Andrew K. Glenn
Jed I. Bergman
Shai Schmidt
GLENN AGRE BERGMAN & FUENTES LLP
55 Hudson Yards
20th Floor
New York, NY 10001
Telephone: (212) 358-5600

Proposed Counsel to the Official Committee of Equity Securities Holders

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
	)	

OBJECTION OF THE OFFICIAL COMMITTEE OF EQUITY SECURITIES HOLDERS TO APPROVAL OF DISCLOSURE STATEMENT FOR DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

[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") hereby submits this objection (the "Objection") to *Debtors' Motion for Entry of an Order (I) Approving the Disclosure Statement; (II) Establishing a Voting Record Date; (III) Approving Solicitation Packages and Solicitation Procedures; (IV) Approving the Forms of Ballots; (V) Establishing Voting and Tabulation Procedures; (VI) Establishing Notice and Objection Procedures for the Confirmation of the Plan and (VII) Approving the Rights Offering Procedures and the Rights Offering Materials* [Dkt. No. 714] (the "Motion" and "Disclosure Statement," respectively).[1] In support of this Objection, the Equity Committee respectfully states as follows:

PRELIMINARY STATEMENT[2]

The Disclosure Statement describes a Chapter 11 plan that would result in a needless transfer of over $1.3 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. The Debtors themselves acknowledged the inequitable nature of 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

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1 On January 22, 2021, the Debtors filed the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Dkt. No. 780] (the "COH Plan") and on January 27, 2021, the Debtors filed the current version of the Disclosure Statement. [Dkt. No. 806].

2 Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the COH Plan, Disclosure Statement, or the Motion to Terminate Exclusivity (as defined below), as applicable.

power and residual economic value of GMI.[3] As the Debtors noted in connection with an earlier iteration of the COH Plan, it is, "inescapably, a sale of controlling equity of a Delaware corporation [whereby] the Debtors would be selling virtually all of the voting power and residual economic value of GMI to a handful of institutional investors for cash."[4]

While the COH Plan suffers from many defects that render it unconfirmable (and which the Equity Committee will address at the proper time), two infirmities render it *patently* unconfirmable and require denying approval of the Disclosure Statement. *First*, the COH Plan does not provide equal treatment to GMI shareholders, in violation of Section 1123(a)(4) of the Bankruptcy Code. Only a select group of shareholders – Centerbridge, Oaktree and the Additional Insider Shareholders – would receive the right to purchase $1.05 billion of the COH Convertible Series A Preferred Stock (subject to the $200 million rights offering available to existing GMI Shareholders, including the COH Group). The remaining, non-insider shareholders may only elect between having their shares reinstated (and substantially diluted by the COH Convertible Series A Preferred Stock, subject to the rights offering) and the $6.25 Cash-Out Option. This unequal treatment of shareholders cannot be justified by any purported "new value" provided by the COH Group because, under Supreme Court precedent, new value must mean *full* value. Where, as here, a debtor offers an insider an exclusive investment opportunity without allowing other shareholders to participate ratably, there is no new value as a matter of law.

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[3] *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].

[4] *See* Debtors' Objection to Motion to Modify Exclusivity ¶ 9 [Dkt. No. 389].

Second, the COH Plan is patently unconfirmable because it violates Delaware law. *As the Debtors themselves have acknowledged*, Section 203 of Delaware General Corporation Law requires that a sale of the Debtors to a group of shareholders (like the COH Group here) holding more than 15% of the common stock be approved by both the board of directors *and* a 66.6% majority of the outstanding voting stock not owned by the interested stockholder. The Debtors have not obtained that approval. Furthermore, the fiduciary obligations of the Debtors' directors are subject to entire fairness review because the COH Group shareholders – which hold 58% of GMI shares – are standing on both sides of the transaction and receiving a unique benefit not shared with the other shareholders. The Debtors have not, and cannot, show that the COH Plan passes muster under this heightened standard of review. Accordingly, the COH Plan is being proposed by "means forbidden by law," in violation of Section 1129(a)(3) of the Bankruptcy Code.

The Court should not approve the Disclosure Statement for the additional reason that it fails to provide adequate information concerning numerous issues that are of immense importance to shareholders, including (i) the magnitude of dilution suffered by unaligned shareholders as a result of the COH Plan; (ii) allocation of value between the ASASCO and GMI Debtors; (iii) analysis of the Honeywell settlement and why the Debtors believe it is more beneficial than reducing Honeywell's claims through litigation; and (iv) the Debtors' analysis of alternatives to the COH Plan – including the Equity Committee's Stand-Alone Plan – and why the Debtors decided not to pursue them.

Accordingly, and as further explained below, the Court should not approve the Disclosure Statement.

<u>OBJECTION</u>[5]

I. THE COURT SHOULD NOT APPROVE THE DISCLOSURE STATEMENT BECAUSE THE COH PLAN IS PATENTLY <u>UNCONFIRMABLE</u>

1. Courts routinely hold that if a plan is unconfirmable as a matter of law, the related disclosure statement cannot be approved. *In re Quigley Co.*, 377 B.R. 110, 115-16 (Bankr. S.D.N.Y. 2007) ("If the plan is patently unconfirmable on its face, the application to approve the disclosure statement must be denied, as solicitation of the vote would be futile."); *In re Filex, Inc.*, 116 B.R. 37, 41 (Bankr. S.D.N.Y. 1990) ("[T]his court will not approve a disclosure statement for an admittedly unconfirmable plan"). Instead, "if it appears there is a defect that makes a plan inherently or patently unconfirmable, the Court may consider and resolve that issue at the disclosure stage before requiring the parties to proceed with solicitation of acceptances and rejections and a contested confirmation hearing." *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012) (internal quotation marks omitted); *In re Phx. Petroleum Co.*, 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) ("If the disclosure statement describes a plan that is so 'fatally flawed' that confirmation is 'impossible', the court should exercise its discretion to refuse to consider the adequacy of disclosures . . . because undertaking the burden and expense of plan distribution and vote solicitation is unwise and inappropriate if the proposed plan could never legally be confirmed.") (citations omitted).

[5] For the factual background relevant to this Objection, the Equity Committee respectfully refers the Court to the Motion of the Official Committee of Equity Security Holders for Entry of an Order Terminating the Debtors' Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances [Dkt. No. 794] (the "<u>Motion to Terminate Exclusivity</u>"). The Equity Committee further relies on 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 [Dkt. No. 795] ("<u>Beers Decl.</u>").

2. Just as important as concerns for judicial economy and the efficient use of estate assets is a court's duty not to grant legitimacy to a plan that violates essential confirmation principles. As this Court has recognized, "court approval of a disclosure statement for a plan which will not, nor can not, be confirmed by the Bankruptcy Court is a misleading and artificial charade which should not bear the imprimatur of the court." *In re Filex*, 116 B.R. at 41. The features of the COH Plan that make it unconfirmable are so blatantly at odds with the requirements of the Bankruptcy Code that this Court should reject the Disclosure Statement to avoid not only the wasteful use of judicial and estate resources, but also any suggestion that the Court approves of the Debtors' rank misuse of the bankruptcy process.[6]

A. The COH Plan Fails to Provide Equal Treatment to the Debtors' Shareholders

3. Section 1123(a)(4) of the Bankruptcy Code provides that any reorganization 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). The principle of equality of treatment for claims and interests in the same class is "a central policy of the Bankruptcy Code." *Begier v. IRS*, 496 U.S. 53, 58 (1990). "Section 1123(a)(4) guarantees that each [interest] will be treated equally, regardless of how [the shareholder] votes on a proposed plan." *ACC Bondholder Grp. v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.)*, 361 B.R. 337, 363 (S.D.N.Y. 2007). The equal treatment mandate applies "to a plan's treatment *on account of particular claims* or interests in a specific

[6] The defects of the COH Plan and the Equity Committee's objections to the confirmability of the COH Plan go well beyond those identified in this Objection. The Equity Committee has focused on those features of the COH Plan that demonstrate most clearly that the COH Plan is unconfirmable on its face. The Equity Committee reserves its right to object to confirmation of the COH Plan on any other grounds.

class." *In re Adelphia Commc'ns Corp.*, 368 B.R. 140, 249-51 (Bankr. S.D.N.Y. 2007) (emphasis in original); *cf. Ahuja v. LightSquared Inc.*, 644 F. App'x 24, 29 (2d Cir. 2016) (no violation of Section 1123(a)(4) because shareholder "received value in the reorganization *not for its common equity interests*, but rather for its secured claim against LightSquared Inc. and the causes of action against third parties that it agreed to attribute to reorganized LightSquared.") (emphasis added).

4. The COH Plan fails the equal treatment requirement because only a select group of shareholders – Centerbridge, Oaktree and the Additional Insider Shareholders – would receive the right to purchase the COH Convertible Series A Preferred Stock (subject to the rights offering). The remaining, unaligned shareholders may only elect between having their shares reinstated (and substantially diluted by the COH Convertible Series A Preferred Stock, subject to the rights offering) and the $6.25 Cash-Out Option. The Debtors themselves have acknowledged the discriminatory nature of this transaction in connection with the original COH Group proposal, which, like the current COH Plan, provided for the transfer of virtually all of the Debtors' equity value to Centerbridge, Oaktree and the Additional Insider Shareholders. Thus, in opposing the COH Group's motion to modify exclusivity, the Debtors argued that because ***the COH Group's bid "treat[ed] minority stockholders disparately***," the duties of the Debtors' directors were subject to "heightened, not lowered, scrutiny."[7] The Debtors further stressed that "[t]he COH Group proposal must be evaluated and negotiated as part of that competitive process, ***especially because of the disparate treatment of stockholders who are participating and not participating***."[8] Based

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[7] See Debtors' Objection to Motion to Modify Exclusivity ¶ 9 [Dkt. No. 389] (emphasis added).

[8] *Id.* ¶ 15 (emphasis added).

on the Debtors' own admission, the COH Plan violates Section 1123(a)(4) and is therefore patently unconfirmable.

5. The COH Plan fails the "equal treatment" requirement under Section 1123(a)(4) for the additional reason that, as a matter of law, Centerbridge, Oaktree and the Additional Insider Shareholders are not providing "new value" that would permit the Debtors to grant them the exclusive opportunity to purchase the COH Convertible Series A Preferred Stock (subject to the rights offering).

6. 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. The Supreme Court held that the exclusive opportunity to invest in the reorganized debtor was property "in its own right," *id*. at 455, and that distributing that property at a significant discount constituted impermissible favoritism toward old equity, rather than consideration for new value. *Id*. at 457. To establish that an exclusive investment right is not provided to a stakeholder "on account of" its status as such, it must pay "full value" in exchange for the exclusive right to purchase new equity. *Id*. at 453-54. There is never "full value," however, where the investment right is exclusive to the participating stakeholder. The Supreme Court reasoned that "[i]f the price to be paid for the equity interest is the best obtainable, old equity does not need the protection of exclusiveness (unless to trump an equal offer from someone else); if it is not the best, there is no apparent reason for giving old equity a bargain." *Id*. at 456. The Supreme Court therefore 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.

7. The COH Plan is patently unconfirmable for the same reason that the plan in *North LaSalle* was "doomed." As a matter of law, the COH Group shareholders are not providing adequate "new value" in exchange for the preferential investment opportunity they are receiving because that opportunity is exclusive to them. *See In re Breitburn Energy Partners LP*, 582 B.R. 321, 358 (Bankr. S.D.N.Y. 2018) (Section 1123(a)(4)'s equality of treatment requirement "is satisfied if claimants in the same class have the same opportunity for recovery"); *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*]"). 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.[9] Although the COH Plan involves equity, the same principle applies here with equal force.

8. The auction by which the Debtors marketed their assets for sale does not permit the Debtors' unequal treatment of their shareholders. Critically, no party other than Centerbridge, Oaktree and the Additional Insider Shareholders was ever given the opportunity to purchase a

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[9] This unpublished order was attached as Exhibit C to the Motion to Terminate Exclusivity.

controlling interest in the reorganized Debtors within the construct proposed under the COH Plan, *including the settlement with Honeywell.* Indeed, the Debtors have announced that "[t]he Honeywell Settlement is an integral and non-severable component of the Final COH Group Plan Proposal and the Plan Support Agreement, *and this settlement is not assignable, transferrable, or portable to any other chapter 11 plans*."[10] Moreover, the Debtors never marketed the COH Convertible Series A Preferred Stock to anyone other than the shareholders comprising the COH Group. In short, the Debtors cannot demonstrate that the COH Plan provides the best value to their estates. Section 1123(a)(4) therefore prohibits them from offering Centerbridge, Oaktree and the Additional Insider Shareholders the exclusive right to purchase the COH Convertible Series A Preferred Stock (subject to the rights offering). The COH Plan is patently unconfirmable for this additional, independent reason.

B. The COH Plan Is Being Proposed by <u>"Means Forbidden by Law"</u>

9. Section 1129(a)(3) of the Bankruptcy Code requires that a plan must not be proposed "by any means forbidden by law." 11 U.S.C. § 1129(a)(3). It mandates that the proposal of the plan comply with *all applicable law*, not solely bankruptcy law. *See In re Koelbl*, 751 F.2d 137, 139 (2d Cir. 1984) ("any means forbidden by law . . . refers inter alia to state law"); *In re Breitburn Energy Partners*, 582 B.R. at 354 ("In the end, the question of compliance with Delaware law and good faith under Bankruptcy Code § 1129(a)(3) are essentially the same."). The transactions embodied in COH Plan violate applicable state law in two independent ways.

10. *First*, GMI is subject to Section 203 of Delaware General Corporation Law, which provides that a Delaware corporation may not engage in any "business combination" with an

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[10] *See* Disclosure Statement at 48 (emphasis added).

interested stockholder (defined to include members of groups of stockholders, such as those in the COH Group, holding 15% or more of the outstanding voting stock) for a period of three years after such stockholder becomes an interested stockholder unless, *inter alia*, such business combination is approved by both the board of directors *and* a 66.6% majority of the outstanding voting stock not owned by the interested stockholder. *See* Del. Code Ann. tit. 8, § 203(a)-(c); *Ark. Teacher Ret. Sys. v. Alon USA Energy, Inc.*, C.A. No. 2017-0453-KSJM, 2019 WL 2714331, at *1 (Del. Ch. June 28, 2019) ("Section 203 of the Delaware General Corporation Law prohibits a stockholder from engaging in a business combination with a company within three years from the date it acquires 15% or more of the company's outstanding voting equity.").

11. The issuance of the COH Convertible Series A Preferred Stock to Centerbridge, Oaktree and the Additional Insider Shareholders – which hold 58% of GMI shares and are acting in concert pursuant to the Coordination Agreement – falls squarely in the definition of "business combination," which includes "[a]ny transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, *or securities convertible into the stock of any class or series*, of the corporation or of any such subsidiary which is owned by the interested stockholder[.]" *See* Del. Code Ann. tit. 8, § 203(c)(3)(iv) (emphasis added).

12. Notably, the Debtors made *this exact same argument* in their opposition to the COH Group's motion to modify exclusivity, noting that "*the COH Group proposal is . . . inescapably, a sale of controlling equity of a Delaware corporation*" and that "in the COH Group proposal, the Debtors would be selling virtually all of the voting power and residual economic value of GMI to

a handful of institutional investors for cash."[11] Now, having capitulated to the COH Group, they are pursuing a similar business combination with the interested stockholders in that group without seeking – let alone obtaining – approval by a supermajority of their unaligned shareholders. This violates Delaware law.

13. *Second*, the fiduciary obligations of the Debtors' directors are heightened where, as here, a "controlling or dominating shareholder stand[s] on both sides of a transaction," in which case the transaction is subject to entire fairness review. *See Kahn v. Lynch Commc'ns Sys.*, 638 A.2d 1110, 1115-18 (Del. 1994).[12] Entire fairness review is appropriate for the additional reason that the COH Group shareholders are receiving a unique benefit not shared with the other shareholders. *See In re Primedia Inc. Shareholders Litig.*, 67 A.3d 455, 487 (Del. Ch. 2013) ("Because it is reasonably conceivable that KKR received a unique benefit in the Merger not shared with other stockholders, the standard of review for purposes of evaluating whether the complaint states a claim is entire fairness.").

14. The Debtors do not – because they cannot – argue that the COH Plan passes muster under the entire fairness standard, which "requires the court to examine all aspects of the transaction in an effort to determine whether the deal was entirely fair." *See Kahn v. Tremont Corp.*, 694 A.2d 422, 432 (Del. 1997); *Moore Corp. Ltd. V. Wallace Comput. Servs., Inc.*, 907 F. Supp. 1545, 1554 n.12 (D. Del. 1995) ("A reviewing court must review the transaction and determine that the merits satisfy the court of its entire fairness . . . including scrutiny of both 'fair dealing' and 'fair price.'").

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[11] *See* Debtors' Objection to Motion to Modify Exclusivity ¶ 9 [Dkt. No. 389] (emphasis added).

[12] The Debtors also argued that the COH Group's proposal was subject to entire fairness review. *See Debtors' Objection to Motion to Modify* Exclusivity ¶ 9 [Dkt. No. 389].

15. To the contrary, the COH Plan is *not* fair because it effects a massive dilution to existing GMI shareholders proposed by the COH Plan, which could transfer over $1.3 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 acquired at the purchase price of $3.50 per share. 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%. That is the antithesis of fairness, let alone entire fairness. *See eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 44 (Del. Ch. 2010) (rescinding dilutive issuance of stock to majority shareholders, holding that "the price of the [stock issuance] is not fair because it requires eBay, the minority stockholder, to give up more value per share than either Jim or Craig, the majority stockholders and directors.").

16. In light of all of the foregoing reasons, the COH Plan is patently unconfirmable. The Court should therefore not approve the Disclosure Statement.

II. THE DISCLOSURE STATEMENT FAILS TO PROVIDE ADEQUATE INFORMATION

17. Section 1125 of the Bankruptcy Code defines "adequate information" as "information of a kind and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable . . . a hypothetical investor [typical of the holders of claims or interests] of the relevant class to make an informed judgment about the plan[.]" 11 U.S.C. § 1125(a)(1). Stakeholders and the Court alike must rely on the Disclosure Statement to assist them in making informed judgments about the COH Plan. Accordingly, the Disclosure Statement must provide sufficient information

to enable such judgments. *See Kunica v. St. Jean Fin., Inc.*, 233 B.R. 46, 54 (S.D.N.Y. 1999) ("The importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court."); *Galerie Des Monnaies of Geneva, Ltd. v. Deutsche Bank, A.G. (In re Galerie Des Monnaies, Ltd.)*, 55 B.R. 253, 259 (Bankr. S.D.N.Y. 1985), *aff'd*, 62 B.R. 224 (S.D.N.Y. 1986) and *aff'd*, No. 86 Civ. 397 (JMW), 1986 WL 6230 (S.D.N.Y. May 27, 1986) ("The preparing and filing of a disclosure statement is a most important step in the reorganization of a Chapter 11 debtor. It is relied on by both the creditors of the debtor before they vote on the plan of reorganization, and by the bankruptcy court before approving it.") (citation omitted). Indeed, it is impossible to "overemphasize the debtor's obligation to provide sufficient data to satisfy the Bankruptcy Code standard of 'adequate information.'" *Kunica*, 233 B.R. at 54 (citation omitted).

18. Whether a disclosure statement contains adequate information to enable creditors to make such a decision is a "fact-specific inquiry into the particular plan" in question. *See Abel v. Shugrue (In re Ionosphere Clubs, Inc.)*, 179 B.R. 24, 29 (S.D.N.Y. 1995). A disclosure statement must "contain simple and clear language delineating the consequences of the proposed plan on [stakeholders' claims and interests] and the possible [Bankruptcy] Code alternatives so that they can intelligently accept or reject the Plan." *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 981 (Bankr. N.D.N.Y. 1988); *see also In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991) (a disclosure statement must "clearly and succinctly inform the average . . . [stakeholder] what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution"). Courts therefore decline to approve disclosure statements that either fail to provide basic financial information about the debtor, *see In re Source Enterprises, Inc.*, Case No. 06-11707, 2007 WL 7144778, at *3 (Bankr. S.D.N.Y. July 31, 2007) ("A creditor is entitled, prior

to voting on a plan, to information about a debtor's financial status."), or that otherwise lack sufficient information to enable a stakeholder to make an informed decision regarding whether to accept or reject the plan, *see In re E. Redley Corp.*, 16 B.R. 429, 430 (Bankr. E.D. Pa. 1982) ("Without information sufficient to allow parties voting on the plan the opportunity to arrive at an independent and informed judgment, the disclosure statement cannot be approved.").

19. The Disclosure Statement is woefully inadequate and fails to provide stakeholders – and the Court – with the information necessary to evaluate the COH Plan. Specifically, the Disclosure Statement does not provide adequate information concerning the following topics:

- Dilution of minority shareholders – While the Disclosure Statement acknowledges that "[a]ll GMI Common Stock shall be subject to dilution by . . . the conversion of any Convertible Series A Preferred Stock,"[13] it does not disclose the magnitude of that dilution. As the Equity Committee has shown, the COH Plan would cause a massive dilution to existing GMI shareholders proposed by the COH Plan, which could transfer over $1.3 billion of value from existing GMI shareholders to the sponsors of the COH Plan.[14] This information is critical for shareholders to make an informed decision whether to vote for or against the COH Plan.

- Allocation of value between the ASASCO and GMI Debtors – This issue is of immense importance to GMI shareholders because the ASASCO Debtors are the primary obligors under the Prepetition Credit Agreement and the Senior Subordinated Notes, and the sole obligors under the Honeywell Indemnity Agreement. As such, the more value is allocated to the GMI Debtors, the higher the recoveries to which GMI shareholders may be entitled. Recognizing that allocation of value is a key issue in these Chapter 11 Cases, "the Debtors determined . . . to engage independent directors at ASASCO and GMHI to negotiate an arm's-length allocation of distributable value among the ASASCO Group and the GMI Group[.]"[15] While the Disclosure Statement alleges that the Debtors "considered . . . the work of the ASASCO and GMHI Transaction Committees as to the allocation of value between ASASCO and GMHI and the resolution of intercompany claims," it says nothing about: (i) whether the Transaction

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13 Disclosure Statement at 61.

14 *See* Beers Decl. ¶ 14, Exhibit E.

15 *See* First Day Decl. ¶ 97.

Committees reached a settlement concerning allocation and intercompany claims; (ii) the provisions of that settlement; (iii) why that settlement is reasonable; and (iv) whether and how the Debtors considered that settlement in their formulation of the COH Plan. Without the foregoing information, GMI shareholders cannot determine whether the COH Plan reflects a proper allocation of value among the ASASCO and GMI Debtors and, as a result, whether to vote for or against the COH Plan.

- The Honeywell Settlement – Under the COH Plan, Honeywell would receive $1.2 billion in payments, which, based on the Debtors' assumptions, have a present value of $959 million. The maximum amount Honeywell could have asserted against the Debtors is between $1.1 and $1.2 billion based on a 7.25% discount rate. The Debtors acknowledge, however, that that maximum amount 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).[16] It is thus unclear whether the Honeywell settlement provides any benefit to the Debtors' estates (and the Equity Committee believes it likely does not). While the Debtors tout the Honeywell settlement by making the unremarkable statement that "litigation is inherently unpredictable and creates significant risks of loss, appeals . . . and potential delays,"[17] they do not explain why those potential risks outweigh the benefits stemming from reducing Honeywell's claims through litigation – a strategy that the Debtors pursued since the Petition Date, at great expense to shareholders. Notwithstanding the foregoing, the Equity Committee likely would have embraced the settlement with Honeywell if the COH Plan allowed reasonably democratic participation among the shareholder body.

- Plan Alternatives – The Debtors must include a meaningful and accurate evaluation of the alternatives to the COH Plan, including, most significantly, the Stand-Alone Plan, as well as the Final KPS Bid and the Final OWJ Bid, which the Debtors rejected. As the Equity Committee explained in detail in the Motion to Terminate Exclusivity, all of the foregoing bids are better than the COH Plan. Specifically, the Stand-Alone Plan equals or exceeds the treatment afforded to all creditors in the COH Plan, including the proposed settlement with Honeywell, while substantially eliminating the massive dilution to existing GMI shareholders proposed by

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[16] *See* Disclosure Statement at 51 ("Applying the Debtors' 11-13% range to Honeywell's nearly $2 billion claims would reduce Honeywell's allowable claim to approximately $1 billion to $1.07 billion, *without crediting any of the Debtors' other state-law defenses*.") (emphasis added).

[17] *Id.*

the COH Plan. The Debtors must explain why they believe the COH Plan is superior to the Stand-Alone Plan and other proposals to allow shareholders to make an informed choice concerning the COH Plan.

- Releases – The Debtors must disclose the factual and legal bases, if any, for granting releases to current and former officers and directors and the benefits and consideration provided to the Debtors' estates in respect of such releases.

- Acceleration of Vested Options and Assumption of Equity Awards – The Debtors must disclose the legal basis, if any, for the acceleration and vesting of outstanding GMI Options and assumption of equity awards on the Effective Date, in a potential aggregate amount of $13,100,000 in cash.

20. In short, the Disclosure Statement fails to provide adequate information under Section 1125 of the Bankruptcy Code because it omits critical information. Without complete and accurate information about the foregoing topics, stakeholders cannot fairly assess whether to accept or reject the COH Plan. As such, the Disclosure Statement cannot be approved.

III. THE MOTION WAS NOT PROPERLY NOTICED

21. The Debtors have failed to provide parties in interest with the requisite 28-days' notice of the hearing to approve the Disclosure Statement in violation of Bankruptcy Rules 2002(b) and 3017(a). The hearing on February 16, 2021 was originally noticed on January 8, 2021 in connection with the Debtors' motion to approve the disclosure statement for the plan predicated on the KPS Bid [Dkt. No. 714]. On January 22, 2021, the Debtors filed the Disclosure Statement (as later amended) and COH Plan. Rather than seek Court authority to shorten the requisite time required to hold a hearing on the adequacy of the Disclosure Statement, the Debtors labeled the new Disclosure Statement "revised" and the COH Plan "amended." The COH Plan, however, is not an amended version of the plan relating to the KPS Bid; nor is the Disclosure Statement simply a revised version of the prior disclosure statement. The COH Plan is an entirely different construct that presents stakeholders with starkly different outcomes. The Court should deny the Motion for this additional reason.

IV. THE SOLICITATION MATERIALS SHOULD INCLUDE A LETTER FROM THE EQUITY COMMITTEE

22. Given all of the plan-related issues addressed herein, in the event that the Court is inclined to approve the Disclosure Statement and permit solicitation to proceed, the Court should require the Debtors to include a letter from the Equity Committee regarding its views on the COH Plan as part of the solicitation materials. The letter that the Equity Committee proposes to enclose with the solicitation materials will provide an explanation regarding a number of the confirmation-related issues that the Equity Committee has identified with the COH Plan based on the current status of the Equity Committee's review and analysis thereof and contains the Equity Committee's recommendation that shareholders vote to reject the COH Plan. A form of the letter will be provided to the Court in advance of any contemplated solicitation.

RESERVATION OF RIGHTS

23. This Objection is submitted without prejudice to, and with a full reservation of, the Equity Committee's rights to object to confirmation of the COH Plan on any basis, or to supplement this Objection in writing or at the hearing thereon including, without limitation, in the event the Debtors amend or otherwise modify the Disclosure Statement and/or the COH Plan.

CONCLUSION

WHEREFORE, the Equity Committee respectfully requests that the Court deny the Motion and grant such other and further relief as may be just and proper.

Dated: February 9, 2021
New York, New York

GLENN AGRE BERGMAN & FUENTES LLP

/s/ *Andrew K. Glenn*
Andrew K. Glenn
Jed I. Bergman
Shai Schmidt
55 Hudson Yards
20th Floor
New York, NY 10001
Telephone: (212) 358-5600
AGlenn@glennagre.com
JBergman@glennagre.com
SSchmidt@glennagre.com

Proposed Counsel to the Official Committee of Equity Securities Holders