Docket #0830 Date Filed: 10/16/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
SpeedCast International Limited, *et al.*,	Case No. 20-32243 (MI)
Debtors.	(Jointly Administered)

INMARSAT GLOBAL LIMITED AND INMARSAT SOLUTIONS B.V.'S OBJECTION TO THE EMERGENCY MOTION OF DEBTORS FOR ENTRY OF ORDER (I) SCHEDULING COMBINED HEARING ON (A) ADEQUACY OF DISCLOSURE STATEMENT AND (B) CONFIRMATION OF PLAN; (II) CONDITIONALLY APPROVING DISCLOSURE STATEMENT; (III) APPROVING SOLICITATION PROCEDURES AND FORM AND MANNER OF NOTICE OF COMBINED HEARING AND OBJECTION DEADLINE; (IV) FIXING DEADLINE TO OBJECT TO DISCLOSURE STATEMENT AND PLAN; (V) APPROVING NOTICE AND OBJECTION PROCEDURES FOR THE ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (VI) APPROVING PLAN SPONSOR SELECTION PROCEDURES; AND (VIII) GRANTING RELATED RELIEF [RELATES TO ECF NO. 811]

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Inmarsat Global Limited, Inmarsat Solutions B.V. and their affiliates (collectively, "Inmarsat") file this objection to the Motion[1] filed by the above-captioned debtors ("Debtors") seeking conditional approval of the Disclosure Statement[2] and setting procedures for the

[1] *Emergency Motion of Debtors For Entry of Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of Plan; (II) Conditionally Approving Disclosure Statement, (III) Approving Solicitation Procedures and Form and Manner of Notice of Combined Hearing and Objection Deadline; (IV) Fixing Deadline to Object to Disclosure Statement and Plan; (V) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases; (VI) Approving Plan Sponsor Selection Procedures; and (VIII) Granting Related Relief* [ECF No. 811] ("Motion")

[2] *Disclosure Statement for Joint Chapter 11 Plan of SpeedCast International Limited and its Debtor Affiliates* [ECF No. 810] ("Disclosure Statement").

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confirmation of the Plan.[3]

PRELIMINARY STATEMENT

The above-captioned debtors ("Debtors") seek expedited conditional approval of the Disclosure Statement and a process designed to speed confirmation of the Plan based on disparate treatment for different trade vendors at the Debtors' discretion. Debtors can exercise that discretion to create a class of Trade Vendor Claims who will receive a significant recovery, 40% to 57% according to the Debtors, in contrast to unfavored trade vendors who will receive a recovery estimated at "≥0%." Although a confirmation issue, this obvious gerrymandering of classes and disparate treatment based on that classification is an impermissible manipulation of the reorganization process and should not be approved.

The Disclosure Statement lacks adequate information regarding the classification to obfuscate Debtors' intent. From the perspective of disclosure, the Debtors should be required to disclose the basis for the separate classification. Trade vendors are placed into one of two classes with no information regarding which trade vendors will be in which class or even what criteria will be used to categorize them. We know that both classes contain trade vendors that will continue to provide services (an ostensibly acceptable basis for separate classification). But what is the rule that will guide the Debtors' decisions? The Debtors retain discretion to decide who goes into which category outside of the Plan and Disclosure Statement – a decision that will evidently be made to ensure an accepting class of claims. If the guiding principle is to obtain a "yes" vote, the Circuit case law is clear that the Plan may not be confirmed. Absent that clear information, creditors lack information regarding how they will be treated until they are informed of their

[3] *Joint Chapter 11 Plan of SpeedCast International Limited and Its Debtor Affiliates*, Exhibit A to the Disclosure Statement ("Plan")

treatment through communications with the Debtors through receipt of a ballot or private discussions.

Inmarsat has filed claims totaling $30.5 million and may have additional claims totaling tens of millions of dollars if an agreement, currently being negotiated with the Debtors is not finalized and approved. Based on discussions with the Debtors, in either event, Inmarsat's services will be required going forward as such services – valued at millions of dollars a year – are required by the Debtors customers, including a leading shipping company. These crucial services would result in Inmarsat's claims being Trade Vendor Claims. However, upon information and belief, the Debtors have not included Inmarsat's claims in their estimation of the Trade Vendor Claims. Nor have they disclosed how the size of Inmarsat's claims would alter recoveries to Trade Vendor Claims. Nor is there any disclosure on the impact to other customers if the Debtors reject the Inmarsat Agreements – in particular that hundreds of contracts would be breached or need to be rejected if Inmarsat no longer provided such services.

The Disclosure Statement is wholly lacking in any meaningful information for Other Unsecured Creditors to determine what their likely recovery potential is. There is simply no information on the Litigation Trust that ostensibly will fund payment. And the little information that will be provided about the Litigation Trust will be provided without adequate time for creditors to receive the information, analyze it, and determine how to vote or whether to object to the Plan. Similarly missing is information regarding the effect of consummation, or lack thereof, of a proposed transaction with Inmarsat. The proposal not only provides cash, but eliminates material claims against the estate from both Inmarsat and the thousands of creditors that will have their claims rejected if the proposed transaction is not approved.

Nor can creditors determine whether this outcome is better than a liquidation because, although there is no substantive consolidation, the liquidation analysis is a group-wide analysis, not a debtor by debtor analysis.

The proposed procedures are designed to assist the Debtors in ensuring that they obtain a consenting class of creditors with limited opposition. First, the procedures allow the Debtors to strip creditors of their rights to vote by filing a simple objection to the claim, rather than asking the Court to disallow that claim. Second, they permit the Debtors to reject contracts prior to confirmation, in a manner that denies those creditors the right to vote if the rejection occurs after the Voting Record Deadline but before Confirmation, the result of which will be potential blanket disenfranchisement of holders of rejected contract claims.

Compounding the structural disenfranchisement of a class of trade creditors, the schedule proposed by the Debtors uses the Thanksgiving holiday to limit meaningful creditor review so that they may vote or object to the Plan. The proposed procedures set the voting and objection deadline for Monday, November 30, 2020, the Monday after Thanksgiving. Just 6 days prior – and only 1 working day prior with the Thanksgiving Holiday and a weekend in between – the Debtors propose to file the Plan Supplement, which includes critical documents related to the Plan and particularly the Litigation Trust and its assets even though that is the sole source of recovery for Other Unsecured Creditors. This timing seems designed to ensure that most creditors will not receive those documents with sufficient time to adequately review them, determine how to vote and whether to object, and mail their votes back to the Debtors.

The Court should not approve a Disclosure Statement so lacking in adequate information to enable a meaningful vote let alone one that is based on a Plan that is unconfirmable. The

Procedures – designed to minimize creditor participation and allow the Debtors to manipulate the vote – should not be approved as they are.

BACKGROUND

Debtors filed the above-captioned bankruptcy case on April 23, 2020 (the "Petition Date").

Prior to the Petition Date, Inmarsat and the Debtors entered into numerous agreements (collectively, the "Agreements") for the provision of bandwidth services that the Debtors in turn provide to its end-user customers. Inmarsat is the largest unsecured trade creditor in this bankruptcy case with filed claims of over $30.5 million.[4]

Post-petition, Inmarsat has continued to provide services to the Debtors consistent with the terms of the Agreements. The future of the Agreements and the resolution of claims held by Inmarsat are the subject of ongoing negotiations. However, those negotiations are ongoing and may not be concluded in the near term, and the failure of those talks would have a material effect on the success of the Plan – something else that Debtors have not addressed or even disclosed.

Pursuant to the Agreements, significant amounts will come due to Inmarsat before the end of the year. Additionally, to the extent an agreement is not reached and/or the Debtors decide to

[4] *See* Proof of Claim Nos. 1085 (filed by Inmarsat Global Limited against SpeedCast Limited in the approximate amount of $8,007,394.00), 1086 (filed by Inmarsat Solutions (Canada) Inc. against SpeedCast France SAS in the amount of $37,641.00), 1087 (filed by Inmarsat Solutions (Canada) Inc. against Speedcast Cyprus Ltd. in the amount of $51,272.00), 1088 (filed by Inmarsat Solutions B.V. against SpeedCast Netherlands B.V. in the amount of $137,169.00), 1089 (filed by Inmarsat Solutions B.V. against SpeedCast France SAS in the amount of $111,915.00), 1090 (filed by Inmarsat Solutions (Canada) Inc. against Caprock Comunicações do Brasil Ltda.), 1091 (filed by Inmarsat Solutions (Canada) Inc. against Satellite Communications Australia Pty Ltd in the amount of $165.00), 1092 (filed by Inmarsat Solutions (US) Inc. against Telaurus Communications LLC in the amount of $143,465.00), 1093 (filed by Inmarsat Global Limited against Speedcast Cyprus Ltd. in the amount of $9,021,419.00), 1095 (filed by Inmarsat Inc. against Telaurus Communications LLC in the amount of $2,398.00), 1096 (filed by Inmarsat Solutions B.V. against Speedcast Cyprus Ltd. in the amount of $781,100.00), 1098 (filed by Inmarsat Solutions AS against Speedcast Cyprus Ltd. in the amount of $72,601.00), 1099 (filed by Inmarsat Global Limited against Evolution Communications Group Limited in the amount of $12,232,056.00), 1183 (filed by Inmarsat Solutions B.V. against Evolution Communications Group Limited in the amount of $575.00).

reject the Agreements, Inmarsat will have substantial additional claims arising from rejection that Debtors also have not described should Debtors not conclude a sale to Inmarsat and obtain Inmarsat's release of its substantial claims. Between the payments that will come due and any rejection damages claims, Inmarsat would have additional claims totaling tens of millions of dollars, with an immediate effect on Debtors' ability to service its future operations – also not covered by the current Disclosures – leaving creditors without sufficient information to assess the real prospects of the Plan.[5]

If the ongoing negotiations are successful, Inmarsat would continue to provide extensive service to the Debtors on an ongoing basis, including service to over 600 vessels, including hundreds owned by a leading shipping company. Those services are required by the Debtors customers. Even in the absence of a deal, upon information and belief, Inmarsat understands that the Debtors would require the same services from Inmarsat in order to fulfill their customers' needs.

OBJECTION

I. *The Disclosure Statement Does Not Contain Adequate Information*

Section 1125 of the Bankruptcy Code requires that the Disclosure Statement provide "adequate information," defined 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 reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

[5] Inmarsat reserves all rights to assert that part or all of the amounts that will come due under the agreements are administrative expense claims. Inmarsat reserves all rights to file and assert any and all claims at the appropriate time, including claims that might exceed the amounts set forth in this pleading.

11 U.S.C. § 1125(a)(1). The determination of what constitutes adequate information is within the discretion of the bankruptcy court. *See In re Cardinal Congregate I*, 121 B.R. 760, 764-65 (Bankr. S.D. Ohio 1990). A disclosure statement must contain all material information relating to the risks posed to creditors and equity holders under the proposed plan of reorganization. *See In re Unichem*, 72 B.R. 95 (Bankr. N.D. Ill. 1987).

In order to be approved, a disclosure statement must contain adequate information – "information of a kind, and in sufficient detail . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1). It has been repeatedly held that "[t]he importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court. Given this reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information.'" *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988); *see also In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994) ("Of prime importance in the reorganization process is the principle of disclosure.").

Because a meaningful Plan vote is based upon adequate information being disseminated to the creditors, a disclosure statement should contain "[a]ll factors presently known to the plan proponent that bear upon the success or failure of the proposals contained in the plan." *In re Microwave Prods. of Am., Inc.*, 100 B.R. 376, 377 (Bankr. W.D. Tenn. 1989) (internal quotations omitted); *see also In re Cardinal Congregate I*, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990) ("Generally, a disclosure statement must contain all pertinent information bearing on the success or failure of the proposals in the plan of reorganization."); *In re Feretti*, 128 B.R. 16, 18 (Bankr. D. N.H. 1991). "The primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Diversified Investors Fund*

XVII, L.P., 91 B.R. 559, 561 (Bankr. C.D. Cal. 1988). Creditors rely on the disclosure statement to decide whether not to approve or reject a proposed plan, so Debtors have an affirmative duty to provide a disclosure statement that contains complete and accurate information. *See Krystal Cadillac-Oldsmobile Freight, Inc. v. General Motors Corp.*, 337 F.3d 314, 324 (3d Cir. 2003); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988).[6]

In short, because a disclosure statement must provide enough information for creditors to make informed evaluations of a proposed plan of reorganization as to how to vote, and this current Disclosure simply does not do, the Disclosures should not be disseminated in their current form. *See In re Divine Ripe, L.L.C.,* 554 B.R. 395, 405 (Bankr. S.D. Tex. 2016) (sustaining objection to disclosure statement because the disclosure statement did not contain sufficient information regarding the debtor and its principal's financial resources such that a creditor would be able to determine whether to vote for the plan); *In re Rodriguez Gas & Oil Servs., Inc.,* No. 08-50152, 2008 WL 4533687, at *2 (Bankr. S.D. Tex. Oct. 2, 2008) (denying approval of disclosure statement because the disclosure statement did, "not provide the information in a reasonable way calculated to be understandable and to be absorbed by the typical creditor," due to its length and complexity of the exhibits); *see also In re Dakota Rail Inc.*, 104 B.R. 138, 142 (Bankr. D. Minn. 1989).

A. *The Disclosure Statement Fails To Provide Adequate Information Regarding Classification of Unsecured Creditors.*

Only two classes of claims are entitled to vote under the Plan: (i) Unsecured Trade Claims and (ii) Other Unsecured Claims. Disclosure Statement p. 6. Unsecured Trade Claims, estimated at $64 million to $90 million, will share in a $25 million cash pot and have an Estimated Percentage

[6] *See also Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir. 1994) ("Of prime importance in the reorganization process is the principle of disclosure."); *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170 (Bankr. S.D. Ohio 1988) ("the disclosure statement was intended by Congress to be the primary source of information upon which creditors and shareholders could rely in making an informed judgment about a plan").

Recovery of 40%-57%.[7] Disclosure Statement p. 6; Plan § 4.4. Other Unsecured Claims are estimated at $506 million to $515 million, will receive interests in a Litigation Trust,[8] and have an Estimated Percentage Recovery of ≥0%. Disclosure Statement p. 6; Plan § 4.5. Trade Vendors are split between the two classes. Unsecured Trade Claims means "any Allowed unsecured trade vendor claims against the Debtors held by trade vendors *crucial to the Debtors' businesses*." Plan p. 17 (definition of "Unsecured Trade Claim") (emphasis added). All other unsecured claims, including claims held by trade vendors who are not "crucial to the Debtors' business," are "Other Unsecured Claims." Plan p. 11 (definition of "Other Unsecured Claim").

Nowhere in the Disclosure Statement, however, do Debtors disclose which trade vendors fall within which class or how that determination will be made. Without that information, it is not possible for a creditor to determine how to vote on the Plan because creditors do not know how they will be treated or how many creditors will be placed into which category of trade creditor, i.e., who will be paid and how much in the aggregate the "in the money" category will recover. As a result, Debtors' projections cannot be accurate – certainly Inmarsat cannot determine where it will fall, since the definition for a Trade Vendor Claim would appear to include Inmarsat, who will continue to provide services to the Debtors, which are required to be provided by the Debtors customers with respect to hundreds of vessels at a cost of millions per year. Despite this, upon information and belief, the Debtors do not include Inmarsat as Trade Vendor Claim. Nor can it be determined who else will be in that category, and what burden that will place on the Plan, let alone

[7] The percentage recovery appears inaccurate. At $90 million the recovery would be just under 28% and at $64 million, the recovery would be about 39%. If the recovery is in fact 40%-57%, the Disclosure Statement should explain how that recovery was calculated. This Objection will use the 40-57% identified by the Debtors in the Disclosure Statement, though it may not be correct.

[8] Although Unsecured Trade Claims do not appear to receive any Litigation Trust Interests, they are inexplicably asserted to have a taxable event from receiving such interests. *See* Disclosure Statement Art. VII.(b)(2)(c).

on future operations. And as for future operations, Debtors' unexplained exclusion of Inmarsat's unreleased claims and the ongoing burden of the maritime business on future operations renders the Disclosures meaningless.

This information should be contained within the four walls of the Disclosure Statement. Instead of digestible disclosure of how the decision is made with respect to each trade vendor and the exact criteria used to make such determinations, it appears that classification of trade vendors is left entirely to the Debtors' discretion to be determined and expressed to such trade vendors in non-public communications with each vendor. Leaving such information and determination to the Debtors' discretion outside of the Plan and Disclosure Statement is the antithesis of the public process the bankruptcy laws require. Adequate information is necessary so that creditors, particularly trade vendors, can determine whether the Debtors are being arbitrary to ensure a group of trade vendors that will support the Plan, thereby potentially allowing confirmation. Without clear criteria to inform how classification of trade vendors is occurring, it is impossible to determine whether the classification is an improper attempt to gerrymander the vote. At the very least, the Disclosure Statement should be amended to provide adequate information on the criteria being used to determine in which class each trade vendor is being placed and make clear in which class each particular trade vendor is placed.

B. *Disclosure Statement Fails To Provide Adequate Information Regarding Potential Recoveries of Other Unsecured Creditors.*

Other Unsecured Creditors receive their "Pro Rata share of the Litigation Trust Distributable Proceeds" from the Litigation Trust as and when provided for in the Litigation Trust Agreement. Plan § 4.5. The Disclosure Statement also provides no real estimate of recoveries for Other Unsecured Claims. The allowed amount of Other Unsecured Claims is $506 to $515 million, but the estimated percentage recovery is simply listed as" ≥0%;" the Disclosure Statement simply

states that "[f]or purposes of estimating recoveries, potential recoveries arising from Causes of Action transferred to the Litigation Trust have not been included in the table above." Disclosure Statement p. 6, fn. 6. In contrast, trade vendors placed in the Trade Vendor Class will receive significant returns on their claims projected at 40% to 57%. The Litigation Trust Agreement to fund the former has not been included: it is to be attached to the Plan Supplement, yet as discussed below Debtors intend to provide the Plan Supplement too late for meaningful creditor review.

The law requires more – full and complete information regarding the Litigation Trust Agreement and the potential recoveries and value of claims assigned to the Litigation Trust. Absent such information, Other Unsecured Creditors have no information from which to decide whether to approve the Plan or not. To reach even a 40% recovery would require recovery of hundreds of millions of dollars, which seems unfathomable and, unless true, would render the Plan unconfirmable.

C. *Liquidation Analysis for Each Debtor Entity Should Be Provided.*

It is well-established that a liquidation analysis is necessary in a disclosure statement. *See, e.g.*, *In re Applegate Property, Ltd.*, 133 B.R. 827, 831 (Bankr. W.D. Tex. 1991); *See In re Mbanugo,* No. 08-47449T, 2009 WL 2849066, at *1 (Bankr. N.D. Cal. May 20, 2009) (Holding that disclosure statement could not omit a liquidation analysis even where creditors were proposed to be paid in full and that specific liquidation amounts must be provided and compared to the amounts of claims); *In re Howell,* 2011 WL 1332176 (Bankr. N.D. Ga. Jan. 21, 2011). Here, the overview of significant assumptions indicates that "[t]he liquidation analysis was prepared on a Debtor entity by Debtor entity basis and follows a priority waterfall where assets are liquidated at each Debtor entity," but the liquidation analysis attached *fatally fails to provide such analysis* on a Debtor entity by Debtor entity basis. *See* Disclosure Statement, Exhibit D; *In re Jennifer Convertibles, Inc.,* 447 B.R. 713, 726 (Bankr. S.D.N.Y. 2011) (holding that a separate liquidation

analysis is required for each debtor where debtors fail to establish on the record that substantive consolidation is appropriate and denying confirmation of Chapter 11 plan).

Through the litigation analysis is not segregated by Debtor, the Plan does not provide for substantive consolidation. *See* Plan § 5.15 ("The Plan is a joint plan of reorganization of the Debtors for administrative purposes only and constitutes a separate chapter 11 plan for each Debtor. The plan is not premised upon the substantive consolidation with respect to the Classes of Claims or Interests set forth in the Plan"); Plan § 3.2 ("this Plan is not premised upon and shall not cause the substantive consolidation of the Debtors or any non-Debtor affiliate"). In fact, the Plan says that it "constitutes a separate chapter 11 plan for each Debtor." Plan § 5.16 ("Notwithstanding the combination of the separate plans of reorganization for the Debtors set forth in the Plan for purposes of economy and efficiency, the Plan constitutes a separate chapter 11 plan for each Debtor. Accordingly, if the Bankruptcy Court does not confirm the Plan with respect to one or more Debtors, it may still, subject to the consent of the applicable Debtors and the Plan Sponsor, confirm the Plan with respect to any other Debtor that satisfies the confirmation requirements of section 1129 of the Bankruptcy Code."). Since the Plan constitutes separate plans for each Debtor, the Disclosure Statement should provide a liquidation analysis on a Debtor entity by Debtor entity basis to give fair information to creditors of separate entities who must determine how they would fare in a liquidation. *In re Jennifer Convertibles, Inc.,* 447 B.R. 713, 726 (Bankr. S.D.N.Y. 2011). The liquidation analysis here simply is not sufficient to provide the required information.

D. *Disclosure Statement Fails To Disclose Proposed Inmarsat Transaction*

The Disclosure Statement is shockingly silent on any discussion of the transaction ("Inmarsat Transaction") being negotiated between Inmarsat and the Debtors even though the disposition of those assets – and corresponding release of the largest trade creditor's claims – would have a significant impact on potential recoveries under the Plan. The Inmarsat Transaction

would provide for the sale of certain assets by the Debtors to Inmarsat. Among other terms, the Plan assumes Inmarsat would waive the claims it holds against the Debtors. Such claims include the approximately $30 million of existing claims, as well as a seven-figure unearned discount for which Debtors will not qualify because their volumes do not warrant the pricing they have received since filing. All of these amounts will come due before the end of the year, *plus* any claims resulting from the rejection and/or termination of existing Agreements, which would likely be tens of millions of dollars. In short, the Inmarsat Transaction has a material impact on the Plan, dependent on whether the transaction is approved or not, and that must be explained in the Disclosure Statement to allow for any meaningful assessment of the Plan.

Additionally, rejection of the Inmarsat Agreements would likely result in approximately 750 additional claims arising from the 2500 vessels that currently receive services from Inmarsat that would no longer receive services. Without Inmarsat's services, those vessels would no longer receive service and would have claims against the Debtors. The fate of the Debtors' maritime business is a material fact on which all creditors are entitled to a full explanation to assess whether the Plan is preferable to liquidation. The Disclosure Statement's omission of both the Inmarsat Transaction and its pivotal role in future operations in an inexcusable flaw that must be remedied at this stage of the proceedings.

In concrete terms, this is what the omitted discussion means: if the Inmarsat Transaction is approved, Inmarsat, at the insistence of the Debtors, would continue to provide broadband services to over 600 vessels, including to hundreds of vessels owned by a leading shipping company. The Debtors are contractually required to provide Inmarsat services to those vessels and Inmarsat would be paid millions of dollars a year for those required services. If, however, the Inmarsat Transaction is not finalized or approved, the failure of the Debtors to provide Inmarsat services to

those hundreds of vessels would result in numerous claims from customers. A meaningful Disclosure should describe and discuss this ongoing relationship with Inmarsat and advice creditors of Debtors alternatives if the Inmarsat Transaction is not approved.

To the extent that Inmarsat's ongoing services are crucial to the Debtors, Inmarsat's claims would be Trade Vendor Claims. However, the Disclosure Statement fails to address the impact on recoveries to Trade Vendor Claims if Inmarsat's claims are Trade Vendor Claims. In light of the size of Inmarsat's claims, such disclosure is necessary as it could result in recoveries at half the level currently stated.

Since the Debtors would have to breach their agreements with hundreds of customers if Debtors cannot obtain services from Inmarsat, that fact also should be disclosed for its direct impact on the treatment creditors receive. And if Debtors propose to reject these underlying contracts and breach hundreds of contracts, that information should be provided now, not in a Plan Supplement that, as discussed below, will be filed too late for creditors to give it any kind of meaningful review.

II. The Plan Is Patently Unconfirmable

A disclosure statement cannot be approved where a plan is unconfirmable as a matter of law. "A disclosure statement must contain adequate information, describing a confirmable plan. 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 Quigley Co.*, 377 B.R. 110, 115-16 (Bankr. S.D.N.Y. 2007); *see also In re Filex, Inc.*, 116 B.R. 37, 41 (Bankr. S.D.N.Y. 1990) ("A court approval of a disclosure statement for a plan which will not, nor cannot, be confirmed by the Bankruptcy Court is a misleading and artificial charade which should not bear the imprimatur of the court."); *In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012) (affirming bankruptcy court's determination that plan was unconfirmable at disclosure statement stage

because, "a bankruptcy court may address the issue of plan confirmation where it is obvious at the disclosure statement stage that a later confirmation hearing would be futile because the plan described by the disclosure statement is patently unconfirmable,"); *In re O'Leary,* 183 B.R. 338, 342 (Bankr. D. Mass. 1995) (refusing to approve disclosure statement where plan was patently unconfirmable); *In re Atlanta W. VI,* 91 B.R. 620, 622 (Bankr. N.D. Ga. 1988) (same).[9]

The Plan impermissibly puts trade vendors into two separate classes so as to gerrymander the vote and obtain a consenting class. *See*, *Matter of Greystone III Joint Venture,* 995 F.2d 1274, 1279 (5th Cir. 1991), *on reh'g* (Feb. 27, 1992) (classification to gerrymander the plan vote, for the sake of effectuating a cramdown violates the bankruptcy code.). Indeed, the Plan also wrongfully provides for drastically different treatment of creditors of the same priority. While these also are

[9] Courts should not approve a disclosure statement that relates to a non-confirmable plan. *See In re Phoenix Petroleum Co.,* 278 B.R. 385, 394 (Bankr. E.D. Pa. 2001) ("If the disclosure statement describes a plan that is [non-confirmable], the court should exercise its discretion to refuse to consider the adequacy of disclosures"); *In re Main Street AC, Inc.,* 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) ("It is well accepted that a court may disapprove of a disclosure statement, even if it provides adequate information about a proposed plan, if the plan could not possibly be confirmed"); *In re Allied Gaming Mgmt., Inc.,* 209 B.R. 201, 202 (Bankr. W.D. La. 1997) ("[N]otwithstanding adequate disclosure of information required by section 1125(b), a disclosure statement should not be approved if the proposed plan, as a matter of law, cannot be confirmed"); *In re United States Brass Corp.,* 194 B.R. 420, 422 (E.D. Texas 1996) (disapproving disclosure statement is appropriate when confirmation of the underlying plan is impossible); *In re Eastern Maine Electric Cooperative, Inc.*, 125 B.R. 329, 333 (Bankr. D. Maine 1991) (Court should exercise its discretion to refuse to consider the adequacy of disclosures where the disclosure statement describes a plan that is fatally flawed and cannot be confirmed); *In re Cardinal Congregate I,* 121 B.R. 760, 764 (Bankr. S.D. Ohio 1990) (Disapproval of a disclosure statement is appropriate "where it describes a plan of reorganization which is so fatally flawed that confirmation is impossible"); *In re Monroe Well Service, Inc.,* 80 B.R. 324, 333 (Bankr. E.D. Penn. 1987) (Court should disapprove of a "disclosure statement, even if it properly summarizes and provides adequate information about a proposed plan, when . . . the plan could not possibly be confirmed"); *See also* 7 Collier on Bankruptcy 15th Ed. Revised ¶ 1125.03[5] *citing In re Century Inv. Fund VIII Ltd. Partnership,* 114 B.R. 1003 (Bankr. E.D. Wis. 1990); *In re 266 Washington Assocs.,* 141 B.R. 275, *aff'd* 147 B.R. 827 (E.D. NY 1992); *In re Market Square Inn, Inc.*, 163 B.R. 64 (Bankr. W.D. Pa 1994); *In re Cardinal Congregate I,* 121 B.R. 760 (Bankr. S.D. Ohio 1990); *In re Filex, Inc.* 116 B.R. 37 (Bankr. S.D. NY 1990). Thus, "the Bankruptcy Court may refuse to approve a disclosure statement whenever doing so would be futile, i.e., when the accompanying plan could not be confirmed as a matter of law." W. Homer Drake, Jr. and Christopher S. Strickland, Chapter 11 Reorganizations, Second Edition, § 13:8. A plan is only confirmable if it complies with all provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(1).

objections to be raised at Confirmation, Debtors nevertheless have an obligation to provide creditors with enough information to be able to make an objection at Confirmation. When the Disclosures fail to provide that information – in this instance how they will divide trade creditors and that they will do so after defeasing a large number of creditors of their franchise, the Disclosures themselves must be revised before being disseminated

A. *The Debtors Are Given Discretion on Classification To Gerrymander the Vote*

The Debtors propose to establish Class 4A, comprised of a small group of hand-selected trade vendors, to obtain an assenting impaired class. Such gerrymandering is impermissible. Class 4A consists of the Trade Vendor Claims, which are claims held by a small group of trade vendors that the Debtors select, based on unknown criteria, allegedly because they are "crucial" to the business, are to receive a share of $25 million, with an expected return of 40-57% recovery. Other general unsecured creditors, including other trade vendors who, among others, provide the same exact types of services and will continue to do so post-confirmation, are instead placed in Class 4B, and may or may not receive any recovery at all. The only imaginable purpose for such a classification is to gerrymander a class of claims to vote favorably for the Plan.

The fact that trade vendors who provide and will continue to provide the same types of services to the Debtors are placed into two separate classes, with no explanation whatsoever, reveals the artificial nature of the split and the Debtor's intention to gerrymander an accepting class. The only plausible conclusion is that the Debtor has attempted to artificially create Class 4A in order to be certain of securing an assenting class.

A debtor proposing a cram down plan must show a legitimate reason (other than the need for obtaining the vote of an impaired class) for separately classifying a claim. *See*, *Matter of Greystone III Joint Venture,* 995 F.2d 1274, 1279 (5th Cir. 1991), *on reh'g* (Feb. 27, 1992) (reversing and remanding district court's judgment upholding confirmation order of debtor's

Chapter 11 plan where debtor had classified a creditor's deficiency claim differently to, "simply mask the intent to gerrymander the voting process,"); *In re Save Our Springs (S.O.S.) All., Inc.,* 632 F.3d 168, 174 (5th Cir. 2011) (affirming order denying confirmation of Chapter 11 plan where it found that non-creditor interests purportedly possessed by unsecured creditor that Chapter 11 debtor had placed in separate class from other general unsecured creditors, despite fact that plan provided identical treatment for both classes, were not such as to have influenced its vote on plan and that separate classification was thus an improper attempt at gerrymandering vote on plan).

Numerous other courts agree that separate classification to gerrymander a vote is impermissible. *See In re Boston Post Road Ltd. Partnership*, 21 F.3d 477, 481-83 (2d Cir. 1994), cert. denied, 513 U.S. 1109 (1995); *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs.,* 987 F.2d 154, 159 (3d Cir. 1993); *In re Bryson*, 961 F.2d 496, 502 (4th Cir.) cert. denied, 506 U.S. 866 (1992); *In re Equitable Development Corp.*, 196 B.R. 889, 892 (Bankr. S.D. Ala. 1996) ("this Court holds that separate classification of claims solely to create an impaired class that will assent to the plan is impermissible; there must be credible evidence of a legitimate reason for such separate classification."); *In re Austin Ocala Ltd.,* 152 B.R. 773, 775 (Bankr. M.D. Fla. 1993); *In re Roswell-Hanover Joint Venture*, 149 B.R. 1014, 1019-20 (Bankr. N.D. Ga. 1992). There is no legitimate reason to split the trade vendors into two separate classes. *In re Greystone III Joint Venture*, 995 F.2d at 1278 ("There is no suggestion in the Code, however, that a class may be created under § 1122(b) in order to manipulate the outcome of the vote on a plan, rather than simply to enhance administration of the plan."). The bottom line is that "[f]acilitating a plan's confirmation is definitely not a valid justification." *In re Pac. Lumber Co.*, 584 F.3d 229, 251 (5th Cir. 2009) (although finding the issue equitably moot, the court noted the bifurcation of unsecured

trade claims and deficiency claims was "even more troubling" and that the bankruptcy court's findings that the trade claims "are necessary to sustain the reorganization are odd")

B. *The Plan Provides Disparate Treatment to Creditors of the Same Priority*

A plan cannot discriminate unfairly between claims of equal priority and must be fair and equitable. 11 U.S.C. § 1129(b)(1). In general, the Bankruptcy Code is premised on the rule of equality of treatment. Creditors with claims of equal rank are entitled to equal distribution. *See In re Sentry Operating Co. of Texas, Inc.,* 264 B.R. 850, 863 (Bankr. S.D. Tex. 2001). "Equality of distribution among creditors is a central policy of the Bankruptcy Code." *In re Combustion Engineering, Inc.,* 391 F.3d 190, 239 (3d Cir. 2004); *see also In re Barney and Carey Company,* 170 B.R. 17, 25 (Bankr. D. Mass. 1994) ("The prohibition against unfair discrimination requires equal treatment of similarly situated creditors."); *In re WR Grace & Co.,* 729 F.3d 332, 343 (3d Cir. 2013) (*quoting Begier v. IRS*, 496 U.S. 53, 58, 110 S. Ct. 2258, 110 L. Ed. 2d 46 (1990)); *In re AOV Indus., Inc.,* 792 F.2d 1140, 1150 (D.C. Cir. 1986); *In re Orfa Corp. of Philadelphia,* 129 B.R. 404, 416 (Bankr. E.D. Pa. 1991).

Yet, though Debtors try to conceal it behind their "discretion," the Plan contemplates unequal distributions. Trade vendors who are placed in the Trade Vendor Claim class will receive 40-57% of their claims. Other trade vendors, who are relegated to the Other Unsecured Claims class will receive nowhere near that amount, and may receive nothing. Such disparate treatment of similarly situated creditors is not permitted. *In re Pac. Lumber Co.*, 584 F.3d 229, 251 (5th Cir. 2009) (noting that, while equitable mootness barred review of the issue, a "plan must not discriminate unfairly between claims of equal legal priority," and disparate classification of unsecured claims by debtor resulted in one class receiving 75-90% of their claims with the other unsecured class likely to receive nothing resulted in just that); *In re Sentry Operating Co. of Texas, Inc.,* 264 B.R. 850, 862 (Bankr. S.D. Tex. 2001) (denying confirmation of Chapter 11 plan where

debtor proposed to, "pay a greater percentage distribution to Class 3 creditors than it pays to Class 4 creditors, even though both have equal rank under state law and under the distribution priorities of the Bankruptcy Code,"); *In re Dziedzic*, 9 B.R. 424, 427 (Bankr. S.D. Tex. 1981) (denying confirmation of Chapter 13 plan where debtor had proposed to pay his credit union in full while other unsecured creditors received only 26% of their claims).

Such a Plan where some, hand-picked, trade vendors are treated substantially better than other trade vendors, even worse on undisclosed and potentially discriminatory criteria at the discretion of Debtors, can never pass muster.[10]

III. *The Proposed Procedures Improperly Deprive Creditors of Important Rights*

The procedures proposed also would unduly impair creditors' voting rights. The proposed procedures would limit meaningful creditor review of critical documents by placing key dates immediately surrounding the Thanksgiving holiday, without a reason that such timing is absolutely required, and force votes based on too little time to give the facts any meaningful study.

A. *Procedures Permit Debtors To Manipulate the Vote*

The solicitation procedures would grant the Debtors the ability to deprive creditors of their right to vote, their right to opt-out of the third-party releases, and permit the Debtors to manipulate voting to obtain confirmation of the Plan.

Inmarsat has filed proofs of claim against the Debtors totaling over $30.5 million. Those claims are *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f); *See In re Today's Destiny, Inc.,* No. 05-90080, 2008 WL 5479109, at *4 (Bankr. S.D. Tex. Nov. 26, 2008) ("If the proof of claim is filed in accordance with Rule 3001(c) and Official Form 10,

[10] To the extent the Court approves the Debtors' Motion, Inmarsat reserves all rights to object to the improper classification and treatment of claims in any objection to the Plan and the Plan confirmation hearing.

'Rule 3001(f) is triggered, giving the creditor's claim prima facie validity.'"); *In re High Standard Mfg. Co., Inc.*, No. 15-33794, 2016 WL 5947244, at *2 (Bankr. S.D. Tex. Oct. 13, 2016) ("A party that files a proof of claim in accordance with the Federal Rules of Bankruptcy Procedure is deemed to have established a prima facie case against the debtor's assets.").

Debtors bear the initial burden to overcome a claim's presumptive validity. *See In re Armstrong,* 347 B.R. 581, 585 (Bankr. N.D. Tex. 2006) (overruling certain of debtor's objections to prima facie valid proofs of claim where debtor had, "not offered enough evidence to rebut the presumption of validity,"); *In re Brunson,* 486 B.R. 759, 773 (Bankr. N.D. Tex. 2013) (overruling debtor's objections to proofs of claim where objection was not based on any particular evidence in the record rebutting prima facie validity, but simply an allegation that the attached documentation was insufficient); *In re Bavelis,* 773 F.3d 148, 154 (6th Cir. 2014). Debtors, however, propose solicitation procedures that would allow them to file objections to prevent such claimholders from voting their whole claim, or voting at all, by placing the burden on the creditor to seek and obtain expedited relief. The Court should not approve such procedures.

First, the proposed procedures allow the Debtors to file a simple objection to a claim at any time prior to October 24, which means the claimholder is not permitted to vote to accept or reject the Plan unless the creditor files its own motion and seeks expedited review with this Court. Motion ¶ 30(d) (A creditor is not entitled to vote to the extent "such creditor's Claim is subject to an objection or request for estimation filed on or before October 24, 2020, subject to the procedures set forth below for filing a Rule 3018 Motion."); ¶ 40 ("if the Debtors have filed an objection to, or a request for estimation of, a Claim on or before October 24, 2020 such Claim is temporarily disallowed for voting purposes, except as ordered by the Court before the Voting Deadline; provided, however, that, if the Debtors' objection seeks only to reclassify or reduce the Allowed

amount of such Claim, then such Claim is temporarily Allowed for voting purposes in the reduced amount and/or as reclassified (as applicable), except as may be ordered by this Court prior to or concurrent with entry of an order confirming the Plan.").

Specifically, the proposed procedures would require the creditor to file a motion seeking temporary allowance no later than November 9, 2020, but the Debtors would not need to count such a vote "unless the Court enters an order on or before the Voting Deadline (November 30) granting the creditors' motion. Motion ¶ 41.

The proposed process – a process which turns customary rejection procedures on their head – would disenfranchise creditors before they know it. If the Debtors want to disallow a claim for voting purposes, they should be required to file an objection, seek a hearing, and obtain a Court order prior to that vote being disallowed. This would impose no burden on Debtors – the bar date for claims was months ago, on August 6 – so Debtors have had time to object to claims they believe are improper. The proposed burden to obtain a court order on an expedited basis, with the last portion of the limited time frame occurring over the Thanksgiving holiday should not rest on the creditors. If the Debtors want to disallow claims, they should be the ones seeking expedited relief.

Second, the proposed procedures would establish a Voting Record Date of October 19, 2020. Motion ¶ 4. Only holders of Claims as of the Voting Record Date are entitled to vote to accept or reject the Plan. Motion ¶ 24. This would allow the Debtors to deprive potential creditors of their right to vote. To the extent that the Debtors reject a contract, after the Voting Record Date, but prior to the Plan Confirmation Hearing, that rejection would result in a claim. The procedures, however, would deprive the counterparty from voting its claim. If the Debtors reject contracts with Inmarsat, the rejection damages could reach tens of millions of dollars. The Debtors should not be permitted to prevent creditors from voting claims simply by timing rejection motions.

The proposed structure is even more problematic because the Plan contains releases that are effective against parties who do not vote. See Plan §10.7 (Releases by Holders of Claims and Interests) & Plan § 1.1 (defining Releasing Parties to include "the holders of all Claims whose vote to accept or reject the Plan is solicited but that do not vote either to accept or to reject the Plan"). In other words, Debtors propose to hobble creditors' voting rights and then, when they don't vote, force release of their claims. The obvious solution is not to approve the Procedures unless they are revised to require the Debtors to obtain a court order disallowing a claim for voting purposes before such claim is either not allowed to vote or is only entitled to vote at a reduced amount.

B. *Procedures Are Designed To Limit Creditor Review of Key Documents*

The proposed procedures also are designed to limit creditor participation and review of the Plan Documents by compressing the timeline and scheduling key events surrounding the Thanksgiving holiday.

Although the Bankruptcy Rules generally require 28 days-notice of the hearing on approval of the Disclosure Statement, and the Local Rules provide for conditional approval of a disclosure statement on "at least fourteen (14) days' notice to the United States Trustee. . . the twenty (20 largest unsecured creditors and all parties who have requested service" this already expedited process was not sufficient for the Debtors. Fed. R. Bankr. Pro. 2002(b), Local Bankruptcy Rule 3016-2. The Debtors filed their Motion along with the Disclosure Statement and Plan late on Saturday, October 10, 2020 and set the matter for hearing only 9 days – 6 business days – later. No specific facts support their request for expedited relief. Only a vague, generic, and conclusory statement that conditional approval is warranted and appropriate was provided. Motion ¶ 16.

The schedule proposed by the Debtors also was designed to make Plan objections even more unlikely by limiting creditor review of key documents. Debtors propose to file the Plan

Supplement by Tuesday, November 24, 2020. Motion ¶ 4. That Plan Supplement[11] will include critical documents for creditors to review including the Litigation Trust Agreement, the selection of the Litigation Trustee, the schedule of retained Causes of Action to be vested in the Litigation Trust, New Speedcast Parent and/or the Other Reorganized Debtors, and the Non-Released Party Exhibit (listing entities and persons who will not be released. Plan pp. 12-13. It will also include the list of contracts to be assumed. Any contract not listed there will be rejected. Plan § 8.1. As discussed above, if the Inmarsat Transaction is not approved and the Debtors decide to reject the Inmarsat Agreements, along with the underlying customer contracts, hundreds of additional claims might exist, but those creditors will lack sufficient time to vote, let alone study the facts on which they are to vote – and that assumes they have not been defeased of their votes as described above.

The only recovery proposed for Other Unsecured Claims are the Litigation Trust Distributable Proceeds. But the documents with all the information about the Litigation Trust and its assets are not in the Disclosure Statement and will not be provided in the Plan Supplement until the Tuesday before Thanksgiving, November 24, 2020 – only 6 days prior to the Voting and Objection Deadline of Monday, November 30, 2020 – and only 1 business day before the vote.

[11] "***Plan Supplement*** means a supplement or supplements to this Plan containing certain substantially final forms of documents relevant to the implementation of this Plan, to be filed with the Bankruptcy Court prior to the Confirmation Hearing, which shall include (i) the New Organizational Documents and any other Amended Organizational Documents (to the extent such other Amended Organizational Documents reflect material changes from the Debtors' existing organizational documents and bylaws); (ii) the slate of directors to be appointed to the New Board, to the extent known and determined; (iii) with respect to the members of the New Board, to the extent known and determined, information required to be disclosed in accordance with section 1129(a)(5) of the Bankruptcy Code; (iv) the Corporate Restructuring Steps; (v) the form of Litigation Trust Agreement, including the selection of the Litigation Trustee; (vi) the schedule of retained Causes of Action to be vested in the Litigation Trust, New Speedcast Parent and/or the other Reorganized Debtors as provided herein; (vii) the Schedule of Assumed Contracts and Leases; (viii) the Non-Released Party Exhibit; and (ix) to the extent applicable, the Additional Party List; provided, that, through the Effective Date, the Debtors shall have the right to amend documents included in, and exhibits to, the Plan Supplement or amendments thereto in accordance with the terms of (and subject to the consent rights provided in) this Plan." Plan pp. 12-13.

The Court should not permit the Debtors to impair meaningful review in this manner. Even assuming the December 10 confirmation date (which also has not been justified), at a minimum the deadline for Voting and Objections should be Thursday, December 3 with the Debtors' Replies due on December 7 (as proposed). If Debtors feel after months of dawdling on the Plan they must now expedite the process, they should bear the burden of shortened time-frames.

RESERVATION OF RIGHTS

Inmarsat reserves the right to raise any and all objections to the Plan and/or confirmation of the Plan, the classification of Inmarsat's claims under the Plan, the treatment of Inmarsat's claims or contracts pursuant to the Plan, the right to assert that part or all amounts owed to Inmarsat are administrative expense claims, and to seek any further relief that is appropriate.

CONCLUSION

For the reasons set forth above, Inmarsat respectfully requests that the Court deny approval of the Motion, and any additional relief it may be entitled, whether at law or in equity.

Dated: October 16, 2020
Houston, Texas

Respectfully submitted,

/s/ Jason L. Boland

Jason L. Boland (SBT 24040542)
Bob B. Bruner (SBT 24062637)
NORTON ROSE FULBRIGHT US LLP
1301 McKinney Street, Suite 5100
Houston, Texas 77010
Telephone: (713) 651-5151
Facsimile: (713) 651-5246
Email: jason.boland@nortonrosefulbright.com
Email: bob.bruner@nortonrosefulbright.com

-and-

Michael Dockterman (*pro hac vice*)
Steptoe & Johnson LLP
227 West Monroe Street, Suite 4700
Chicago, IL 60606
Telephone: (312) 577-1300
E-mail: mdockterman@Steptoe.com

Alfred M. Mamlet (*pro hac vice*)
Joshua R. Taylor (*pro hac vice*)
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
Telephone: (202) 429-6205
E-mail: amamlet@Steptoe.com
E-mail: jtaylor@Steptoe.com

Jeffrey Reisner
633 West 5th Street Suite 1900,
Los Angeles, CA 90071
Telephone: (213) 439-9400
E-mail: jreisner@steptoe.com

Counsel to Inmarsat

CERTIFICATE OF SERVICE

I hereby certify that on October 16 2020, a true and correct copy of the foregoing was served on all parties registered to receive electronic notice through the Court's CM/ECF automatic electronic notice system.

By: */s/ Bob B. Bruner*
Bob B. Bruner