALD WITTKOWSKI, Staff Writer, 609-272-7258 | Posted: Saturday, June 6, 2009 |

ATLANTIC CITY - Donald Trump is attempting to regain control of the casino company that still bears his name but no longer has him as the boss.

The loquacious Trump has been unusually quiet since his resignation as chairman of Trump Entertainment Resorts Inc. in February in a dispute with corporate bondholders. However, newly filed bankruptcy documents show he has teamed up with a bank to make an offer for the company.

Buried deep in a list of bankruptcy bills are brief entries indicating that "DJT" - Trump's initials - and Beal Bank have proposed a deal that is under review by the company's financial and legal advisers. Trump declined to comment Friday.

Newark attorney Charles A. Stanziale Jr., bankruptcy counsel for Trump Entertainment, confirmed Friday that a confidential offer from Trump and Beal Bank will be considered by the company's board of directors.

Bondholders who own $1.25 billion in Trump Entertainment notes have made a competing confidential offer, Stanziale added.

Donald Trump and bondholders have been on bad terms since they spurned his offer in February to buy the publicly traded company and take it private. Now they are fighting again in bankruptcy court. At stake is ownership of the three Trump Entertainment casinos in Atlantic City.

"The board will look at both proposals and determine whether it is satisfied that the offers meet the needs of the company," Stanziale said.

Stanziale also raised the possibility that a third party could bid for the company or that Trump Entertainment's management could craft its own plan for new ownership. He stressed that the board of directors has not yet committed to any plan this early in the game.

"Are the plans being reviewed by the company's financial consultant, management and legal counsel? The answer to that is yes," Stanziale said. "Has the board acted on any of these plans? No. Has there been a recommendation on either one? The answer is no."

Trump Entertainment filed for Chapter 11 bankruptcy protection Feb. 17 in hopes of restructuring $1.7 billion of suffocating debt made worse by the company's declining business in the recession. Four days before the bankruptcy filing, Donald Trump and daughter Ivanka Trump resigned from the company's board of directors.

Angered that his offer to take the company private was rejected by bondholders, Trump quit as chairman and announced he was no longer associated with the casino operations. Privately, though, he has been maneuvering to get back into the casino business.

Bankruptcy documents also refer to the Trump-Beal team as the "Trump family," suggesting that Ivanka Trump is part of the proposed deal, too. She serves as her father's board room sidekick in his NBC reality show "The Apprentice" and also represented him at a bankruptcy hearing in March.

Trump's financial backer, Beal Bank, is headed by Andy Beal, a Trump friend. Beal Bank is one of Trump Entertainment's lead creditors. In December 2007, the company received a $500 million loan from Beal Bank Nevadá, an affiliate of the Dallas-based bank. Beal is currently owed $493 million on its loan, Stanziale said.

Beal Bank came to Trump's rescue during another bout with bankruptcy in 2005. At that time, the bank supplied a $100 million loan that allowed the casino operator to continue paying its bills while simultaneously working on a plan to pull itself out of bankruptcy protection. Trump emerged from Chapter 11 in May 2005, only to fall back into bankruptcy four years later.

Trump Entertainment is asking for a 90-day extension of its exclusive rights to submit a reorganization plan in its current bankruptcy case. The company faces a June 17 deadline to file the plan but wants the court to push back the date to Sept. 15 to give it more time to negotiate a deal. A bankruptcy judge is scheduled to rule on the request June 16.

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Exhibit H

pressofAtlanticCity.com

Trump Marina still looking for a buyer

Phila. developer considered turning it into luxury hotel

By DONALD WITTKOWSKI, Staff Writer, 609-272-7258 | Posted: Friday, July 24, 2009 |

ATLANTIC CITY - A real estate developer who wants to build a luxury hotel on the Boardwalk expressed interest in Trump Marina Hotel Casino after another potential buyer backed out, but has since withdrawn.

Newly filed documents in the Trump Entertainment Resorts Inc. bankruptcy case reveal that Christopher DiGeorge, of Philadelphia-based DiGeorge Atlantic Properties LLC, spoke to the company last month about the casino.

Documents indicate DiGeorge discussed Trump Marina's finances and debt with Trump's bankruptcy attorneys and was preparing to tour the property with Trump management. However, Trump Entertainment Chief Executive Officer Mark Juliano said nothing serious resulted in talks with DiGeorge.

"He might have had some interest and done a walk-through like other people have done, but there's nothing that came of it," Juliano said. "There's nothing credible out there."

DiGeorge, who did not return messages this week seeking comment, has proposed building a $300 million luxury condominium and noncasino boutique hotel on the Boardwalk. The project, called Prasada, has been stalled by the recession and frozen credit markets.

In an e-mail to The Press of Atlantic City last month, DiGeorge said there may be a potential opportunity to create a "Prasada-like" boutique property out of an existing casino. He did not disclose in his e-mail which casino he had in mind, but bankruptcy documents show it was Trump Marina.

Trump Entertainment has been shopping Trump Marina ever since a deal fell through in early June to sell the property for $270 million. The would-be buyer, New York gaming group Coastal Marina LLC, wanted to rebrand Trump Marina into a Margaritaville-themed casino in partnership with singer-songwriter Jimmy Buffett.

Both Trump Entertainment and Coastal Marina have accused each other of breaching terms of the sale. Analysts predict Coastal may attempt to rework the deal at a lower price once Trump Entertainment's ownership is settled in bankruptcy court.

"We're not really talking right now," Juliano said of Coastal.

Donald Trump, who resigned as Trump Entertainment's chairman in February following a dispute with corporate bondholders, is attempting to regain control of the publicly traded company and take it private. Bondholders are talking to the company about a competing buyout plan.

The federal bankruptcy judge overseeing Trump Entertainment's Chapter 11 reorganization has set Aug. 3 as the deadline for the company to accept either Donald Trump's proposed buyout or the one by bondholders. Terms of both proposals have not been made public.

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Exhibit I

Pliant II
6/29/09 Hearing

RULING
(5:02:35)

Judge: Let's take five minutes and then I'll render my ruling.

Bailiff: All rise.

Judge: All right. Before me is the Creditor's Committee Motion to Terminate Exclusivity to permit the Court and creditors to consider an alternative plan. The Court has the ability to terminate exclusivity for cause. I don't have to find a breach of fiduciary duty and based on the testimony here I find that the Debtor has not breached his fiduciary duty. And based on the testimony here I find that the Debtor has not breached his fiduciary duty. The Debtor and his management and advisors followed an appropriate process of evaluating the deal and plan that they had negotiated with the first lien holders in comparison with the Apollo plan and believe that their plan is better; that is not a breach of fiduciary duty. They did everything that was required of them. However, we're in bankruptcy, we're not in a proxy fight or other fight under Delaware state law. The Court's discretion to terminate exclusivity is broad, but I take that as very important. The Debtor's right to propose a plan to run its case is a very important right in bankruptcy. It should not be cut off at the knees, except in extreme circumstances or in unique circumstances at least. The typical situation where a creditor's committee is simply seeking leverage or another creditor group is simply seeking leverage to negotiate a plan that is not an appropriate case to terminate exclusivity. I am fully familiar, both in practice and as a judge, with the various dynamics that are going on behind the scenes and accepting hearings like this don't come to the floor. I need to find a cause, I need to find a reason, to eliminate the Debtor's right to run its case. I agree that the Global Ocean and LaSalle cases are not applicable. This is not a situation where the shareholders, the old equity holders, are being given all the equity in the case. But I think that the case is sufficiently similar to that because all of the equity is being given to one creditor group. That creditor group professes that it would prefer to have all the equity rather than have some $89 million dollars in cash and $236 million dollars in secured notes. That gives the Court some pause because I know in the marketplace secured debt and cash is better than stock, unless the value of the entity has an upside. And if that is the case, if there is an upside there then I think that the other creditor constituents have a right to test that and to see whether or not there is a plan that can give them some value without eliminating or otherwise violating the rights of the first lien holders. But I think the best way to test that is under Section 1129 and to allow the creditors a choice of pressing two plans. This is not a situation where there is a hostile takeover, nor a situation where a creditor group is just simply trying to get leverage. The Committee has come in with a, I hate the term, but a fully baked plan to use their argument. There are some serious concerns the Court has about the feasibility of that, but I think in the first instance it is up to the creditors to evaluate that and to determine whether or not they are willing to take the risk of proceeding with that. But that can be tested both by the creditors and by the Court in a confirmation process. I do rely in large part on the Creditor's Committee's evaluation in this situation, while recognizing that they really are representing only one constituency, and that is the unsecured creditors. And that the Debtor has a fiduciary duty to all constituents. And again, I do not fault the Debtor in the manner in which they have approached this. I just think under the unique circumstances of this case, we should let those people with a stake in the case make their decision. And I fully recognize that when we come down to confirmation only one of these plans may be confirmable, but both of them may be confirmable; and in that instance I will again look to the creditors to decide which is the best place. So I will grant the Committee's motion and terminate exclusivity. I know that we had some dates the parties were looking to. Do we need to review that again or do we need to speak with Ms. Capp about what dates? I think we had tentatively scheduled some dates.

Larry Nyhan: Your Honor, I didn't know of a date. I know that July 24th had been…

Derek Abbott: Your Honor, Derek Abbott for Apollo. My recollection was that there was an omnibus hearing on the 20th, but the Court had indicated there was time on the 24th and the parties would agree to a couple of days of shortening notice of a disclosure statement hearing to be able to do it on the 24th.

Judge: Can you shorten that? I just had another e-mail today about that. Can we shorten that notice?

Derek Abbott: Let's check, Your Honor.

Judge: I know it has to be twenty-five days. I guess it's 9006 I have to look to read that. I think this notice is under 2002(b). So I think it can be shortened.

Derek Abbott: I believe that's correct, Your Honor.

Judge: Okay.

Derek Abbott: I think the 24th, although I must admit I forget exactly the time that Ms. Capp suggested would be available.

Judge: She's got us down for the 24th at 11:30. So that would be for both disclosure statements?

Larry Nyhan: Yes. Your Honor, we need to talk to our client about whether we are going to seek an appeal on this and I just don't – that date will work for us, but I don't want to surprise the Court if we're -

Judge:	Understood.
Derek Abbott:	Your Honor, I think that's all we have from our side for today.
Judge:	All right. You'll get me a form of Order, somebody?
Male:	We will, Your Honor. We'll circulate it and submit it.
Judge:	All right.
Larry Nyhan:	Your Honor, we also have – although I suppose it would be best to pick this up tomorrow, but I think we also had a lease motion; the solicitation motion and disclosure statement will obviously go over to the 24th.
Judge:	Well, let me see what our last matter is. We handled Item 7. You're talking about Item 8, the Debtor's new headquarters lease?
Larry Nyhan:	Yes, Your Honor.
Judge:	Well, do we want to postpone that given my decision on the exclusivity motion?
Larry Nyhan:	I think, Your Honor, the Debtors would like to proceed. We think we need the space regardless, but I know that if we had time tomorrow we'd be happy to come in tomorrow morning.
Judge:	Well, do the parties want to talk?
Derek Abbott:	We can certainly talk about it [inaudible 5:19:47].
Judge:	All right. Why don't you talk and we can come back.
Sharon Levine:	I think the other issue is we submitted a proposed form of Order with the motion; we'll circulate that among the parties right now also and see their comments to it as well.
Judge:	Okay.
Sharon Levine:	Thanks.
Larry Nyhan:	Thank you, Your Honor.
Judge:	Tomorrow we're starting at 9:30, if you like.
Larry Nyhan:	Thank you, Your Honor.
Judge:	All right. We'll stand adjourned then.

Exhibit J

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	)	Case No. 03-12227 (PJW)
	)	
SEITEL, INC., et al.,	)	
	)	Courtroom No. 2
	)	824 Market Street
Debtors.	)	Wilmington, Delaware 19801
	)	
	)	
	)	November 3, 2003
	)	1:31 P.M.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE HONORABLE PETER J. WALSH
UNITED STATES CHIEF BANKRUPTCY JUDGE

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For Erich Riesenberg:	ERICH RIESENBERG, Pro Se

equity that did not put up any new money at all would retain 20 percent of the company.

Our financial advisors believe that 20 percent of the company that is left for old equity is worth anywhere between 24 and $36 million. And they get that value plus they have the upside as anyone would have of holding the stock.

To refresh your recollection on the debtors' plan, Berkshire Ranch's plan, that plan says to old equity, vote for the plan and you get a piece of $10 million. Vote against the plan and you get nothing. Their plan -- their disclosure statement says that, in fact, equity has no value. That's their position, equity has no value. And the $10 million they're giving to old equity is a gift.

Now, Your Honor, that equals 40 cents a share. And, of course, we had great debate last time that old equity, unless there's a new development that I haven't heard as of right now, that old equity is not necessarily getting the $10 million, even if they vote in favor of the plan. Because if you recall, the old equity also shares as a matter of law under 510(b) with the class claimants, who have a class action lawsuit for the purchase and sale of securities.

They also share in that $10 million. The interesting point is that if the debtor says that old equity has no value and the class claimants have value. I don't know if we get -- if old equity gets anything for that matter. But the truth of prevent anyone from doing anything, that no one would be able to do the due diligence and come up with the type of money and to do a plan that protected equity. And I would say in 99 percent of the cases, they would have been successful.

For some reason, there were people out there who had latched onto this company for whatever reason. One of the reasons probably is because Warren Buffett was there trying to buy it for zero to $10 million. And we were here miraculously with something. I'm, frankly, a little surprised. I know when we were here the last time we were talking to Your Honor about it, but to actually get the commitment letters, to get a plan done, to get all of that done in time, which is why we're here on an emergency basis, was difficult, but we did it. They're surprised. They don't want the equity to know that it's an alternative. They know if equity knows it's an alternative, they're going to lose. If equity doesn't know that it's an alternative, they may vote for the plan because they may as well take their zero to 40 cents as opposed to nothing and then we don't have a chance to beat them at confirmation. If the equity class votes in favor of it, I don't get that chance, and they know that. And that's what they're banking on.

And they've misused the exclusivity period. It's not a long case where the debtor held on to exclusivity, it's the inverse. The debtor used the exclusivity to prevent anyone from negotiating. The debtor and the Board never negotiated with us.

The -- Berkshire and Ranch never talked to us about a plan. When we told them we had a plan, they never sat down with us to see if it was something better for the other side. They knew it, that was their plan from the beginning, that's what they're saying to Your Honor today, look, Your Honor, let's have a vote and then we'll see what happens. And they're banking on that vote being positive because equity doesn't know.

We have a plan that's confirmable. We have some impaired classes that will vote for the plan. And we think we can proceed. And all we're asking is a dual track. I don't even know the delay is that long. The dual track, let the equity vote, we'll have a valuation hearing at confirmation and it's resolved and it's fair. And ultimately, I would think that's where Your Honor would want to be.

THE COURT: I think it's important for the equity holders to know what the alternative is. And so I'm going to terminate the exclusivity.

However, we're going to stay on the same schedule so that we will have the debtors' plan up for confirmation hearing -- and I suspect that the November 17 hearing is not going to do much if this is going to be contested until the real hearing will spill over to December 3. And we'll determine on December 3 whether the debtors' plan is confirmable. And if it's not, then obviously the Equity Committee can then tee up its plan.

But I think in the interest of giving to the equity holders a full picture of all that is in the cards here, that they should be able to see what the Equity Committee is offering.

And, quite frankly, the numbers that Mr. Gottlieb has thrown out, it's pretty obvious that the parties are polls apart in terms of the enterprise value here and we'll see at confirmation hearing on the debtors' plan who's right in that regard.

MR. GOTTLIEB: Your Honor, may I ask you -- one technical problem. We can file our plan and disclosure statement right away. The problem we have is that the ballots actually have to be received by November 7th, which is this Friday.

The other motion we filed may be slightly -- may be no help, but it may be slightly helpful. We ask for another week. That would enable some shareholders out there to have at least a chance to have heard about our plan before they send back the ballot. Otherwise, anyone who hears about it tomorrow probably doesn't have a chance to get a ballot and get it back.

So, if we could have an extra week, Your Honor, and if Your Honor could ask that the balloting agent make sure that if people called and asked for ballots, that they could get a ballot, it would be slightly helpful, I think.

Exhibit K

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re	)	Case No. 08-02005
	)	(Chapter 11)
HAWAIIAN TELCOM	)	
COMMUNICATIONS, INC., et al.,	)	July 1, 2009
	)	9:43 a.m.
Debtors.	)	
	)	

TRANSCRIPT OF MOTION TO EXTEND EXCLUSIVITY PERIOD TO FILE PLAN
BEFORE THE HONORABLE LLOYD KING
UNITED STATES BANKRUPTCY JUDGE

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for a certain amount of time, then I'd like to make an official request for a one day PUC approval process, but -- but if it's not up to us that's just our estimate of how long it might take, that's all. We're happy for it to go as fast as possible.

MR. BRAY: Several quick observations, Your Honor, in the comments from the Secured Lenders about Chanin and the PUC I suspect may be indicative of the type of ownership that one could expect if the plan is confirmed.

Secondly, it's hard or it's disingenuous to say that the Sandwich Isles proposal was in fact seriously vetted by the professionals when they never gave us a chance to do any diligence to really make a serious proposal to them, very much a self fulfilling prophecy, Your Honor.

THE COURT: Thank you. Is the matter submitted?

MR. MARCUS: Yes, Your Honor.

THE COURT: All right. The matter is submitted. The motion will be denied.

Now, in denying the motion to extend exclusivity this is not to be taken as a criticism of the Debtors, the Debtors' proposed plan, the Secured Creditors. It's not an endorsement of Sandwich Isles. It's merely a reflection that the dominant factor in this case is the public interest. This is Hawaii's telephone company. At our first hearing the Chair of the Public Utilities Commission explained why -- that the failure of this reorganization was not an option.

Necessarily regulatory uncertainties abound at this moment. State and Federal necessarily there will be delays to give the regulatory entities an opportunity to consider whatever they must consider.

Cause has already been extended once in this case, and it's now time to give others an opportunity. Now, this is not merely providing an opportunity to -- to Sandwich Isles. There's no limitation. If the Creditors' Committee comes up with a plan -- come up with plan that has to be qualified. You don't just come up with a plan. You have to do a disclosure statement and that's usually the -- the barrier.

As I said, if -- if -- this motion being denied it does not guarantee to Sandwich Isles a dual track plan, and we may or may not be back here over the desire of Sandwich Isles to have access to whether we call it the diligence room or the data room, but I think we're talking about the same thing.

The Public Utilities Commission is neutral on this motion. It has not endorsed the -- the plan that's been filed by the Debtors and supported by the Secured Lenders.

I'm not satisfied that there's any harm in allowing the possibility of a competing plan to be filed. I'm sorry that no one was here from the Union, but I -- I don't feel that this possibility of a proposed plan necessarily destabilizes the Debtor or the Debtors' operations.

A lot of the fight, the dispute has been over the qualifications of Sandwich Isles to file a competing plan. If it's qualified or unqualified that will be apparent when the Sandwich Isles files a disclosure statement, if it files a disclosure statement. If -- if everything that the Debtors and their advisers have suggested about Sandwich Isles is -- is accurate, I doubt that Sandwich Isles will be able to file a disclosure statement at least one that -- that has any hope. But, again, because of the public interest, Sandwich Isles should not be denied an opportunity to see if it can present a serious alternative to the plan that has been filed.

There's always the possibility that the termination of exclusivity may speed things along towards a consensual plan. A consensual plan can mean different things. It may mean the inclusion of Sandwich Isles or it may just mean that the -- the Debtor, the Secured Lenders and the -- the constituency of the Creditors' Committee may get together. If those three come together that's a pretty powerful alliance as far as the confirmation of plan of reorganization is concerned.

I'm aware of the nine factors in the Dow Corning case, and I'm not going to go over them one by one, but I have considered all of those. Some of those don't necessarily favor extension of confirmation, they're just things to think about, and I think that my thought process has addressed them, but it's apparent that Sandwich Isles, I say, has been shut out from diligence efforts and those diligence efforts -- the inability of Sandwich Isles to get information, as I said, makes a lot of the criticisms just a self fulfilling prophecy because how can they go to lenders, how can they get commitments that they may need if they don't have information as to what it is that they wish to acquire.

The Debtors are encountering staggering professional fees which may be increased if the motion of the State is granted and, unfortunately, because of the regulatory situation there's no immediate end in sight. This is going to continue. So if there's going to be the possibility of a competing plan let's get it under way now so that it can be -- it -- possibly even more than one competing plan may be considered.

The Debtors' customer base is shrinking because the competitors are unregulated. They don't have to supply the public services that this Debtor is required to do. This Debtor has lots of serious issues that arise because of its regulation. As it has pointed out, its pricing and everything necessarily is made public so that the competitors can -- can see that.

So to the extent we can move this along let's move it along, let's see if there is the possibility of a competing plan.

There necessarily will be confidentiality concerns if Sandwich Isles is given access to the data room or the diligence room. That's something that is dealt with frequently in reorganization cases, and we should be able to deal with here.

So for all those reasons I'm satisfied that the Debtors have not demonstrated cause to continue the situation where only the Debtor plan may be considered and an order will be entered simply -- the Court will generate the order simply stating that for the reasons stated in open court the motion is denied. Is there anything else that requires attention today? Mr. Guben.

MR. GUBEN: Yes, Jerrold Guben on behalf of the State of Hawaii. Your Honor --

THE COURT: Please speak into the microphone, Mr. Guben.

MR. GUBEN: -- I was informed this morning that the Governor has exercised her right to extend the June 30th, 2009 deadline on Senate Bill 603 to sign or veto it to July 15th. That does address the issue of their regulatory regime possibly coming out of each plan.

THE COURT: Maybe you should tell -- tell everyone what that -- what that bill is.

MR. GUBEN: That was a bill introduced this Spring in the Legislature, Senate Bill 603, with respect to a partial deregulation of the consumer telephone rates and giving greater flexibility to Hawaiian Telephone Company and obviously the reorganized Debtor with respect to the regulation of consumer rates primarily. One of the reasons being that they were facing not only wireless competition, but competition from the other

Exhibit L

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LEE R. BOGDANOFF (State Bar No. 119542)
JONATHAN S. SHENSON (State Bar No. 184250)
BRIAN M. METCALF (State Bar No. 205809)
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Counsel for the Official Committee of
Unsecured Creditors

FILED
JUL 16 2009
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY: Deputy Clerk

ENTERED
JUL 20 2009
CLERK U.S. BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
BY: Deputy Clerk

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA ANA DIVISION

In re FREMONT GENERAL CORPORATION, a Nevada Corporation Debtor. Tax I.D. 95-2815260	Case No. 8:08-13421-ES Chapter 11 **ORDER GRANTING MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ORDER TERMINATING THE EXCLUSIVE PERIODS IN WHICH ONLY THE DEBTOR MAY FILE A PLAN AND SOLICIT ACCEPTANCES THERETO** Hearing Date: July 14, 2009 Time: 10:30 a.m. Place: Courtroom 5A 411 West Fourth St. Santa Ana, California

Klee, Tuchin, Bogdanoff & Stern LLP
1999 Avenue of the Stars, 39th Floor
Los Angeles, California 90067-6049
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On June 8, 2009, the Official Committee of Unsecured Creditors appointed in the above-captioned chapter 11 bankruptcy case (the "Creditors' Committee") filed and served that certain *Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto; Memorandum Of Points And Authorities In Support Thereof* [Docket # 728] (the "Motion")[1] and, in support thereof, the Creditors' Committee filed and served that certain *Declaration Of Hugh Steven Wilson In Support Of (I) Motion For Order Pursuant To Local Bankruptcy Rule 9075-1 Shortening Time And (II) Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 731] (the "Wilson Declaration"), *Declaration Of Deborah Hicks Midanek In Support Of Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 732] (the "Midanek Declaration"), and *Declaration Of Jonathan S. Shenson In Support Of Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 730] (the "Shenson Declaration", and together with the Motion, the Midanek Declaration and the Wilson Declaration collectively, the "Moving Papers").

On June 18, 2009, John Mlynick and Andrey Muthenik objected to the Motion by and through that certain *Objection To The Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto [Docket 728]; And Declaration Of John Mlynick In Support Thereof* [Docket # 755] (the "Mlynick Objection").

On June 30, 2009, the Official Committee of Equity Holders joined in the Motion by and through the filing of that certain *Joinder and Support of Relief Requested in Motion of Official Committee of Unsecured Creditors for Order Terminating the Exclusive Periods Which Only the Debtor May File a Plan and Solicit Acceptances Thereto; Declaration of Philip E Strok in*

[1] Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Motion.

Support Thereof; Filed by Interested Party Official Committee of Equity Security Holders [Docket # 779] (the "Joinder").

On July 6, 2009, the above-captioned debtor and debtor in possession (the "Debtor") objected to the Motion by and through that certain *Fremont General Corporation's Response To The Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto; Declarations of Donald E. Royer, Ricardo S. Chance, And Theodore B. Stolman In Support Thereof* [Docket # 776] (the "Debtor's Objection").

On July 10, 2009, the Creditors' Committee objected to certain evidence contained in the declarations submitted by the Debtor in support of the Debtor's Objection by and through that certain *Official Committee of Unsecured Creditors' Evidentiary Objections To Declarations Of Donald E. Royer, Ricardo S. Chance And Theodore B. Stolman In Support Of Fremont General Corporation's Response To The Motion Of Official Committee Of Unsecured Creditors For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 789] (the "Evidentiary Objection to the Debtor's Objection").

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On July 10, 2009, the Creditors' Committee also filed and served that certain *Reply Of Official Committee Of Unsecured Creditors To Debtors' Response To The Committee's Motion For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 787] (the "Reply") and, in support thereof, that certain *Supplemental Declaration Of Hugh Steven Wilson In Support Of Reply Of Official Committee Of Unsecured Creditors To Debtor's Response To The Creditors' Committee's Motion For Order Terminating The Exclusive Periods In Which Only The Debtor May File A Plan And Solicit Acceptances Thereto* [Docket # 788] (the "Supplemental Wilson Declaration" and together with the Reply, the "Reply Papers").

On July 14, 2009 at or about 10:30 a.m., the Court held a hearing (the "Hearing") to consider the Motion. Jonathan S. Shenson appeared at the Hearing on behalf of the Creditors' Committee and other appearances were as noted on the record.

The Court has reviewed and considered the Moving Papers, the Joinder, the Mlynick Objection, the Debtor's Objection, Evidentiary Objection to the Debtor's Objection, and the Reply Papers and all other pleadings, exhibits, documents and evidence submitted in conjunction with the Hearing on the Motion; the arguments and representations of counsel at the Hearing; and the record in this case; and based on the foregoing review and consideration, the Court finds that:

A. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334; venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2);

B. Notice of the Motion and the Hearing was adequate and appropriate under the particular circumstances and complies with the applicable provisions of Title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the Central District of California, and this Court has determined that no other or further notice need be given; and

C. The legal and factual bases set forth in the Motion establish good and sufficient "cause" for the Court to enter an order, pursuant to section 1121(d) of the Bankruptcy Code, terminating the period under section 1121(c)(3) of the Bankruptcy Code in which the Debtor has the exclusive right to solicit and obtain acceptances of a plan and during which time competing plans may not be filed ("Solicitation Exclusivity Period").

THEREFORE, IT HEREBY IS ORDERED THAT:

1. All objections to the Motion are overruled in their entirety, including, the Debtor's Objection and the Mlynick Objection.

2. The Motion is GRANTED, and Solicitation Exclusivity Period shall be, and is hereby, terminated effective as of July ~~14~~, 2009. 17 ES

DATED: July 16, 2009

HONORABLE ERITHE A. SMITH
UNITED STATES BANKRUPTCY JUDGE

Rus, Tuchin, Bogdanoff & Stern LLP
1999 Avenue of the Stars, 39th Floor
Los Angeles, California 90067-1606
(310) 477-4000

Exhibit M

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: MAGNACHIP SEMICONDUCTOR FINANCE COMPANY, *et al.*[1], Debtors.	Chapter 11 Case No. 09-12008 (PJW) Jointly Administered Re: #141, 144

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 1121(d)
<u>TERMINATING THE DEBTORS' EXCLUSIVE PERIODS</u>

Upon consideration of the objection (the "<u>Objection</u>") of the the Official Committee of Unsecured Creditors (the "<u>Committee</u>") appointed in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the "<u>Debtors</u>") to the Disclosure Statement (the "<u>Disclosure Statement</u>") in Respect of Joint Chapter 11 Plan of Liquidation for MagnaChip Semiconductor Finance Company *et al.* and UBS AG, Stamford Branch as Credit Agreement Agent and Priority Lien Collateral Agent; and the court having considered the Committee's Objection; and the Court having conducted a hearing to consider approval of the Disclosure Statement on July 30, 2009 (the "<u>Disclosure Statement Hearing</u>"); and for the reasons, findings and concusions stated on the record at the Disclosure Statement Hearing; and for good cause shown;

IT IS ORDERED, ADJUGED AND DECREED as follows:

1. Pursuant to 11 U.S.C. §§ 105(a) and 1121(d), the Debtors' Exclusive Periods in which to file a plan are hereby terminated, as to the Committee only.

2. This Order is effective immediately upon entry.

The Honorable Peter J. Walsh
United States Bankruptcy Judge

[1] The Debtors in these cases are: MagnaChip Semiconductor Finance Company; MagnaChip Semiconductor LLC; MagnaChip Semiconductor, Inc.; MagnaChip Semiconductor SA Holdings LLC; MagnaChip Semiconductor S.A.; and MagnaChip Semiconductor B.V.

23235/2
08/03/2009 12161534.1

Exhibit N

Donald Trump aims to retake control of casinos

CAMDEN, N.J. (AP) — As the casino company that bore his name sank deeper and deeper into the red this year, Donald Trump went head to head with bondholders trying to buy it and take it private — and lost.

Now the real estate mogul, whose distaste for losing is legendary, is back in the ring and pushing a plan to buy Trump Entertainment Resorts out of bankruptcy.

To succeed, he'll have to beat out a competing offer advanced by the bondholders.

The three Atlantic City casinos owned by Trump Entertainment still bear his name, but that's the extent of Donald Trump's involvement with them right now. He had to relinquish day-to-day control of the company following a 2004 bankruptcy — the second of three the company would file.

When his offer to buy the company and take it private was spurned in February by board members allied with bondholders, Trump resigned as chairman, saying his stock was now "worthless to me." His daughter, Ivanka, also resigned from the company's board.

Mark Juliano, the company's CEO, said Tuesday the board will weigh the two competing offers for the company and does not plan to formulate one of its own.

Neither plan has been filed with the court so the terms of both remain confidential.

Donald Trump's offer is in partnership with Dallas-based Beal Bank, run by Andy Beal, a close friend.

Juliano would not comment in detail on either proposal, other than to say both seek to reduce the company's debt to levels that can be supported by its reduced cash flow.

He would not specify a target number for the debt level beyond saying it is below the current $1.7 billion.

"We're looking for a plan that represents the opportunity to have an appropriate balance sheet and allows the company to generate enough cash to support its leverage, which it hasn't been able to do in the past," Juliano said.

Two past Trump bankruptcy reorganizations have failed largely because they did not eliminate enough debt to make the company competitive in the cutthroat Atlantic City market. That competition is more fierce now than ever with slots parlors in Pennsylvania and New York draining away loyal customers and revenue.

For the first five months of this year, Atlantic City casino winnings are down 16.7%.

Neither Donald Trump nor Erez Gilad, an attorney for the bondholders, immediately returned messages seeking comment Tuesday.

On Tuesday, a bankruptcy court judge gave the company an extra 46 days to consider the plans, but Juliano predicted it would not take that long to decide on one.

Juliano also said there are no current offers to buy Trump Marina Hotel Casino. A deal to sell the struggling gambling hall to Richard Fields, a New York developer who was once a protege of Donald Trump, fell through this month.

He said both purchase plans submitted to the Trump Entertainment board envision the company having three casinos in Atlantic City.

UNITED STATES BANKRUPTCY COURT
<u>FOR THE DISTRICT OF NEW JERSEY</u>
Caption in compliance with D.N.J. LBR 9004-2(c)

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Co-Counsel to the Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015

In Re: TCI 2 HOLDINGS, LLC, et al.,[1] Debtors.	Case No. 09-13654 (JHW) Judge: Honorable Judith H. Wizmur (Jointly Administered)

ORDER APPROVING EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ACCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE <u>STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION</u>

The relief set forth on the following pages, numbered two (2) through three (3), is hereby **ORDERED**.

---

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: TCI 2 Holdings, LLC (0526); Trump Entertainment Resorts, Inc. (8402); Trump Entertainment Resorts Holdings, L.P. (8407); Trump Entertainment Resorts Funding, Inc. (8405); Trump Entertainment Resorts Development Company, LLC (2230); Trump Taj Mahal Associates, LLC, d/b/a Trump Taj Mahal Casino Resort (6368); Trump Plaza Associates, LLC, d/b/a Trump Plaza Hotel and Casino (1643); Trump Marina Associates, LLC, d/b/a Trump Marina Hotel Casino (8426); TER Management Co., LLC (0648); and TER Development Co., LLC (0425).

Page: 2
In Re: TCI 2 HOLDINGS, LLC, et al
Case No: 09-13654 (JHW)
Caption: ORDER APPROVING EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ASCCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION

Upon consideration of the emergency motion (the "Motion")[1] of the ad hoc committee (the "Ad Hoc Committee") of certain holders of the 8.5% Senior Secured Notes Due 2015 issued by Trump Entertainment Resorts Holdings, L.P. and Trump Entertainment Resorts Funding, Inc., seeking entry of an order (a) pursuant to section 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), terminating the Debtors' exclusive periods to file a plan of reorganization and solicit acceptances thereof, respectively (the "Exclusive Periods" or "Exclusivity") in connection with the Debtors' chapter 11 cases, and (b) pursuant to sections 105(a) and 1125 of the Bankruptcy Code adjourning the hearing to consider the Debtors' proposed disclosure statement dated August 23, 2009 (the "Insider Disclosure Statement") in respect of the Debtors' proposed plan of reorganization dated August 3, 2009; and sufficient notice of the Motion having been given; and good cause existing fro the Court to grant the relief requested in the Motion;

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The Motion is granted.

2. The hearing on the Insider Disclosure Statement shall be adjourned from _______, 2009 to __________ , 2009 at ____.

3. Pursuant to 11 U.S.C. §§ 105(a) and 1121(d), the Exclusive Periods are hereby immediately terminated, and the Ad Hoc Committee is authorized to file and solicit the plan co-sponsored by the Ad Hoc Committee and Coastal Development, LLC (the "Noteholder Plan").

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[1] Each capitalized term that is not defined herein shall have the meaning ascribed to such term in the Motion.

Page: 3
In Re: TCI 2 HOLDINGS, LLC, et al
Case No: 09-13654 (JHW)
Caption: ORDER APPROVING EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ASCCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION

4. The Court retains exclusive jurisdiction to hear and decide any and all disputes related to or arising from this Order

5. This Order is effective immediately upon entry.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
Caption in compliance with D.N.J. LBR 9004-2(c)

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Co-Counsel to Ad Hoc Committee of Holders of 8.5% Senior Secured Notes Due 2015

In re: TCI 2 HOLDINGS, LLC, et al., Debtors.	Case No.: 09-13654 (JHW) Judge: Judith H. Wizmur Chapter 11 Hearing Date: August 27, 2009

ORDER GRANTING MOTION OF TH OF 8.5%
SENIOR SECURED NOTES DUE 2(THE
DEBTORS' EXCLUSIVE PE
REORGANIZATION AND SO
(B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE
STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION

DATED: 8/31/2009

Judith H. Wizmur, Chief Judge
United States Bankruptcy Court

The relief set forth on the following pages, numbered two (2) through three (3), is hereby **ORDERED**.

Page:	3
In re:	TCI 2 HOLDINGS, LLC, *et al.*
Case No:	09-13654 (JHW)
Caption:	ORDER GRANTING EMERGENCY MOTION OF THE AD HOC COMMITTEE OF HOLDERS OF 8.5% SENIOR SECURED NOTES DUE 2015 FOR AN ORDER (A) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS IN WHICH TO FILE A PLAN OF REORGANIZATION AND SOLICIT ACCEPTANCES THERETO, AND (B) ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR DEBTORS' JOINT PLAN OF REORGANIZATION

Upon consideration of the emergency motion dated August 11, 2009 [D.I. 530] (the "Motion") of the ad hoc committee (the "Ad Hoc Committee") of certain holders of the 8.5% Senior Secured Notes Due 2015 issued by Trump Entertainment Resorts Holdings, L.P. and Trump Entertainment Resorts Funding, Inc., seeking entry of an order (a) pursuant to sections 105(a) and 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), terminating the exclusive periods of the above-captioned debtors and debtors-in-possession (the "Debtors") to file a plan of reorganization and solicit acceptances thereof, respectively (together, the "Exclusive Periods") in connection with the Debtors' chapter 11 cases, and (b) pursuant to sections 105(a) and 1125 of the Bankruptcy Code adjourning the hearing to consider the Debtors' proposed disclosure statement dated August 3, 2009 [D.I. 519] in respect of the Debtors' proposed plan of reorganization dated August 3, 2009 [D.I. 518]; and sufficient notice of the Motion having been given; and the Court having considered the filings in support of and in opposition to the Motion, including the objections to the Motion filed by each of Donald J. Trump [D.I. 557], Beal Bank [D.I. 560] and the Debtors [D.I. 563], and the responses and joinders to the Motion filed by each of U.S. Bank National Association, as Indenture Trustee [D.I. 562], certain former shareholders [D.I. 547, 586], Coastal Marina, LLC and Coastal Development, LLC [D.I. 588] and New Century Investment Partners, L.P. [D.I. 589], and the omnibus reply of the Ad Hoc Committee [D.I. 591]; and for the reasons, findings and conclusions stated on the record at the hearing held before the Court and

Case 20-12166-mew Doc 79-23 Filed 11/26/20 Entered 11/26/20 21:20:33 Exhibit M Pg 77 of 97

incorporated herein; and sufficient cause existing for the Court to grant the relief requested in the Motion;

IT IS ORDERED as follows:

1. Pursuant to 11 U.S.C. §§ 105(a) and 1121(d), the Exclusive Periods are each hereby terminated as of the entry of this Order.

2. This Order is effective immediately upon entry.

Approved by Judge Judith H. Wizmur August 31, 2009

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: PLIANT CORPORATION, *et al.*,[1] Debtors.	Chapter 11 Case No. 09-10443 (MFW) Jointly Administered Hearing Date: TBD Objection Deadline: TBD

EMERGENCY MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER (I) PURSUANT TO 11 U.S.C. §§ 105(a) AND 1125, ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION AND (II) PURSUANT TO 11 U.S.C. §§ 105(a) AND 1121(d) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS

The Official Committee of Unsecured Creditors (the "Committee") of Pliant Corporation, *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through its undersigned counsel, submits this emergency motion (the "Motion") for an order (i) pursuant to 11 U.S.C. §§ 105(a) and 1125, adjourning the hearing to approve the Debtors' Disclosure Statement (the "Disclosure Statement") For Debtors' First Amended Joint Plan Of Reorganization (the "Plan") and (ii) pursuant to 11 U.S.C. §§ 105(a) and 1121(d), terminating the period during which the Debtors have the exclusive right to file a plan of reorganization (the "Exclusive Filing Period") and similarly terminating the period during which the Debtors have the exclusive right to solicit acceptances thereof (the "Exclusive

[1] The Debtors in these jointly administered cases are: Pliant Corporation (Case No. 09-10443); Uniplast Holdings, Inc. (Case No. 09-10444); Pliant Corporation International (Case No. 09-10445); Pliant Film Products of Mexico, Inc. (Case No. 09-10446); Pliant Packaging of Canada, LLC (Case No. 09-10447); Alliant Company LLC (Case No. 09-10448); Uniplast U.S., Inc. (Case No. 09-10449); Uniplast Industries Co. (Case No. 09-10450); and Pliant Corporation of Canada Ltd. (Case No. 09-10451). The mailing address for Pliant Corporation is 1475 Woodfield Road, Suite 700, Schaumburg, IL 60173.

Solicitation Period" and together with the Exclusive Filing Period, the "Exclusive Periods"). In support of this Motion, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Debtors have requested the Court to approve the Disclosure Statement at a hearing currently scheduled for May 11, 2009. The Committee timely filed an objection to approval of the Disclosure Statement on May 6, 2009. The primary reason that the Committee opposes approval of the Disclosure Statement is that the Plan it describes is facially inferior to an alternate plan proposal (described below) that has been made by Apollo Management VII, L.P. The Debtors' management has refused to properly consider the Apollo Proposal (defined below), possibly as a result of the economic benefits they will receive if their own plan is approved on the expedited schedule they have sought.[2] Unless the myriad defects in the Plan and Disclosure Statement are corrected, the Court should deny approval of the Disclosure Statement for the reasons set forth in the Committee's objection thereto. But the better course of action at this point is to adjourn the Disclosure Statement Hearing so that the Debtors can address the problems in the Disclosure Statement and Plan and more fully consider the Apollo Proposal.

2. Adjourning the Disclosure Statement Hearing is appropriate for several reasons. The most compelling reason is that an adjournment will give the Debtors and Committee the time they need to properly evaluate the Apollo Proposal. The Apollo Proposal appears to provide vastly better treatment for all of the Debtors' stakeholders (other than its management) than the Plan. According to the Disclosure Statement, unsecured creditors will receive illiquid warrants worth only **0.5%** of their claims under the Plan. This is in stark contrast to the most recent proposal made by Apollo on May 4, 2009, which provides for a minimum recovery to unsecured creditors of **17.5%** of their claims in cash. Despite the apparent superiority of the Apollo Proposal, the Debtors have dismissed it, and refused to even consider it

[2] Pursuant to the Plan (at Exhibit 5.13), the five most senior members of the Debtors' management stand to receive bonuses of 75% of the Target Success Bonus (which ranges from 50% to 100% of salary depending on the individual) if the Plan is confirmed on or before June 12, 2009.

further.[3]

3. The Disclosure Statement is bereft of any analysis on why the Debtors insist on pursuing the Plan to the exclusion of other proposals, such as the Apollo Proposal. Any analysis that the Debtors may have done in the past must in any event be revisited in light of the substantial improvement in terms offered in the May 4, 2009 Apollo Proposal. As a result of this recent development, the Disclosure Statement Hearing should be postponed to allow time for the Debtors to review the Apollo Proposal and either decide to support it or explain to the Committee why they are unwilling to support it. The Committee is entitled to have time to discuss the Apollo Proposal with the Debtors and consider the merits of any decision by the Debtors to support one plan over another. If the Debtors continue to refuse to properly consider the Apollo Proposal, or even provide guidance on what steps Apollo needs to take in order to obtain the Debtors' support, such refusal may well constitute a breach of fiduciary duty by the Debtors' board and management.[4] Such a breach would render the Debtors' Plan non-confirmable, and would make consideration of the Disclosure Statement a waste of judicial resources. Until this issue is fully addressed by the Debtors and the Committee, it is premature to consider the Disclosure Statement.

4. A further ground for postponing the Disclosure Statement Hearing is that the Apollo Proposal will be moot if the Disclosure Statement is approved. Thus, approval of the Disclosure Statement -- even if confirmation of the Plan is denied -- will deprive the unsecured creditors of the opportunity to realize the greater value that may be provided in the Apollo Proposal.

5. While there are compelling reasons to adjourn the Disclosure Statement

[3] By letter dated May 4, 2009, Jefferies (the Debtors' financial advisors) advised Apollo that the Debtors were not considering the Apollo Proposal. Thus, unless the Exclusive Periods are terminated as requested herein there will be no consideration of the Apollo Proposal.

[4] The fiduciary duty of the Debtors' management and board are discussed in detail in the Committee's objection to the Disclosure Statement.

Hearing, there are few, if any reasons to go forward with the hearing as currently scheduled. As discussed in more detail in the Committee's objection to the Disclosure Statement, it lacks adequate information regarding critical provisions of the Plan and/or materially misrepresents certain provisions of the Plan. In particular, and only by way of example, the Disclosure Statement fails to disclose: (a) the material terms of the New Warrants (*i.e.*, the exercise price and the amount of stock reserved for warrant holders); and (b) sufficient information about the Exit Facility (*i.e.*, the Exit Facility Credit Agreement, whether the Exit Facility is fully participated, and whether there is a backstop commitment by any lender to fund any shortfall to the extent the Exit Facility is not fully participated) necessary to enable unsecured creditors to assess the New Warrants. This information is missing because it does not yet exist. The Committee is presently engaged in negotiations with the Debtors and the *Ad Hoc* Committee of First Lien Noteholders over the terms of the Plan. The contours of the parties' discussions may result in a revised Plan that contains material provisions which are substantially different from the one described by the Disclosure Statement. Thus, to the extent an agreement is reached, the current Disclosure Statement will materially misrepresent the Plan. In the interest of judicial economy and fundamental fairness to the parties, the Court should not conduct a hearing to approve the Disclosure Statement where the Plan it describes may change substantially. Moving forward with the scheduled Disclosure Statement Hearing serves only to give the Debtors and the *Ad Hoc* Committee of First Lien Noteholders leverage to force the Committee prematurely to consent to the terms of a revised Plan.

6. The strategy being pursued by the Debtors and *Ad Hoc* Committee First Lien Noteholders is evident: seek approval of the Disclosure Statement as expeditiously as possible to prevent any meaningful consideration of the Plan (or negotiations regarding the Plan) or any alternatives to the Plan (such as the Apollo Proposal). It should also be noted that this strategy inures to the financial benefit of the Debtors' management, which stands to receive "emergence bonuses" of 75% of the Target Success Bonus (which ranges from 50% to 100% of salary) if the Plan is confirmed on or before June 12, 2009.

7. For these reasons, and as more fully discussed herein, the Committee submits that the Disclosure Statement Hearing should be adjourned for a period of four to six weeks.

8. The Debtors are contractually obligated under the terms of the Lockup Agreement with a majority of the holders of the First Lien Notes to support the Plan to the exclusion of other proposals. Although the Lockup Agreement does contain an exception allowing the Debtors' board to consider and support alternative proposals in the exercise of their fiduciary duty, they have not done so. Whether or not the Lockup Agreement is enforceable in this regard, the Committee is skeptical of the willingness of the Debtors to fairly evaluate the Apollo Proposal. Therefore, in addition to requesting an adjournment of the hearing on the Disclosure Statement, the Committee requests the Court to terminate exclusivity, so that Apollo can submit a plan and disclosure statement for consideration and approval.

RELEVANT BACKGROUND

A. In General.

9. On February 11, 2009 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

10. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. No trustee or examiner has been appointed in the Debtors' bankruptcy cases.

12. On February 12, 2009, the Court entered an order directing that the Debtors' chapter 11 cases be jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure and Rule 1015-1 of the Local Bankruptcy Rules. *See* Docket No. 42.

13. On February 24, 2009, the Office of the United States Trustee appointed

the Committee pursuant to section 1102 of the Bankruptcy Code. *See* Docket Nos. 106, 451.

B. The Debtors' Plan.

14. One day prior to filing for bankruptcy, Pliant Corporation, together with its subsidiaries, entered into the Restructuring & Lockup Agreement (the "Lockup Agreement") with the holders of certain of the First Lien Notes. In the Lockup Agreement, the Debtors and the First Lien Noteholders expressed their "desire[] not to support any restructuring or reorganization of the Company that does not achieve or implement the terms" of the Plan. *See* Lock Up Agreement, at C. The Debtors expressly agreed (in contravention of their fiduciary duties) to "not seek to implement any transaction or series or transactions that would effect a restructuring or reorganization of the Company (or any plan or proposal in respect to same) that is not consistent with, or does not implement or achieve, the materials terms" of the Plan. *See* Lockup Agreement, at § 2(d).

15. On the Petition Date, the Debtors filed the Disclosure Statement for Debtors' Joint Plan of Reorganization (the "Disclosure Statement") and the Debtors' Joint Plan of Reorganization (the "Plan"). *See* Docket Nos. 15, 17. Also on the Petition Date, the Debtors and certain holders of 11 5/8% senior secured notes due 2009 (the "First Lien Noteholders") (a subset of the First Lien Noteholders also provided debtor-in-possession financing to the Debtors) entered into a lock-up agreement with respect to the Plan. *See* Plan at § 1.76.

16. Late in the evening of May 1, 2009, the Debtors filed the First Amended Plan of Reorganization and the First Amended Disclosure Statement for the First Amended Plan of Reorganization. *See* Docket Nos. 483 and 485.

17. The Plan proposes to repay the debtor-in-possession financing in full from an exit financing facility. *See* Plan at §§ 3.1(b). In addition, the First Lien Noteholders will receive 100% of the Class A New Common Stock of the reorganized Debtors. *Id.* at § 3.2(d). Unsecured creditors will receive their *pro rata* share of the New Warrants, representing the right to purchase an undisclosed amount of the reorganized Debtors' Class B Common Stock within three years after the effective date of the Plan. *Id.* at § 3.2(e); *See also* Plan Exhibit 5.2(d) New

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Warrant Agreement. Neither the Disclosure Statement nor the Plan currently specify the exercise price of the New Warrants, or other key terms that will determine their value. As a result, it is impossible for creditors to determine what value, if any, they have.

18. Attached to the Plan is a non-binding term sheet setting forth certain terms of the Exit Facility. *See* Disclosure Statement Exhibit G - Form of Exit Financing Term Sheet. Absent from the Disclosure Statement and Plan, however, is confirmation that the Exit Facility is fully participated and whether any lender or group of lenders has agreed to backstop the Exit Facility to the extent it is not fully participated on the Effective Date. In fact, it is clear that the Debtors do not have a commitment for the Exit Facility. *See* Debtors' Emergency Motion of the Debtors for An Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code Authorizing the Debtors to Enter Into Certain Fee Letters with Potential Lenders and to (A) Pay the Work Fees of Potential Lenders, (B) Provide Deposits to Potential Lenders, and (C) Provide Indemnification to Potential Lenders With Respect to Such Financing (Docket No. 481) at ¶ 8. This information is crucial to the Court's and Committee's (and other creditors') analysis of the feasibility of the Plan and the potential value of the New Warrants.

C. The Apollo Plan Proposal.

19. By correspondence dated March 17, 2009, Apollo Management ("Apollo") presented the Debtors and the Committee with a non-binding term sheet describing an alternative plan proposal (the "Apollo Proposal"). In subsequent term sheets dated April 3, 2009 and May 4, 2009 (collectively with the March 17, 2009 letter, the "Proposal Letters"), Apollo provided additional details of the Apollo Proposal to the Debtors and the Committee.

20. The Apollo Proposal provides that holders of First Lien Notes will be paid in full through a combination of $75 million in cash and $156 million in new first lien notes. The total payment of cash and notes equals the highest value of the collateral securing the First Lien Notes shown in the Debtors' valuation report. This treatment constitutes payment in full of the secured portion of the First Lien Notes. Any deficiency claims asserted by the holders of First Lien Notes will receive preferred stock in the reorganized Debtors. Holders of Second Lien

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Notes will receive puttable common stock rights. To the extent these rights are not exercised, holders of Second Lien Notes may put their rights to Apollo for 17.5 cents per dollar of their claim. Whether the put rights are exercised to buy stock or put to Apollo for cash, Apollo has committed to fully backstop the equity up to $175 million.

21. Unsecured creditors whose claims are neither Second Lien Notes Claims nor Senior Subordinated Notes Claims (*i.e.*, "trade" creditors) will receive 17.5 cents per dollar of allowed claim. Moreover, the Apollo Proposal contemplates exercising the Debtors' authority to pay certain critical vendors and the creation of a convenience class to pay certain "small" claims in full on the effective date. Thus, the Apollo Proposal, at least facially, pays creditors in a better, stronger currency and removes the risks associated with illiquid, non-transferrable warrants of indeterminate value provided under the Plan.

22. Apollo also has exit financing from Barclays in the amount of $150 million with approximately $95 million of it to be drawn on the effective date of an Apollo plan.

23. In addition, the Apollo Proposal also includes a contribution of certain assets of Berry Plastics Corporation ("Berry"), one of Apollo's portfolio companies, with estimated annual EBITDA of $10 million.

JURISDICTION AND VENUE

24. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the requested adjournment of the Disclosure Statement Hearing are 11 U.S.C. §§ 105(a) and 1125. The statutory predicates for terminating the Debtors' Exclusive Periods are 11 U.S.C. §§ 105(a) and 1121(d). Venue is proper before this Court pursuant to 28 U.S.C. § 1409.

RELIEF REQUESTED

25. By this Motion, the Committee seeks to adjourn the Disclosure Statement Hearing for a period of four to six weeks. This adjournment will enable the parties to continue and conclude their discussions over the Plan, conduct necessary discovery of certain material aspects of the Disclosure Statement, and permit a more robust and meaningful consideration of

the Apollo Proposal. The Committee also requests the Court to terminate the Exclusive Periods.

BASIS FOR RELIEF REQUESTED

I. The Disclosure Statement Hearing Should Be Adjourned To Permit Additional Time For The Parties To Negotiate The Plan And Consider The Apollo Proposal.

26. A hearing on the Disclosure Statement at this time would be premature. One reason is that the Committee is presently engaged in discussions with the Debtors and *Ad Hoc* Committee of First Lien Noteholders over the terms of the Plan. These discussions have not concluded and a reasonable amount of time (without the undue pressure of the Disclosure Statement Hearing) is necessary to permit these discussions to continue. To the extent the parties agree on the terms of a consensual plan, material portions of the Plan will have to be substantially revised. Not only is time needed to conclude these dicussions and revise the Plan, but an agreement on the terms of the Plan would render the Disclosure Statement moot. A further modified disclosure statement describing any subsequently agreed-to plan would have to be approved by the Court.

27. A second reason is that the Debtors have neither fully considered the merits of the Apollo Proposal nor adequately explained to the Committee the reasons for their refusal to do so. The Debtors should be required to disclose the Apollo Proposal in the Disclosure Statement and explain their reasons for not considering it. Moreover, the Committee is entitled to time to conduct discovery of the Debtors' and *Ad Hoc* Committee of First Lien Noteholders' consideration, if any, of the Apollo Plan and the Lockup Agreement.

28. In light of the substantial differences between the Plan and Apollo Proposal, the Committee should be provided with a reasonable amount of additional time to complete its discussions with the Debtors and *Ad Hoc* Committee of First Lien Noteholders and evaluation of the Apollo Proposal. Once the Disclosure Statement is approved and the Debtors commence solicitation of the Plan, the Apollo Proposal becomes moot. Thus, to the extent the Apollo Proposal actually provides greater value than the Plan, that value will be lost unless the Disclosure Statement Hearing is adjourned.

29. In addition, as is set forth in more detail in the Committee's objection to the Disclosure Statement, the Disclosure Statement fails to provide adequate information of the kind required by the Bankruptcy Code.

II. The Exclusive Periods Should Be Terminated.

30. Section 1121(d) of the Bankruptcy Code provides that the Court may terminate the Exclusive Periods:

> . . . on request of a party in interest . . . and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d)(1).

31. Although "cause" justifying the termination of a debtor's exclusivity is not defined in the Bankruptcy Code, courts generally look at the totality of the circumstances and consider a number of competing factors, each of which may constitute sufficient grounds for reducing or extending the periods. *See, e.g., In re Adelphia Communications Corp.*, 352 B.R. 578 (Bankr. S.D.N.Y. 2006); *In re Dow Corning Corp.*, 208 B.R. 661, 664-65 (Bankr. E.D. Mich. 1997); *In re Express One Int'l*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996). Some of the factors courts generally consider include:

1. the size and complexity of the case;
2. the necessity of sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
3. the existence of good faith progress towards reorganization;
4. the fact that the debtor is paying its bills as they become due;
5. whether the debtor has demonstrated reasonable prospects for filing a viable plan;
6. whether the debtor has made progress in negotiations with its creditors;
7. the amount of time that has elapsed in the case;

8. whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and

9. whether an unresolved contingency exists.

In re Dow Corning Corp., 208 B.R. at 664-65.

32. Section 1121(d)(1) "grants great latitude to the Bankruptcy Judge in deciding, on a case-specific basis, whether to modify the exclusivity period on a showing of 'cause.'" *Geriatrics Nursing Home v. First Fidelity Bank, N.A. (In re Geriatrics Nursing Home)*, 187 B.R. 128, 132 (D.N.J. 1995) (*citing In re Kerns*, 111 B.R. 777, 781 (S.D. Ind. 1990); *In re Sharon Steele Corp.*, 78 B. R. 762, 763 (Bankr. W.D. Pa. 1987)).

33. Courts have noted that "the primary consideration in determining whether to terminate the debtor's exclusivity is whether its termination will move the case forward, and that this 'is a practical call that can override a mere toting up of the factors.'" *Adelphia Communications Corp.*, 352 B.R. at 590 (*quoting Dow Corning*, 208 B.R. at 670). The *Adelphia* court went on to to note that the "test is better expressed as determining whether terminating exclusivity would move the case forward materially, to a degree that wouldn't otherwise be the case. Certainly practical considerations, or other considerations in the interests of justice, could override, in certain cases, the result after analysis of the nine factors." *Id.* at 590 (*citing Dow Corning*, 208 B.R. at 670).

A. Sufficient Cause Exists To Terminate The Exclusive Periods.

34. Cause exists to terminate the Exclusive Periods. The reason is that terminating the Exclusive Periods will allow Apollo to submit its proposal for consideration, which currently provides for vastly better treatment for unsecured creditors than the Plan that the Debtors are trying to force the unsecured creditors to accept.

35. As previously discussed, in comparison to the Plan, which gives unsecured creditors only illiquid warrants of indeterminate value, under the Apollo Proposal holders of First Lien Notes will be paid the full amount of their secured claim through a combination of $75 million in cash and $156 million in new first lien notes with any deficiency claim being paid

through the issuance of preferred stock. Holders of Second Lien Notes will receive puttable common stock rights which are exchangeable for 17.5 cents per dollar of their claim. Whether the put rights are exercised to buy stock or put to Apollo for cash, Apollo has committed to fully backstop the equity up to $175 million. Unsecured creditors whose claims are neither Second Lien Notes Claims nor Senior Subordinated Notes Claims (*i.e.*, "trade" creditors) will receive 17.5 cents per dollar of allowed claim. Moreover, the Apollo Proposal contemplates exercising the Debtors' authority to pay certain critical vendors and the creation of a convenience class to pay certain "small" claims in full on the effective date. Apollo also has exit financing from Barclays in the amount of $150 million.

36. Given the stark differences between the treatment of creditors under the Plan and the Apollo Proposal, Apollo should have the opportunity to present a plan to creditors pursuant to a Court-approved disclosure statement. The Debtors have refused to fully consider the Apollo Proposal and have determined, for unspecified reasons, to pursue an inferior restructuring proposal. In these circumstances, only the termination of the Exclusive Periods by the Court will allow the Apollo Proposal to be considered by the Court, the Debtors, the Committee and all creditors in these cases.

37. The attempt by the Debtors to force the unsecured creditors to accept the Plan is grounds for terminating exclusivity under the eighth *Dow* factor, which focuses on whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands. Although the Debtors are not seeking to extend the Exclusive Periods, allowing the Exclusive Periods to remain in place will have the same overall effect of an extension -- creditors will have no choice over how their claims will be treated. Currently, the Debtors are using the Exclusive Periods to prevent consideration of the Apollo Propoal (or any other competing proposal) and thus pressuring creditors into approving the Debtors' Plan on an expedited timetable. If the Exclusive Periods are terminated, creditors will have the opportunity to fully evaluate the different plan proposals, negotiate them with the respective proponents, and vote for the proposal that provides the most favorable outcome in

these cases.

38. The fourth, fifth, sixth and ninth *Dow Corning* factors are largely inapplicable here, but weigh in favor of termining the Exlusive Periods. These factors inquire whether the Debtors are current in their post-petition obligations and have the ability to file a viable plan. Since the Debtors have already filed their Plan, these *Dow Corning* factors cannot reasonably be construed as providing a basis for continuing the Exclusive Periods based on evidence of the Debtors' good behavior in paying their bills, prospects for filing a viable plan, progress in negotiations with creditors, or extenuating circumstances in the form of unresolved contingencies preventing the filing of a plan. Rather, the non-applicability of these factors weakens any argument the Debtors may have for preserving the Exclusive Periods.

39. Finally, it should be noted that the Apollo Proposal is not a hypothetical or potential alternative plan based on mere speculation or conjecture. *See, e.g., In re Geriatrics Nursing Home, Inc.*, 187 B.R. 128, 134 (D.N.J. 1995) (denying a motion to terminate the debtor's exclusivity to allow creditors to pursue an indefinite hypothetical alternate plan if only the court terminated exclusivity). Rather, it is a definitive proposal with committed financial support and creditors should have a meaningful opportunity to consider, negotiate and vote on it if it truly provides greater value than the Plan. At a minimum, the definitiveness of the Apollo Proposal dictates that creditors should have the opporuntity to at least consider it without the threat of confirmation of the Plan hanging over their heads.

B. Terminating Exclusivity Will Move These Cases Forward.

40. Courts have consistently held that "when determining whether to terminate a debtor's exclusivity, the primary consideration should be whether or not doing so would facilitate moving the case forward." *Dow Corning*, 208 B.R. at 670; *see also Adelphia Communications Corp.*, 352 B.R. at 590. The *Adelphia* Court clarified the *Dow Corning* court's holding, stating that the "test is better expressed as determining whether terminating exclusivity would move the case forward materially, to a degree that wouldn't otherwise be the case." *Adelphia Communications Corp.*, 352 B.R. at 590.

41. Here, it is beyond cavil that terminating the Exclusive Periods to allow consideration of the Apollo Proposal and any other competing proposal that surfaces would move the case forward materially to a degree that otherwise would not occur. If the Exclusive Periods remain intact, creditors will not have the benefit of reviewing more than one plan proposal and selecting the one proposal that provides the greatest value for their claims. This is particularly relevant here because of the presence of the Apollo Proposal.

42. Terminating the Exclusive Periods at this juncture does not sound a "death knell" for the Debtors' reorganization; instead, it "affords creditors their right to file the plan; there is no negative effect upon the debtor's co-existing right to file its plan." *Matter of All Seasons Industries, Inc.*, 121 B.R. 1002, 1005 (Bankr. N.D. Ind. 1990). Allowing creditors to consider competing proposals will encourage all plan proponents to make their proposals as attractive to creditors as possible with the objective of garnering creditor support prior to solicitation. Such material progress will not occur if the Exclusive Periods are allowed to remain in place and creditors are forced to consider only the Plan proposed by the Debtors.

C. Practicality and Other Considerations in the Interests of Justice Establish Cause Sufficient to Terminate Exclusivity.

43. Beyond the standard analysis of the factors discussed above, ". . . practical considerations, or other considerations in the interests of justice, could override, in certain cases, the result after analysis of the nine [*Dow*] factors." *Adelphia Communications Corp.*, 352 B.R. at 590 (*citing Dow Corning*, 208 B.R. at 670). Accordingly, even if the Court determines that an analysis of the relevant factors does not establish cause, the Court may still terminate the Exclusive Periods in the interests of practicality and justice.

44. Justice would be served by terminating the Exclusive Periods because the Debtors and *Ad Hoc* Committee of First Lien Note Holders are abusing the privilege of exclusivity by seeking confirmation of an potentially inferior plan without first fully considering the Apollo Proposal. As evidenced by the Lockup Agreement and the terms of the Plan, The First Lien Note Holders are clearly trying to acquire the Debtos on the cheap and have provided

lucrative incentives for the Debtors' management to go along. Thus, terminating the Exclusive Periods is necessary as a check on this conduct to protect the interests of creditors and enforce the Debtors' fiduciary duties in managing the estates.

45. Terminating the Exclusive Periods also serves the interests of practicality. The Apollo Proposal is not a hypothetical or potential alternative plan, rather it is a definitive proposal evidenced by robust term sheets containing specific information about an alternate plan of reorganization for the Debtors. Terminating the Exclusive Periods is the only way to ensure any consideration of the Apollo Proposal because the Debtors, by letter dated May 4, 2009, have completely cut off any consideration of it. Because the Apollo Proposal may provide value to unsecured creditors -- or may cause the Debtors to improve their Plan -- it is deserving of meaningful consideration. From a practical standpoint, the earlier the various creditor constituencies are allowed to consider the Apollo Proposal as a viable alternative to the Plan, the better the estates and creditors will be. Thus, the interests of practicality demand that the Court terminate the Exclusive Periods so that creditors may fully consider the merits of the Apollo Proposal in comparison with those of the Plan and draw their own conclusions as to which option provides the highest value and offers the best outcome in theses cases.

46. Accordingly, in the interests of the Debtors' estates and all creditor constituencies, the Committee submits that the Exclusive Periods must be terminated.

CONCLUSION

47. For the reasons set forth herein, the Committee respectfully requests that the Court (i) adjourn the Disclosure Statement Hearing for a period of four to six weeks; (ii) terminate the Debtors' Exclusive Periods; and (iii) grant the Committee such other and further relief as the Court deems just.

Respectfully submitted,

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By:________________________

Dated: May 6, 2009
Wilmington, Delaware

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
PLIANT CORPORATION, *et al.*,[1]	Case No. 09-10443 (MFW)
Debtors.	Jointly Administered
	Re: Docket No. ______

ORDER GRANTING EMERGENCY MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER (I) PURSUANT TO 11 U.S.C. §§ 105(a) AND 1125, ADJOURNING THE HEARING TO APPROVE THE DEBTORS' DISCLOSURE STATEMENT FOR DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION AND (II) PURSUANT TO 11 U.S.C. §§ 105(a) AND 1121(d) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS

Upon consideration of the emergency motion (the "Motion") by the the Official Committee of Unsecured Creditors (the "Committee") for an order (i) pursuant to 11 U.S.C. §§ 105(a) and 1125, adjourning the hearing to approve the Debtors' Disclosure Statement (the "Disclosure Statement") For Debtors' First Amended Joint Plan Of Reorganization (the "Plan") and (ii) pursuant to 11 U.S.C. §§ 105(a) and 1121(d), terminating the period during which the Debtors have the exclusive right to file a plan of reorganization (the "Exclusive Filing Period") and similarly terminating the period during which the Debtors have the exclusive right to solicit acceptances thereof (the "Exclusive Solicitation Period" and together with the Exclusive Filing Period, the "Exclusive Periods"); and sufficient notice of the Motion having been given; and good cause exisiting for the Court to grant the releif requested in the Motion,

[1] The Debtors in these jointly administered cases are: Pliant Corporation (Case No. 09-10443); Uniplast Holdings, Inc. (Case No. 09-10444); Pliant Corporation International (Case No. 09-10445); Pliant Film Products of Mexico, Inc. (Case No. 09-10446); Pliant Packaging of Canada, LLC (Case No. 09-10447); Alliant Company LLC (Case No. 09-10448); Uniplast U.S., Inc. (Case No. 09-10449); Uniplast Industries Co. (Case No. 09-10450); and Pliant Corporation of Canada Ltd. (Case No. 09-10451). The mailing address for Pliant Corporation is 1475 Woodfield Road, Suite 700, Schaumburg, IL 60173.

IT IS ORDERED, ADJUSGED AND DECREED as follows:

1. The Motion is granted.

2. The hearing on the Disclosure Statement shall be adjourned from May 11, 2009 until ______________________, 2009 at __________________ .

3. Pursuant to 11 U.S.C. §§ 105(a) and 1121(d), the Exclusive Periods are hereby terminated.

4. The Court retains exclusive jurisdiction to hear and decide any and all disputes related to or arising from this Order.

5. This Order is effective immediately upon entry.

DATED: May ____, 2009

____
The Honorable Mary F. Walrath
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
PLIANT CORPORATION, ***et al.,***[1]	Case No. 09-10443 (MFW)
Debtors.	Jointly Administered
	Re: Docket No. 498

ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 1121(d) TERMINATING THE DEBTORS' EXCLUSIVE PERIODS

Upon consideration of the emergency motion (the "Motion") by the the Official Committee of Unsecured Creditors (the "Committee") for an order (i) pursuant to 11 U.S.C. §§ 105(a) and 1125, adjourning the hearing to approve the Debtors' Disclosure Statement (the "Disclosure Statement") For Debtors' First Amended Joint Plan Of Reorganization (the "Plan") and (ii) pursuant to 11 U.S.C. §§ 105(a) and 1121(d), terminating the period during which the Debtors have the exclusive right to file a plan of reorganization (the "Exclusive Filing Period") and similarly terminating the period during which the Debtors have the exclusive right to solicit acceptances thereof (the "Exclusive Solicitation Period" and together with the Exclusive Filing Period, the "Exclusive Periods"); and sufficient notice of the Motion having been given; and the court having considered the filings in support of and in opposition to the Motion; and for the reasons, findings and concusions stated on the record at the hearing and incorporated herein; and cause exisiting for the Court to grant the relief requested in the Motion,

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[1] The Debtors in these jointly administered cases are: Pliant Corporation (Case No. 09-10443); Uniplast Holdings, Inc. (Case No. 09-10444); Pliant Corporation International (Case No. 09-10445); Pliant Film Products of Mexico, Inc. (Case No. 09-10446); Pliant Packaging of Canada, LLC (Case No. 09-10447); Alliant Company LLC (Case No. 09-10448); Uniplast U.S., Inc. (Case No. 09-10449); Uniplast Industries Co. (Case No. 09-10450); and Pliant Corporation of Canada Ltd. (Case No. 09-10451). The mailing address for Pliant Corporation is 1475 Woodfield Road, Suite 700, Schaumburg, IL 60173.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. Pursuant to 11 U.S.C. §§ 105(a) and 1121(d), the Exclusive Periods are hereby terminated.

Mary F. Walrath 7/2/09

The Honorable Mary F. Walrath
United States Bankruptcy Judge

Exhibit C

UNITED STATES BANKRUTPCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	**Chapter 11**
	:	
PACIFIC DRILLING S.A., *et al.*,	:	**Case No. 17-13193 (MEW)**
	:	
Debtors.	:	**(Jointly Administered)**

BENCH DECISION REGARDING MOTION FOR APPROVAL OF TERMS OF EQUITY RIGHTS OFFERING AND EQUITY COMMITMENT AGREEMENT

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MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

This is the final version of a bench decision that the Court announced in open court on September 25, 2018.

Before me is the Debtors' motion for approval of the terms under which additional equity capital will be raised in connection with the proposed plan of reorganization. I will not keep everybody in suspense: I am going to approve the arrangements, but not without a great deal of misgivings, which I am going to explain.

The proposed arrangements were negotiated during the course of a mediation supervised by former Judge Peck. The participants in the mediation included certain holders of fully secured obligations, a separate ad hoc group of holders of three classes of secured debts that apparently are undersecured, and Quantum Pacific, the majority equity owner, which I shall refer to as "QP."

As originally proposed in early August, the structure was similar to one that has become increasingly common in Chapter 11 cases. More particularly, the proposal called for $400 million to be raised through a rights offering. The opportunity to participate in the rights offering would be provided only to holders of the three classes of undersecured debts. Those holders would be given the opportunity to buy common stock at a 46.9 percent discount to the stipulated and expected value of that equity under the plan.

In addition, the proposal called for a private placement of $100 million pursuant to which the so-called Ad Hoc Group would have the exclusive right to buy additional stock, which would be sold for $100 million but at the same 46.9 percent discount to expected plan value.

The Ad Hoc Group also proposed to provide a backstop under which the Ad Hoc Group guaranteed its own purchases of stock and under which the Ad Hoc Group would have the exclusive right to buy any shares that other eligible holders did not subscribe to purchase pursuant to the rights offering. The backstop would ensure that the full $500 million would be raised under the various equity sales, and in exchange the proposal called for a backstop fee equal to 8 percent of the amount of stock to be issued pursuant to the offering, payable in common stock. Eight percent of $500 million is $40 million but since the eight percent fee was to be payable in the form of a percentage of the steeply discounted stock to be issued, the fee actually had an expected value of much greater than $40 million.

When this proposed structure was first before the Court early August, it was met with strong opposition from QP, which had its own proposal that it wanted to make. The QP proposal also contemplated a $500 million equity raise but it differed from the Ad Hoc Group proposal in at least three ways. First, the proposed backstop fee would be 7 percent rather than 8 percent. Second, the backstop premium would be available to any creditor participating in the rights offering who committed to make a purchase on or before an early election deadline that was to be established, but that was not described any further in the papers that I received. Third, QP proposed a $100 million private placement in which it, not the Ad Hoc Group, would be the buyer, but it proposed a slightly higher buy-in price than was proposed in the Ad Hoc Group proposal.

I raised questions about the proposals on August 9 and expressed some skepticism about the structure and the fees. I asked if the Debtors had explored the option of raising equity in the markets and whether the Debtors had done their homework, so to speak, as to whether better terms might be available in the market. The answer at that time in so many words was that the Debtors had not done so. The Debtors have offered different explanations since then as to why they agreed to this structure, but at least on August 9th the answer essentially was that this was being proposed because it raised the amount of money the Debtors wanted and it was the structure that the Ad Hoc Group wanted.

I also asked why the private placements were being set aside either for the Ad Hoc Group (under its proposal) or for QP (under its proposal); why there was a need for a backstop at all, since the parties in front of me seem to be fighting for the chance to buy the equity at the proposed discounted price; and why such a large backstop fee of eight percent was needed in light of the fact that equity was to be sold at a very large 46.9 percent discount to expected value.

I did not get answers at that time that were very specific or very satisfactory, though in fairness to the parties, the structure had just been agreed to and was not actually before me for approval on that date. I noted on August 9th that rights offering structures like this can be a proper and useful way of raising financing, and that backstop fees can be appropriate when real risks are taken and when the fees are proportionate to those risks, but that like every other tool that has been invented they can be misused.

The theory of the Bankruptcy Code is that when the big creditors sit in a room and negotiate a deal, the little creditors who are in the same boat get the same deal. The Bankruptcy Code does not permit the unequal treatment of creditors in the same class; it also does not permit the payment of extra compensation to large creditors in exchange for their commitment to vote for a plan. The problem with special allocations in rights offerings, or with private placements that are limited to the bigger creditors who sat at the negotiating table, or big backstop fees that are paid to the bigger creditors who sat at the negotiating table but that are not even open to other creditors (and in particular to other creditors in the same class), is that it is far too easy for the people who sit at the negotiating table to use those tools primarily to take for themselves a bigger recovery than smaller creditors in the same classes will get. The Code allows for reasonable financing terms but they must be reasonable, and they cannot just be a disguised means of giving bigger creditors a preferential recovery. I therefore made clear that to the extent that these terms were being presented to me as reasonable financing terms, the parties would need to convince me that the terms were reasonable as a financing matter and were better than other options.

After the August 9th hearing, the parties returned to mediation, and since that time they have resolved their differences. The size of the proposed rights offering was changed to $350 million. In addition to the proposed $100 million private placement for the Ad Hoc Group, the parties proposed a separate $50 million private placement to QP on the same terms. The proposed backstop arrangement remained the same: the Ad Hoc Group would be paid an eight percent fee, payable on stock, with respect to the entire $500 million offering. The parties also entered into a Plan Support Agreement, which as I have noted previously, has not been presented for my approval and which contains some terms that I have previously said I would not approve.

Last week, on September 18th, the parties appeared before me with their request for approval of the backstop fees and rights offering procedures. I heard evidence in the form of the testimony of Mr. Celentano of Evercore, the Debtor's investment banker. At the conclusion of the hearing, I made a few rulings.

First, I ruled that no legitimate justification had been offered for the proposed separate private placement to the Ad Hoc Group. I noted that the terms were to be the same as the proposed terms under the rights offering, and that in substance, if not in form, the proposed private placement was just a way of giving the Ad Hoc Group a disproportionate share of the rights offering. Counsel to the Ad Hoc Group agreed that the private placement would be eliminated and that the shares that would have been covered by the private placement to the Ad Hoc Group would instead be part of the rights offering for which all holders would be eligible.

Second, I ruled last week that the Debtors had failed to show the reasonableness of the proposed backstop fee, or the need for it in certain instances. During the hearing, the Debtors pointed to other bankruptcy cases in which large backstop fees have been paid. But Mr. Celentano readily acknowledged that he could think of no out-of-bankruptcy market context in which people who are being given the exclusive opportunity to buy stock at an expected 46.9 percent discount were nevertheless also paid an eight percent fee in exchange for their willingness to take advantage of that golden opportunity. In addition, Mr. Celentano acknowledged that even in prior bankruptcy cases there were few instances, if any, in which equity was offered at so steep a discount and in which parties nevertheless were paid such a high fee as the eight percent fee that was being proposed.

Some prior decisions have justified backstop fees by reference to put options since the backstop includes a commitment to buy at a fixed price no matter what the real value turns out to be. But there are several flaws in that analogy.

First, in most of the cases where these structures have been proposed the equity is offered at a steep discount to expected value. In this case, for example, the proposed discount is 46.9 percent. That means that the put option is very much out of the money. The more out of the money a put option is, the less the premium that it ought to command.

Second, there are features to the typical backstop arrangement that are far different from a typical put option. In a straight put option, the seller of the option takes the risk that it will have to buy the security if prices fall below the exercise price. But if prices stay above the exercise price, then the option will not be exercised. In that case, the seller of the put option gets nothing except the right to retain the option premium, and the option premium is paid in exchange for the risk that the price might fall.

In this case, though, and in other bankruptcy cases where similar structures have been proposed, the party who provides the backstop also is being given an exclusive right to buy at a discount. In other words, the backstop provider does not merely take the risk of a lower price. Instead, the backstop party also gets the benefit of the expected discount. That is more akin to being given a call option. It is a right that has additional value that ought to be valued and taken into account in determining, as a reasonable financing matter, whether a backstop fee is needed at all, or what a reasonable backstop fee should be.

Here, the evidence that I received last week did not suggest that a backstop fee was needed or proper. I ruled after considering the evidence that the eight percent fee could be paid with respect to shares for which no commitments were yet in place, but that the fee had not been justified as a financing matter as to other portions of the proposed offering, including those to which QP and other creditors had committed and to which the Ad Hoc Group itself had committed. However, I also scheduled this further hearing today in case the parties wished to present additional evidence.

In advance of this hearing the parties have submitted a revised proposal that eliminates the proposed private placement to the Ad Hoc Group and that provides that $460 million of equity will be raised to a rights offering in which all members of the three impaired secured classes will be entitled to participate. They have also proposed that the Ad Hoc Group be paid a backstop fee equal to 8 percent of the uncommitted portions of the equity offering and 5 percent as to the rest. Again, that fee would be payable in stock. The parties have submitted an additional brief and an additional declaration that emphasizes the benefits to the Debtors of having obtained committed equity financing, and that repeats arguments that were previously made regarding the risks that allegedly are involved in providing the backstop. Mr. Celentano has also provided additional evidence as to not only fees approved in other bankruptcy cases but regarding committed underwriting fees that have been paid in a number of out-of-bankruptcy financings.

I have considered the additional evidence that has been provided and the revised terms of the proposed arrangements. As I said at the outset of my remarks here, I have misgivings. I have misgivings mainly because I am not completely satisfied with the evidence that I have as to the reasonableness of the proposed fee. There are tools that investment bankers and securities professionals use to calculate option values. There are option formulas that take account of how the exercise price compares to the current value (which in this case would be the expected plan value) and that take account of potential market volatility. As a general matter, the higher the market volatility, the higher the option value. In this case, the parties have made many submissions in which they have trumpeted the risks that oil prices might decline, but nobody has made any effort to calculate the actual degree of risk involved here, or to calculate the actual value of the put option portion of the backstop fee, or to calculate just how volatile the markets would have to be in order to justify an option fee of the size that has been proposed, given how out-of-the-money the put option would be.

I have been provided with evidence of committed underwriting fees that have been charged in cases outside bankruptcy. It is true, as the Debtors suggest, that in those cases the commitments usually were made only a few days before the sales of the relevant securities, and that significantly reduced the risks to the parties providing the commitments. But it is also the case that the prices to which the parties committed themselves in those instances were much closer to the expected values, as opposed to the steep 46.9 percent discounts that are being offered here.

I have also been given evidence of backstop fees that courts have approved in some other bankruptcy cases, but many of those were uncontested, and nobody has pointed me to any prior decision in which a court has approved these fees with any actual discussion of the evidence as to the economic reasonableness of a particular backstop fee, or as to how the reasonableness of such a fee should properly be evaluated.

The parties have also urged me to approve the eight percent fee in reliance on the Debtors' business judgment. But in considering such arguments courts should not lose sight of the fact that these fees are typically payable in stock. As a result, they have no practical effect on the Debtors themselves. The real effect is on other creditors, because the issue of the added shares dilutes the value of the shares that those other creditors will receive.

Furthermore, the principle to be guarded here is one that requires equal treatment of similarly situated creditors, which is more a matter of bankruptcy philosophy than it is a matter of business judgment. As I said last week, as a business matter the Debtors just want to get out of bankruptcy. They can agree to reasonable fees as part of a financing, but it is for the courts to decide whether fees are reasonable or not and to decide whether, in effect, some larger creditors are really being given an unequal and preferential treatment that is disguised as a financing term.

I cannot help but continue to be skeptical based on the evidence I have as to the proposed backstop fee and the alleged need for it in this case. That is particularly true as to the Ad Hoc Group's own commitments to exercise their rights in the rights offering. They have ample economic incentive to exercise those rights and, in fact, participated in structuring those rights to make them attractive to themselves. They have already committed to exercise their rights as part of a Plan Support Agreement with other parties. I am concerned that nobody else was given a similar opportunity, which raises the possibility again that the backstop fee is really just an extra payment and an extra recovery rather than a reasonable, stand-alone financing term.

But, on the other hand, while I have expressed my own concerns many times over the past several weeks in the hearings on this matter, not one of the relevant indenture trustees and not a single holder of any of the relative debts has come forward to complain about the proposed terms. Instead, the Debtors and all of the other parties have in unison asked me to approve these revised arrangements.

I may be skeptical about what the evidence would show if objections were filed. I hope that in the future when these structures are presented, the parties will explore in more detail the issues and concerns that I have raised. But this is the wrong case in which to make rulings, particularly based only on skepticism. I have to rule on the evidence that is actually before me. While I have strong doubts, those doubts are not enough, without more and without any objections, for me to reject the terms that the parties have negotiated and for which they have sought approval today. So I will approve the revised arrangements that have been presented.

Dated: October 1, 2018
New York, New York

s/Michael E. Wiles
THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE