

**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF DELAWARE**

2024 NOV 12 AM 11: 01

In re:

FISKER INC., et al.,

Debtors.

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket Nos. 300, 756, 719, 718, 720

**RE: OBJECTION OF ZACHARY R CROSTA, TO CVI INVESTMENTS, INC TO  
SHAREHOLDER MOTION TO UNSEAL DOCKET 300**

Out of immense frustration, shareholders strongly believe that Docket 300 holds critical communications between the secured creditor and Fisker management. The actions and decisions taken by Fisker Inc's management, as well as its dealings with creditors, raise significant concerns regarding shareholder interests and fiduciary duties. The companies approach to share issuance and convertible notes, its delay in bankruptcy filing, and the potential influence of Heights Capital Management have prompted serious questions about the integrity of the decision-making process. Shareholders suspect potential collusion between creditors and debtors, given the persistent unified opposition to unsealing this crucial document to shareholders, which was initially submitted as an objection to CVI's Chapter 7 conversion. Once this objection was withdrawn and Chapter 11 liquidation was approved, it became even more imperative for shareholders to understand whether the secured creditor exerted undue influence or if it can be shown they maintained a level of control over management decisions leading up to these critical actions.

Docket 300 included five emails from Fisker co-founder, CFO and COO Geeta Gupta-Fisker to Heights' CEO Martin Kobinger, as well as multiple text messages between the two. Those communications could have shed some light on this persistent question of Heights' role during Fisker's undoing.

**PRELIMINARY STATEMENT**

In cases where shareholders allege that directors or officers have breached their fiduciary duties, emails or texts may be used to illustrate relationships and communications with creditors. This can demonstrate how those relationships may have influenced management decisions to the detriment of shareholder interests.

Shareholders have occasionally used emails, texts, and other communications to demonstrate control or influence that a creditor or major stakeholder has over a company. Here are a few notable instances and general principles in corporate governance and litigation where such evidence has been relevant:



**-In re SGL Carbon Corp. Securities Litigation (1999):** In this case, shareholders alleged that the management of SGL Carbon misled investors about the company's financial health. Emails and communications between creditors and management were presented to show the degree of influence creditors had on management decisions, which helped to establish a case for securities fraud.

**-Oklahoma v. Tyson Foods, Inc. (2007):** In this litigation, the state of Oklahoma used communications and emails to show the extent of control that major creditors had over the company's practices, arguing that this control impacted the company's compliance with environmental regulations. While not strictly a shareholder case, it illustrates how communications were used to establish control.

This underscores the importance of communication records in establishing the nature of relationships and the extent of influence in corporate decision-making. If communications reveal that Fisker management breached their fiduciary duty, shareholders could have a stronger case for a lawsuit. Breaches may include failing to act in the best interests of shareholders, mismanaging funds, or making decisions that favor insiders at the expense of the company. This could strengthen claims against both management and the secured creditor, especially if their actions are linked to shareholder losses. Documenting these breaches could also provide grounds for seeking damages or other remedies.

**1. Affiliation Implications:** If communication can be uncovered that shows Heights exercised control or influence over Fisker's management decisions, this could legally categorize Heights as an affiliate of Fisker. Under SEC rules, this could have serious implications, particularly concerning the sale and conversion of shares, and adherence to regulations like SEC Rule 144.

**2. Key Dates of Communication:** Identifying and analyzing key dates of correspondence can help establish a timeline of influence and control. If Heights exercised significant influence over Fisker's decisions, this could indicate a nexus of control, which may support claims of mismanagement or breach of fiduciary duty.

**3. Evaluating Control:** If communications reveal that Heights had a hand in strategic decisions, such as prioritizing certain financial maneuvers over essential operational vehicle updates, this could substantiate claims that they acted as insiders. Such findings could be pivotal in arguing that they held a fiduciary duty towards shareholders, particularly if their actions led to financial harm to their benefit.

**4. Legal Grounds for Shareholder Rights:** In Delaware, shareholders have specific legal rights that enable them to access company records and potentially pursue action if mismanagement or breaches of duty are suspected. Delaware's General Corporation Law, specifically Section 220, grants shareholders the right to inspect company books and records when they have a "proper purpose" — often related to concerns of fiduciary breaches, corporate mismanagement, or failure to act in the best interests of shareholders. Shareholder rights to access information are supported by cases like *Aronson v. Lewis and Grimes v. Vitalink Communications Corp.*, which emphasize the necessity for shareholders to obtain information related to potential breaches of fiduciary duty. I believe our shareholder suspicions are well-founded.

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In the aftermath of the Wall Street Crash of 1929, Congress passed a suite of laws designed to combat securities fraud and increase market transparency. Three such statutes are relevant: The Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940. These Acts respectively govern the registration of securities, the trading of securities, and the activities of investment advisers. Although each regulates different aspects of the securities markets, their pertinent provisions—collectively referred to by regulators as "the antifraud provisions,"— target the same basic behavior: misrepresenting or concealing material facts

## OBJECTIONS

- Law of the Case Doctrine Isn't Absolute. I am bringing to the attention of the court new case findings and relative information that was not considered previously and warrant a refreshed review. The mootness claim by CVI does not address the ongoing importance of transparency and shareholder's rights to access information about actions that may have impacted their investments. Regardless of docket 300 being deemed moot, its contents could still reveal information that is material to shareholder rights and potential creditor influence, or decisions affecting shareholder investments.
- Confidential designations may no longer be justifiable unless they serve a compelling ongoing purpose. Given the confirmed Chapter 11 liquidation plan's clear directive to wind down operations and permanently cease car production, the need for confidentiality designations is substantially diminished. Liquidation implies no ongoing business risks that would justify confidentiality based on competitive concerns. Therefore, absent any compelling reasons for maintaining confidentiality, the designation on Docket 300 should be lifted.
- The Confidentiality agreement and Local Rule 9018-1(f) shouldn't permanently shield information if there is a strong shareholder interest in transparency. Rules governing confidentiality are not meant to override stakeholders' rights to information, especially if the content impacts shareholder interests and the company's financial health.
- Differentiation from *Valley Health Sys. LLC v. Aetna Health, Inc. and King & Spalding LLP v. United States Dep't of HHS*: Both cases cited involved situations where the sealed information no longer had relevance after settlement, and the public need for access was minimal. In contrast, the current situation involves potential shareholder impacts, including possible creditor influence, that are not directly addressed by the settlement and remain of high relevance to shareholders.
- While the moving shareholders acknowledge awareness of the First Unsealing Motion, the arguments presented in this motion are not merely a representation of prior claims.
- The dissolution of the Committee does not negate the necessity for transparency and access to pertinent information. The Committee's withdrawal of its Objection should not serve as a barrier to unsealing information vital to shareholder rights.
- This request and relevant new proceedings have a **Right to Due Process**. The court was aware of these concerns regarding transparency and the equitable treatment of shareholders. Ignoring a pre-confirmation objection undermines fairness, as these issues should have been fully addressed before the plan's confirmation.
- While the confirmed plan provides for the cancellation of shareholder interests, we are not attempting to undermine the confirmed plan but rather to ensure transparency and equitable treatment during its execution. The request to Unseal Docket 300 is rooted in the need for clarity about events leading to the plan's confirmation. Shareholders are asserting their right to verify that the proceedings were conducted fairly and without conflict of interest. If a fiduciary breach or collusion to benefit creditors at shareholder expense may be evident in docket 300, shareholders would be entitled to compensation. This right is independent of the Plan's terms and should be recognized to maintain shareholder confidence in the process.
- CVI's Joinder in Other Objections is a "blanket objection" which undermines the credibility of CVI's argument because it signals resistance to shareholder due diligence. This should be deemed as overarching reluctance to allow scrutiny of proceedings in which shareholders have legitimate interests. Which further supports shareholder's claim that CVI acts in the disinterest of shareholders rights.

## Relevant Findings

The series of events surrounding Fisker Inc. in late 2023—namely the amendment to the certificate of incorporation, the resignation of the Chief Accounting Officer (CAO), and the company's default—could appear suspicious, especially when viewed in the context of Heights Capital's influence over Fisker's financial decisions.

### Executive Resignations and Internal Instability:

a. The resignation of John Finnucan as CAO in September 2023 and the abrupt departure of Florus Beuting just days after his appointment were major events. These resignations, coming so close to the financial filing deadline and amidst growing financial issues, point to internal instability.

b. It's plausible that these resignations were part of a broader restructuring plan orchestrated with Huron's guidance. The timing of the executive exits—especially Finnucan's resignation in September, just as the amendment was filed—suggests that Huron and potentially other advisors were preparing Fisker for the next stages of financial maneuvering, which likely involved restructuring and debt conversions

1. **The Certificate of Amendment:** In September 2023, Fisker amended its certificate of incorporation to increase the number of authorized shares, potentially enabling the conversion of debt into equity. This move could directly benefit Heights Capital (a major creditor) by allowing it to convert its notes into a substantial equity stake, especially if Fisker's financial difficulties continued.

2. **Resignation of the CAO:** The resignation of the CAO just days after his appointment in November 2023 raised questions about internal instability. This abrupt leadership change occurred just before the release of Fisker's Q3 earnings report, which was delayed. Given the timing, some may interpret this resignation as indicative of potential management issues or conflicts that could have contributed to the company's financial challenges. The timing of these events might suggest that insiders had knowledge of looming financial difficulties, including the risk of default.

3. **Potential Default and Strategic Conversions:** With Fisker facing the risk of default on its financial obligations, potentially with Heights Capital's involvement, it is possible that the amendments and internal changes were part of a larger strategy to steer the company toward a financial resolution that benefited creditors, especially Heights.

The sequence of these events—coupled with the resignation of key personnel and the amendment to facilitate note conversions—raises concerns about whether these actions were strategically designed to benefit Heights, possibly at the expense of other stakeholders, including shareholders.

The timing and nature of these developments warrant further scrutiny, especially as they align with Fisker's ongoing financial difficulties and the potential for creditor-driven decisions to shape the company's future direction. In the case of Fisker Inc., several factors could substantiate shareholders' rights to request information or pursue legal action, particularly if there is suspicion of mismanagement or failure to fulfill fiduciary duties:

1. **Timing of Share Issuances and Capital Usage:** Fisker Inc. increases its total authorized shares to 1,415,000,000, on Sept 22, 2023, potentially benefiting convertible noteholders like Heights Capital Management by enabling further issuance of shares for debt conversion, coupled with the strategic choice to allocate resources elsewhere instead of addressing recalls and software updates for the Ocean model, could raise questions. Issuing shares under challenging market conditions might have led to dilution, potentially impacting shareholder value, especially if these funds were not used to rectify safety concerns. By authorizing enough shares to satisfy creditor conversions, management essentially removed shareholders' right to deny approval or seek alternative solutions. This undermines shareholders' position and gives creditors de facto priority over equity holders in terms of financial control and potential recovery, especially in the

case of default. Fisker had reported around 530m in cash, inventory, and raw materials at the end of 2023. Delaware law supports the rights of shareholders to investigate whether such decisions prioritized insider or creditor interests over those of shareholders, especially when critical safety issues were neglected.

2. **Increased Share Authorization:** By raising the total number of authorized shares, Fisker created the legal capacity to issue more shares, which can be advantageous for holders of convertible notes, like Heights Capital Management, if they're converting debt into equity. The increase ensures there are enough shares available to satisfy conversions without requiring additional shareholder approval.
3. **Safety Recalls and Operational Neglect:** Fisker's/CVI's apparent disregard for managing recalls or updating software in the Ocean during bankruptcy and after the 2<sup>nd</sup> quarter of the initial deliveries in 2023, especially when reports indicated significant issues early in the vehicle's delivery phase, raises questions of both management effectiveness and management of shareholder investments. If it can be shown that the company and its advisors, such as Huron, neglected these issues despite having the capital needed to address them (estimated at \$750,000), shareholders could argue that these failures represented a breach of fiduciary duty or corporate negligence. Secondly, the decision to allocate only \$750,000—likely insufficient for the scope of needed updates and recalls—suggests cost-cutting that doesn't align with maintaining vehicle quality or customer satisfaction. Delaware courts have supported claims where failure to act led to material harm to the corporation, particularly when such actions could have mitigated reputational or financial losses.
4. **Influence and Motive of Heights/CVI in Chapter 7 Filing:** If Heights Capital/CVI significantly influenced Fisker's decisions to pursue Bankruptcy and intended to ignore recall and update obligations, this could also suggest a breach of fiduciary duties to the shareholders. The motion to convert to Chapter 7, potentially disregarding consumer and shareholder needs, can only be seen as prioritizing creditor interests in ways that harm the broader company stakeholders.
5. **Damage to Shareholder Value and Reputation:** Following a widely viewed YouTube review in mid Feb 2024 that criticized the Ocean's quality (drawing 6.1 million views), shareholder value likely declined further as public perception worsened. The viral nature of the criticism may indicate that operational and product quality issues had a significant reputational impact. Fisker management along with its Huron Advisors chose to deliver problematic Oceans to dealer partners. Delaware courts have recognized that reputation can be a key corporate asset and that failure to protect it could be grounds for shareholder claims, especially if negligence or poor oversight is involved. Unsealing Docket 300 would help shareholders understand if there was a strategy to dilute shareholder value to satisfy creditors without a fair process or opportunity for shareholder objection.
6. **Impact on Future Investments:** Access to these communications could inform shareholders not only about potential legal avenues but also about the nature of the relationship between Heights and Fisker. Understanding whether the secured creditor acted in a manner consistent with their fiduciary responsibilities could influence shareholders' decisions regarding future investments. Overall, the pursuit of this information is essential for determining the viability of legal actions against both Fisker management and Heights. It may also shed light on whether shareholders have been unfairly treated or misled, impacting both current and future stakeholder confidence in the company.

**Appointment of Huron Advisors:**

It's reported that in late 2023, Fisker engaged Huron as advisors amid escalating financial challenges, as confirmed by John DiDonato. There is ambiguity regarding whether this timing aligns with a covenant default under the terms of their loan agreement with Heights, which adds a layer of uncertainty about possible strategic influences behind Fisker's decision-making at this time. Specifically, the choice to engage Huron and subsequently Height's mandates to appoint DiDonato pursuant to a forbearance agreement, who is affiliated with Huron, as Chief Restructuring Officer on April 22, 2024, suggests a possible alignment of interests between Heights and Fisker's restructuring process. The appointment of DiDonato at Heights' directive raises concerns about whether Heights exerted substantial influence over Fisker's strategic trajectory, especially as the company approached bankruptcy and because essentially Heights benefitted from the November 2023 Default. This overlap points to a potential scenario in which Heights could have directed Fisker toward decisions that might ultimately favor its own financial position, such as steering the company toward a delayed liquidation and share issuances. Such influence by a creditor in the management of a distressed company can prompt shareholders to question whether fiduciary duties to all stakeholders, including shareholders, were adequately observed or whether decisions were primarily designed to maximize creditor recovery at shareholder expense.

It was said by John Didonato-

"Discussions with the OEM persisted for several months, during which, the Company recognized that, even if a transaction with the OEM could be agreed upon, it would likely need to be implemented as part of a broader financial restructuring. In late 2023, the Debtors engaged Davis Polk & Wardwell LLP ("Davis Polk") as its counsel to advise the Debtors on these restructuring efforts. The Debtors subsequently engaged (a) Morris, Nichols, Arsht & Tunnell LLP ("Morris Nichols") as local Delaware counsel, (b) PJT Partners LP ("PJT") to evaluate potential strategic transactions and financing opportunities, and (c) FTI Consulting Inc. ("FTI" and, collectively with Davis Polk, Morris Nichols, PJT, FTI, and Huron, the "Advisors") to serve as its operational advisor."

These connections invite closer examination of Heights' role in Fisker's restructuring and the extent to which this influence may have affected Fisker's financial and operational decisions, raising potential grounds for shareholder inquiries or action.

**Emerging Pattern**

In the Fisker Automotive bankruptcy, Heights Capital Management (through its affiliate CVI Investments) and other investment firms, including Susquehanna International Group, were involved as creditors with significant equity stakes. Public records from Fisker's 2013 bankruptcy filings indicate that these investment firms were among the largest stakeholders due to their investments in convertible debt and equity positions. It appears that a pattern is emerging, as both Fisker Automotive and Fisker Inc. have experienced significant financial difficulties, with defaulted loans and creditor involvement affecting their stability and shareholder value. In the 2013 bankruptcy of Fisker Automotive, the company defaulted on a Department of Energy loan, which eventually led to the DOE selling its secured claim to Hybrid Tech Holdings. This claim sale diminished the recovery options for other stakeholders, including unsecured creditors like CVI and Heights Capital, resulting in a substantial loss for stakeholders.

With Fisker Inc., there has been similar creditor influence, as the company also took on debt that it struggled to manage, facing financial strain that put pressure on both the company and its shareholders. Fisker Inc.'s recent challenges, including its restructuring plan, indicate ongoing financial struggles and concerns about prioritizing creditors over shareholder interests, especially given CVI and Heights Capital's historical roles. This repeated scenario raises questions about the fiduciary duty to shareholders and whether creditor influence has affected company decisions in ways that may not align with shareholder interests.

In 2023, Fisker Inc. raised approximately \$47 million from its \$350 million at-the-market (ATM) equity program during the first quarter. Heights publicly announced their right to convert notes to shares with Fisker Inc. on July 10, 2023, when Fisker Inc. announced the offering of \$340 million in convertible notes. Additionally, in September 2023, Fisker raised \$150 million from issuing convertible notes to an existing investor, with the potential to raise an additional \$550 million. By November 2023, Fisker was in a position where it had defaulted on its debt obligations. Despite this, Fisker continued to present a positive outlook, including through optimistic statements from management, which may have misled investors into believing that the company was in a more stable position than it was. This combination of capital-raising activities and the subsequent financial crisis suggests that Fisker's management may have been engaged in a strategy to maintain operations for as long as possible, while shielding the true extent of the company's financial difficulties from the public and investors.

Public companies like Fisker Inc. have a fiduciary duty to provide complete and accurate information to shareholders. Shareholders rely on official statements and financial projections when making investment decisions. Positive projections and public comments by the CEO, especially on something as specific as stock price predictions, can reasonably influence investors' expectations and decisions. Fisker dealt with cash flow challenges, sustaining losses and relying heavily on shareholder equity to fund operations and development, especially as it aimed to scale up production

**Fisker Inc Prospectus - Risk Factor: "We will initially depend on revenue generated from a single model and in the foreseeable future will be significantly dependent on a limited number of models.** We will initially depend on revenue generated from a single vehicle model and in the foreseeable future will be significantly dependent on a limited number of models. Historically, automobile customers have come to expect a variety of vehicle models offered in a manufacturer's fleet and new and improved vehicle models to be introduced frequently. Given that for the foreseeable future our business will depend on a single or limited number of models, to the extent a particular model is not well-received by the market, our sales volume, business, prospects, financial condition, and operating results could be materially and adversely affected."

The risk outlined in Fisker's prospectus, which states that the company's initial revenue generation will rely on a single vehicle model, the Fisker Ocean, and for the foreseeable future, it would be significantly dependent on a limited number of models. This concentration of risk becomes critical, as any issues with the vehicle, market reception, or production delays could severely impact Fisker's financial performance and prospects. The company itself acknowledged that if a particular model, such as the Ocean, were not well-received by the market, it could lead to material adverse effects on sales, business, and overall financial condition.

**Expectation vs. Reality:** Shareholders anticipated that the significant funds raised—would be allocated to enhance the success of the Fisker Ocean. Instead, the lack of investment in critical areas, such as improving software and addressing recalls, suggests a neglect of shareholder interests and brand reputation.

The focus on timing in the communication within Docket 300 is especially relevant, if it comprises of communications around mid-late 2023 and or early–mid 2024 would demonstrate whether management (or any controlling creditors) was aware of the Ocean's operational issues and chose not to address them as well as chose to send them out to new dealer partners to sell to the public with safety and software issues. If there's evidence that known problems were neglected, only to result in a widely viewed negative review, shareholders may argue this decision-making cost them significantly in lost reputation and market value. Moreover, communications from that period could show if decisions were made in good faith to support the Ocean's success, or if cost-cutting measures were imposed without consideration of long-term impacts on brand and shareholder interests. The lack of investment in software updates, compounded by the reported software company quitting in June as the triggering bankruptcy event, could indeed point to a pattern where creditor interests (like Heights Capital's) are prioritized over long-term viability and shareholder value. This is especially relevant if CVI (a significant secured creditor) or its representatives exerted influence that directed resources away from updates essential for the

Ocean's success. Shareholders who invested with the expectation that Fisker would prioritize the Ocean's reliability and brand reputation might argue that this cost-cutting approach undercuts those assumptions.

Delaying or reducing investment in major projects, like the "Ocean" vehicle line, could potentially benefit convertible note investors if it causes the stock price to drop significantly:

1. **Lower Share Prices, More Shares on Conversion:** When the stock price is low, convertible noteholders can convert their debt into a larger number of shares, as the conversion rate becomes more favorable to them at lower prices. By minimizing investments that could support the stock price, the company effectively sets up conditions for noteholders to acquire shares at "pennies" per share, maximizing the dilution effect for common shareholders and the return for noteholders.

2. **Quarterly Conversions and Regular Issuance:** Since the notes allow for conversion into shares every three months, a pattern of declining stock price provides convertible noteholders with more shares in each quarterly conversion. If the price remains low (or declines further each quarter), each subsequent conversion round could result in greater dilution for common shareholders while amplifying the value of each conversion for the noteholders.

3. **On March 3<sup>rd</sup> 2024, Henrik Fisker (CEO)** in an interview with Yahoo Finance did express an optimistic outlook for Fisker Inc.'s stock performance, suggesting it could rebound to over \$1. This statement was made despite the company's financial challenges, including ongoing operational difficulties and the stock trading at well below \$1, which led to growing concerns about delisting from the New York Stock Exchange on March 25<sup>th</sup>, 2024. Fisker's comments came as the company struggled to meet delivery goals and faced setbacks in securing new partnerships and funding sources, which were critical for continuing operations. This optimistic projection contrasted with the company's financial trajectory and imminent bankruptcy led to mixed reactions among investors.

4. **On March 6<sup>th</sup> 2024, Fisker Inc Files Second Amended and Restated Certificate of Incorporation:** The most significant change is the alteration to Article IV, Section 1.1, which now states that the corporation has the authority to issue up to 2,165,000,000 shares, broken down into:

- 2,000,000,000 shares of Class A Common Stock
- 150,000,000 shares of Class B Common Stock
- 15,000,000 shares of Preferred Stock

**Potential Delay in Filing to Sustain Trading Activity:** It's welcoming to suggest that the delay in bankruptcy filing might have been a strategy to maintain trading volume. This sustained activity could have allowed convertible noteholders to continue converting debt into equity or even offload shares to retail investors before the bankruptcy filing. It can be seen as obvious scheduling once Fisker issues more shares in March 2024 and subsequently Heights finished offloading shares in July 2024 they filed Bankruptcy. Unsealing docket 300 could clarify whether there was intent to keep shares trading to benefit certain parties.

Fisker management may have delayed the filing for bankruptcy following a failed Original Equipment Manufacturer (OEM) discussion on March 22<sup>nd</sup>, 2024, while leading shareholders to believe in a potentially positive outcome. This delay may have provided an opportunity for management to continue trading activity and raise additional capital while concealing the company's true financial condition providing nearly another 3 months of trading/conversions.

The withdrawal of docket 300 raises serious concerns about potential collusion among secured creditors, unsecured creditors, and the debtors against shareholders. Such collusion could involve manipulating the bankruptcy process to prioritize creditor interests at the expense of shareholders. If these parties are working together to limit transparency, it constitutes a breach of their fiduciary duties to act in the best interests of all stakeholders.

This Motion seeks to address potential misconduct and ensure transparency for nearly 10,000 shareholders who hold roughly 157 million shares of Fisker Inc. It is estimated that nearly 20% of shareholders hold shares after a company files bankruptcy. It is imperative to investigate the circumstances surrounding the recent issuance of shares and the involvement of Heights.



It's not very common for companies to issue a large number of shares and then file for bankruptcy shortly afterward. While companies do sometimes issue additional shares to raise capital, doing so right before declaring bankruptcy can raise red flags about the company's financial health and intentions. Issuing shares shortly before bankruptcy could be seen as an attempt to raise funds quickly, possibly to pay off certain creditors or insiders, which can lead to legal and ethical concerns, including potential claims of insider trading or fraudulent conveyance. **A call for accountability** is essential for shareholders to access communications between management and investors, as the decisions made appear misaligned with the expectations of those who invested in the company with hopes for its success.

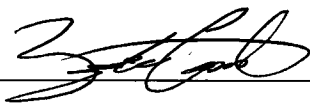
**CONCLUSION:**

In unsealing docket 300 is critical for providing shareholders with the transparency necessary to understand the actions taken by Fisker management and their implications. The circumstances surrounding the company's recent financial maneuvers suggest a need for accountability, and access to these communications is essential for shareholders to assess whether their interests were adequately represented and protected. Transparency is not only a shareholder right but a fundamental principle of good corporate governance, and it is vital for restoring trust in the management of Fisker Inc. The intent to compel the unsealing of communications is a strategic step for shareholders to establish a clearer understanding of the decision-making dynamics within Fisker. It is essential for shareholders to assess whether they have a viable legal basis for action and whether any involved parties, particularly from Heights Capital, may be subject to regulatory scrutiny.

This series of events paints a picture of a strategy that seemingly prioritized the financial interests of Heights over the operational integrity of Fisker and the value of shareholder investments. Given the appointed advisors' awareness of existing issues, the public presentation of the vehicles, and the resulting stock volatility, it becomes essential to scrutinize the actions and decisions made by management and their advisors. The implications of these actions warrant a thorough investigation into potential breaches of fiduciary duty and the overall governance of Fisker during this tumultuous period.

WHEREFORE, for all foregoing reasons, shareholders respectfully requests that the court approve and compel the Motion to unseal of docket 300.

Dated: November 6<sup>th</sup>, 2024  
Las Vegas, Nevada



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