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10/10/2024

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CLERK
US BANKRUPTCY COURT
DISTRICT OF DELAWARE

Honorable Judge Thomas M. Horan
United States Bankruptcy Court
District of Delaware
824 North Market Street, 3rd Floor
Wilmington, Delaware, 19801

Subject: Request for Shareholder Compensation, SEC Investigation, and Unsealing of Docket 300

Re: Fisker Inc, et al. Case Number 24-11390

Dear Judge Horan,

I am writing to urgently address critical issues regarding my investment in Fisker Inc., which is currently undergoing Chapter 11 bankruptcy proceedings. As a shareholder of Fisker Inc., I am deeply concerned about the proposed plan to cancel shares without providing any compensation to equity holders.

1. Background:

I am a committed investor with a significant stake in Fisker Inc., believing in the company's mission and potential. The current Chapter 11 proceedings propose a liquidation plan that cancels all existing shares, leaving shareholders with no recourse.

2. Concerns:

Fisker Inc. has shown a pattern of misleading and non-transparent financial disclosures, including significant undisclosed debts that have only recently come to light. This lack of transparency has directly impacted shareholders, undermining trust and financial security. The abrupt cancellation of shares not only strips us of our investments but also disregards the fundamental principles of fairness and equity in bankruptcy proceedings.

3. Legal Principles and Protections:

Bankruptcy law is designed to ensure a fair and equitable distribution of a debtor's assets among creditors and stakeholders. The Bankruptcy Code provides specific protections for shareholders, including the right to receive fair compensation for their investments. The proposed plan to cancel shares without compensation violates these fundamental principles and undermines the integrity of the bankruptcy process.

4. Relevant Case Precedents:

- *Enron Bankruptcy Case: Case No. 01-16034* in the Southern District of New York, the SEC played a crucial role in uncovering fraudulent activities and ensuring that the interests of shareholders were considered during the restructuring process. The court acknowledged the impact of Enron's misleading financial disclosures, and the subsequent loss suffered by shareholders. In this case, it is essential to address similar issues to ensure shareholders are not unfairly left without compensation.

- *PG&E Bankruptcy Case: Case No. 19-30088-DM* in the Northern District of California, the court recognized the importance of fair treatment for shareholders and creditors alike. The reorganization plan included provisions to ensure that stakeholders received compensation, reflecting a balanced approach. Similarly, in the Fisker Inc. case, it is crucial to consider the interests of shareholders who have invested in the company with the expectation of fair treatment and potential returns.

5. SEC Investigation:

Given the significant discrepancy between Fisker Inc.'s positive earnings reports in respect of revenue growth for Q4 2023 and projected growth of Q1 2024 and the drastic decline in stock price, I demand that the SEC investigate unsealing docket 300. This investigation is crucial to ensure that the stock price accurately reflects the company's financial health and to protect shareholders from unfair market practices. In Docket# 303: The Unsecured Creditors Committee have provided documents including graphs that raises serious concerns about market manipulation. This



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investigation is crucial to ensure that the stock price accurately reflects the company's financial health and to protect shareholders from unfair market practices.

Under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, fraudulent activities such as market manipulation are prohibited, and injured investors have the right to sue for damages.

6. Support for Motion to Unseal Docket 300:

I strongly support the motion to unseal docket 300, as it is essential to provide further evidence of potential market manipulation. Unsealing these documents will help uncover the truth and ensure that shareholders receive the recourse they deserve. Had there been a compensation package for shareholders, the urgency for unsealing this docket and pursuing an SEC investigation might have been mitigated. However, with no recourse provided, it is imperative to address this matter with full transparency and justice.

Key Events:

1. *7/10/2023*: Fisker sells \$340M of 2025 convertible notes, with 12% Original Issue Discount (OID), resulting in gross proceeds of \$300M to Fisker. 275M shares were reserved for conversion.
2. *9/29/2023*: Fisker sells an additional \$170M in 2025 convertible notes, with 12% OID, resulting in gross proceeds of \$150M to Fisker. Reserved shares increased to 782M.
3. *11/22/2023*: As a result of a reporting delay, the company purportedly triggers the right to convert under the alternate conversion and enters a "waiver" that purports to grant liens on its subsidiaries for the benefit of Heights Capital Management in connection with the 2025 notes.
4. *4/4/2024*: The company enters into a forbearance agreement and acknowledges the outstanding unpaid principal amount due under the 2025 notes is \$183M.
5. *4/22/2024*: The company enters into a forbearance agreement, pursuant to which Heights directs the company to replace the previous CRO with John DiDonato from Huron Consulting Group.

Financial Maneuvers by Heights Capital Management:

1. *Initial Investment (July 2023)*: Heights bought \$340M of unsecured notes from Fisker, with a 12% Original Issue Discount (OID), meaning they got the notes for less than face value.
2. *Additional Investment (September 2023)*: Another \$170M of notes was purchased under similar terms.
3. *Event of Default (November 2023)*: Fisker technically defaulted on the notes, allowing Heights to convert the notes into shares at a favorable rate.
4. Outcomes:
 - Heights invested \$510M and recovered \$507M via conversions and cash sweeps.
 - Heights made an implied profit of \$200M or more, yielding an internal rate of return (IRR) of 262% and a multiple on invested capital (MOIC) of 1.77x.

Implications:

1. *Dilution*: Heights' conversions diluted Fisker's stock, drastically dropping its value.
2. *Market Manipulation*: This strategy led to significant gains for Heights while harming shareholder value.
3. *SEC Investigation*: The discrepancies between Fisker's positive earnings and plummeting stock prices warrant scrutiny for possible manipulation by secured creditors.

Connection to loss:

Heights' actions, particularly market manipulation tactics, have significantly impacted shareholder value. The manner in which Heights executed these conversions, alongside the potential for short selling, has exacerbated the situation. The specific mechanics of these actions have led to a sharp decline in stock price, disproportionately affecting shareholders. The full extent of these activities has yet to be confirmed within Heights' trading activity regarding Fisker Inc. Underscoring the need for a comprehensive SEC investigation.

Implication of Harm:

Heights Capital Management engaged in actions which have led to a significant decline in Fisker Inc's stock price. At the start of 2024 Fisker's stock price was approximately \$1.80 per share. Which plummeted to around \$.01 per share in the 1st month of Q2 2024. Despite Fisker Inc's positive projected revenue growth in added dealers January 2024, with preliminary Q4 2023 total revenue reaching \$200.1 million, an increase of \$128.3 million from Q3 2023.

Addressing CVI's Objections:

CVI argues the Objection is moot because it was withdrawn. However, the content remains crucial for an SEC investigation. Even if not relied upon in court, it contains vital information regarding potential market manipulation that can significantly impact shareholder rights and fairness of the proceedings.

Shareholder Rights vs Confidentiality:

While respecting confidentiality agreements, shareholders have a right to access information that directly affects their investments, especially in cases of market manipulation.

Section 220 of the Delaware General Corporation Law (DGCL). This statute allows shareholders to demand access to a corporation's books and records for a "proper purpose," which is defined as a purpose reasonably related to the person's interest as a shareholder. Shareholders have statutory right to access certain company information ensuring no foul play in transactions affecting shareholder value. As part of this investigation, Heights Capital Management / Affiliates must surrender their trading activity records related to Fisker Inc. to determine the extent of market manipulation and any fraudulent activities.

Inequitable Settlement:

It is crucial to note that the unsecured creditors have agreed to a settlement with Heights/CVI which benefits them but leaves shareholders without recourse. Shareholders have not been afforded the opportunity to settle with CVI or participate in negotiations, leading to an inequitable outcome. The significant profits derived by Heights from these financial maneuvers should be used to compensate all affected parties, including shareholders.

7. Request for Compensation from Heights Capital Management:


Given the substantial profits Heights Capital Management has made through these financial maneuvers—amounting to an implied profit of \$200 million—I respectfully request that the court mandate Heights Capital Management to compensate shareholders using these profits. This compensation would serve as a just recourse for the financial harm and equity dilution experienced by shareholders because of these transactions. Specifically, I request that Heights be ordered to pay a total of \$1.62 per share for losses shareholders have endured.

8. Conclusion:

I implore the court to recognize the adverse impact on shareholders and mandate a revised plan that addresses these injustices. Our investments and faith in the company should not be dismissed without consideration of our rights and interests. The principles of fairness and equity enshrined in bankruptcy law must be upheld to protect the interests of all stakeholders. I request that the SEC review the unsealed docket 300 and complete their investigation before any shares are cancelled to ensure all shareholder interests are considered and protected.

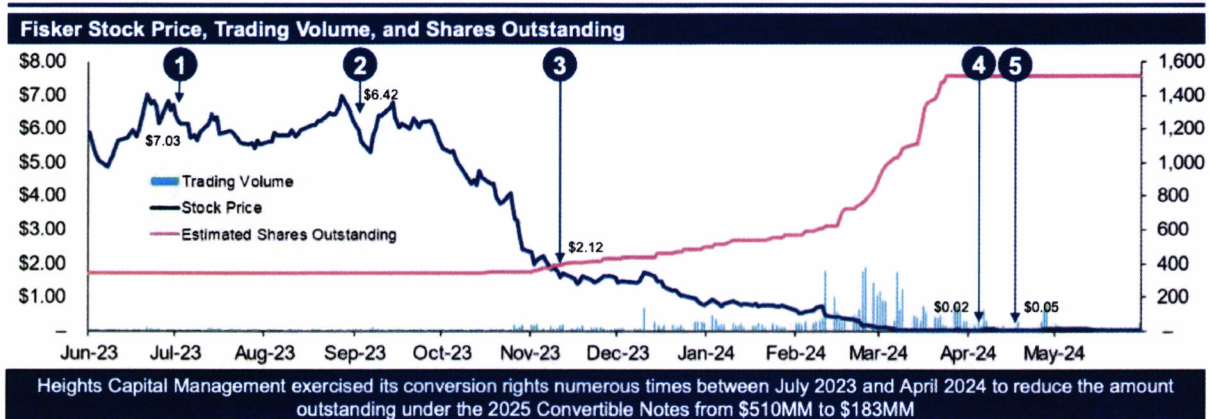
Thank you for your time and thoughtful consideration of this critical matter.

Sincerely,



Zachary R Crosta

2025 Convertible Notes – Dilutive Impact of Alternate Conversion



- 1 (7/10/2023) Fisker sells \$340MM of 2025 convertible Notes, with 12% OID, resulting in gross proceeds of \$300MM to Fisker
 - 275MM shares were reserved for conversion
- 2 (9/29/2023) Fisker sells an additional \$170MM in 2025 Convertible Notes, with 12% OID, resulting in gross proceeds of \$150MM to Fisker
 - Reserved shares increased to 782MM
- 3 (11/22/2023) As a result of a reporting delay, the Company purportedly triggers the right to convert under the Alternate Conversion and enters into a "waiver" that purports to grant liens on its subsidiaries for the benefit of Heights Capital Management in connection with the 2025 Notes
- 4 (4/4/2024) The Company enters into a forbearance agreement and acknowledges the outstanding unpaid principal amount due under the 2025 Notes is \$183MM
- 5 (4/22/2024) The Company enters into a forbearance agreement, pursuant to which Heights directs the Company to replace the previous CRO with John DiDonato from Huron Consulting Group

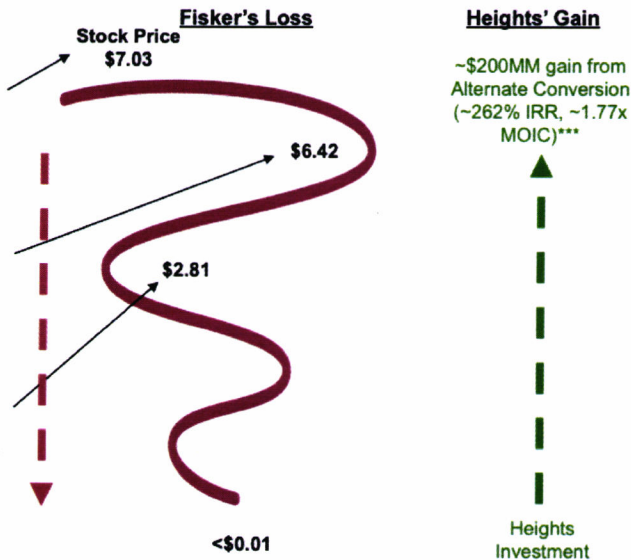
How Heights Profited from Fisker's Death Spiral

Beginning in Nov. 2023 through April 2024, Heights converted \$293MM face amount of the 2025 Notes under the Alternate Conversion feature. Heights potentially made \$200MM or more on conversions (including stated OID), bringing their total recovery (prior to cash sweeps) to \$494MM on their \$450MM cash outlay.**

July 11, 2023: Heights Capital Management ("Heights") purchases \$340MM of unsecured notes, with 12% stated OID, that may be converted into shares with an equivalent value of \$1.5625 for every \$1.00 face amount converted following an event of default*

Sept. 29, 2023: Fisker needs more cash and Heights purchases an additional \$170MM of unsecured notes, with a stated OID of 12%, that again can be converted into shares with an equivalent value of \$1.5625 for every \$1.00 face amount converted following an event of default *

Nov. 16, 2023: Fisker agrees it has technically defaulted on the notes and that Heights can convert under the default provisions. On Nov. 22, Fisker agrees to grant Heights liens and claims on substantially all of Fisker's assets in exchange for a partial waiver of the alleged event of default.



Bottom Line: On its July and September aggregate cash investments of \$450MM, Heights has recovered \$507MM using the Alternate Conversion provision and cash sweeps for an implied profit of \$57MM, yet Heights continues to assert a \$183MM secured claim against the Debtors.**

* In the absence of an event of default, Heights could convert at a fixed price per share. After an event of default, Heights could convert its notes at 125% of the principal amount and at a conversion rate equal to 80% of the stock's market price.

** Estimated Heights' implied gain is prior to trading profits/slippage. The Committee requested details of Heights' trading activity but has not yet received.

*** Implied profit, IRR and MOIC are calculated using only invested capital on post-default converted amounts under the Alternate Conversion feature

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US Bankruptcy Court of Delaware
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 Honorable Judge Thomas M. Horan
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