IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
J.L. FRENCH AUTOMOTIVE CASTINGS, INC., et al.,[1]	:	Case No. 09-12445 (KG)
Debtors.	:	Jointly Administered

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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[1] The Debtors in these cases along with the last four digits of each of the Debtors' federal tax identification numbers are: J.L. French Automotive Castings, Inc. (3670); French Holdings LLC (0518); Nelson Metal Products LLC (4939); Allotech International LLC (5832); J.L. French LLC (8901); J.L. French Automotive, LLC (7075); Central Die, LLC (7793). The Debtors' headquarters and mailing address is: 3101 South Taylor Drive, Sheboygan, WI 53082.

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J.L. French Automotive Castings, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, "Debtors") hereby submit this memorandum of law (the "Memorandum") in support of confirmation of the Debtors' First Amended Joint Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code (docket no. 245, the "Plan") pursuant to section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan, or, if not defined in the Plan, then as defined in the in the Disclosure Statement (docket no. 246).

I.

BACKGROUND AND BRIEF DESCRIPTION OF PLAN AND VOTING

The Debtors are leading global designers and producers of high-pressure aluminum die-castings, specializing in automotive powertrain components. They have unionized manufacturing facilities located in Kentucky and Wisconsin. The Debtors currently produce a broad range of aluminum die-cast components and assemblies, including engine blocks, oil pans, transmission cases, engine covers, bedplates, ladderframes, cam covers, and front end accessory drive brackets. The Debtors depend upon a select group of OEMs and first-tier automotive part suppliers for a majority of their sales. During 2008, approximately 95% of the Debtors' sales revenue was attributable to just four customers— Ford Motor Company, General Motors Corporation, Magna International, Inc., and Chrysler, LLC (the "Principal Customers").

As described in the Debtors' Disclosure Statement, while most of the Debtors' product lines are profitable, prior to the Petition Date the Debtors' financial results were seriously impaired by the loss of sales volume under many of their existing customer contracts. The precipitous decline in volume under these contracts and related loss of revenue rendered the

Debtors unable to generate sufficient cash flow to service their debt obligations. The Debtors' financial woes were exacerbated by the refusal of some of their customers to award certain new business because of the Debtors' over-leveraged balance sheet. In the months prior to the Petition Date, the Debtors had no access to working capital and were unable to stay current on their payment obligations under the First Lien and Second Lien Credit and Guaranty Agreements.

Several months prior to the Petition Date, the Debtors engaged in discussions with its Principal Customers and its principal Creditors to put together the essential pieces of an overall restructuring of its capital structure and certain accommodations from the Principal Customers. The Plan represents the culmination of several months of prepetition and post-petition negotiations, and accomplishes a very significant reduction in debt, and many of the accommodations the Debtors sought from their Principal Customers. The Plan has the support of substantially all of the Debtors' Creditors, and the Principal Customers.

Under the Plan, approximately $160 million of First Lien Claims and $64 million of Second Lien Claims will be converted into equity interests in Reorganized Debtors, and approximately $50 million of immediately due First Lien Revolving Claims will be converted into a four-year term loan. All of this is being accomplished with the full consent of the secured lenders involved. Upon the Effective Date of the Plan, the Debtors expect certain new business and price accommodations from one or more of the Principal Customers to go into effect.

The Plan does not impair the Debtors' collective bargaining agreements, does not seek to modify any obligations under the Debtors' unionized employees' pension plans, and does not seek to relieve the Debtors from their ongoing obligations under state and federal

environmental laws. The provisions of the Plan relating to those obligations have been approved by representatives of the Pension Benefit Guaranty Corporation and the U.S. Environmental Protection Agency.

Three Classes of Creditors were entitled to vote on the Plan: Class 3 (First Lien Claims), Class 4 (Second Lien Claims) and Class 5 (General Unsecured Claims). The Vote Certification filed with the Court prior to the Confirmation Hearing establishes that Classes 3, 4 and 5 voted to accept the Plan. The vote of Classes 3 and 4 in favor of the Plan were unanimous. Class 5 voted 89% in number and 98% in dollar amount in favor of the Plan. However, because Class 6 Preferred Equity Interests and Class 7 Common Equity Interests are receiving nothing under the Plan, they are deemed to have rejected the Plan, and the Debtors must confirm the Plan under the cramdown provisions of section 1129 (b) of the Bankruptcy Code.

As described in the Going Concern Valuation contained in the Plan Supplement, the post-Effective Date going concern value of the Reorganized Debtors is between $120 million and $150 million. The Allowed Claims of the First Lien Lenders are in excess of $210 million, and they hold liens on substantially all of the assets of the Debtors. Thus, Classes junior in priority to Class 3 (which accepted the Plan), like Classes 5, 6 and 7 can have no complaint under Bankruptcy Code Section 1129(b) if they receive less than payment in full on their Claims, or nothing on account of their Equity Interests. Based upon the Going Concern Valuation, the Plan, as required by section 1129(b) of the Bankruptcy Code, does not discriminate unfairly and is fair and equitable with respect to all rejecting Classes.

Similarly, no Holder of Claims or Equity Interests that voted against confirmation of the Plan has any credible argument that it would receive more in a chapter 7 liquidation than it is receiving under the Plan. The Liquidation Analysis contained in the Plan Supplement

provides a reasonable estimate of the liquidation values of the Debtors (approximately $27 million to $55.7 million) upon a hypothetical conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code. The First Lien Revolving Lender has an Allowed Claim of approximately $50 million, leaving less than $6 million to be distributed to First Lien Term Loan Lenders in any such chapter 7 liquidation, a 4% recovery, while under the Plan they are receiving an estimated 42% recovery. All other Holders of Claims and Equity Interests, including all of Class 5 (General Unsecured Claims), Class 6 (Preferred Equity Interests) and Class 7 (Common Equity Interests) would receive nothing in a chapter 7 liquidation. Therefore, each Holder of an Impaired Claim or Equity Interest has either has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date, that is not less than the amount that such Claim Holder or Equity Interest Holder would receive pursuant to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code. Thus, the Plan satisfies the requirements of section 1129 (a)(7) of the Bankruptcy Code in all respects.

This Memorandum, coupled with evidence to be adduced at the Confirmation Hearing by Debtors will demonstrate that the Plan should be confirmed. The Plan complies with every relevant section of the Bankruptcy Code and Bankruptcy Rules, including sections 1122, 1123 and 1129 of the Bankruptcy Code, and applicable non-bankruptcy laws. Accordingly, the Debtors submit that the Court should enter an order confirming the Plan, in the form of the Confirmation Order attached hereto as Exhibit 1.

II.

THE PLAN SATISFIES EACH OF THE REQUIREMENTS OF SECTION 1129(A) OF THE BANKRUPTCY CODE EXCEPT FOR SUBSECTION 1129(A)(8)

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan. The Debtors, proponents of the Plan, must demonstrate that the Plan

satisfies the applicable provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence. See In re Briscoe Enter., Ltd. II, 994 F.2d 1160, 1165 (5th Cir. 1993) (holding that appropriate standard of proof under section 1129 of Bankruptcy Code is preponderance of evidence); 7 Collier on Bankruptcy ¶1129.02[4] (15th rev. ed. 2008) ("[T]he proponent bears the burden of both introduction of evidence and persuasion that each subsection of section 1129 (a) has been satisfied."). As demonstrated below by at least a preponderance of the evidence, and in substantially all instances by clear and convincing evidence, all of the applicable requirements of section 1129(a) of the Bankruptcy Code, with the exception of the requirements of section 1129 (a)(8) of the Bankruptcy Code, have been satisfied with respect to the Plan.

A. Section 1129(a)(1): The Plan Complies With All Applicable Provisions of Bankruptcy Code

Section 1129(a)(1) of the Bankruptcy Code provides that a court may confirm a plan of reorganization only if "the plan complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). The legislative history of section 1129 (a)(l) of the Bankruptcy Code indicates that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code governing classification of claims and contents of the plan, respectively. See H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978); see also In re Johns-Manville Corp., 843 F.2d 636, 648-9 (2nd Cir. 1988); In re Century Glove. Inc., 1993 WL 239489, *6 (D. Del. Feb. 10, 1993).

a. Section 1122: Classification of Claims and Interests

Section 1122(a) of the Bankruptcy Code provides in relevant part that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). A plan proponent has significant flexibility in classifying claims and interests under section 1122 of the

Bankruptcy Code, as long as a reasonable legal or factual basis exists for the classification and all claims or interests within a particular class are substantially similar. See John Hancock Mut. Life Ins. Co. v. Route 37 Business Park Assocs., 987 F.2d 154 (3d Cir. 1993); In re Jersey City Medical Center, 817 F.2d 1055, 1060-61 (3d Cir. 1987) ("Congress intended to afford bankruptcy judges broad discretion [under section 1122] to decide the propriety of plans in light of the facts of each case"). Moreover, "[s]ection 1122(a) does not demand that all similar claims be in the same class. To the contrary, the bankruptcy court has substantial discretion to place similar claims in different classes," if there is a reason to do so. In re Dow Corning Corp., 280 F.3d 648, 661-662 (6th Cir. 2002); see also, In re Boston Post Road Limited Partnership, 21 F.3d 477, 482-484 (2nd Cir. 1994); In re Woodbrook Associates, 19 F.3d 312, 318-319 (7th Cir. 1994).

The Plan's classification scheme is proper and satisfies section 1122 of the Bankruptcy Code because such scheme recognizes the differing legal and equitable rights of the Holders of Claims and Equity Interests.

- **Class 1**. Class 1 provides for the separate classification of Other Priority Claims entitled to priority under section 507(a) of the Bankruptcy Code, (other than Administrative Claims or Priority Tax Claims which are not classified and are separately treated). Class 1 Claims are appropriately classified separately since, pursuant to section 1129(a)(9) of the Bankruptcy Code, each Holder of an Other Priority Claim must generally receive payment in full.

- **Class 2**. Class 2 provides for the separate classification of all Other Secured Claims. Separate classification of secured creditors is appropriate and generally required. See, e.g., In re Commercial Western Finance Corp., 761 F.2d 1329, 1338 (9th Cir. 1985); In re Sullivan, 26 B.R. 677 (Bankr. W.D.N.Y. 1982).

- **Class 3**. Class 3 provides for the separate classification of all First Lien Claims arising from the prepetition first priority secured loan (both revolving and term loan) made by the First Lien Lenders to the Debtors.

- **Class 4**. Class 4 provides for the separate classification of all Second Lien Claims arising from the prepetition second priority secured term loan made by the Second Lien Lenders to the Debtors.

- **Class 5**. Class 5 provides for the separate classification of all General Unsecured (non-priority) Claims.

- **Class 6**. Class 6 provides for the separate classification of all Preferred Equity Interests. These Class 6 Preferred Equity Interests are appropriately classified separately from Claims because they consist of equity interests in the Debtors, not debt Claims, and separate from Class 7 because they represent certain Equity Interest rights senior to those of Class 7.

- **Class 7**. Class 7 provides for the separate classification of all Common Equity Interests. These Class 7 Common Equity Interests are appropriately classified separately from Claims because they consist of equity interests in the Debtors, not debt Claims, and separate from Class 6 because they represent certain Equity Interest rights junior to those of Class 6.

No party in interest has objected to the classification of Claims or Equity Interests under the Plan. Each of the Claims or Equity Interests in each particular Class is substantially similar to the other Claims or Equity Interests in such Class. Each Class has substantially different legal rights from every other Class, ranging from payment in full to no payment at all. The classification of Claims and Equity Interests in the Plan therefore complies with section 1122 of the Bankruptcy Code.

b. Section 1123: Contents of Plan

Section 1123(a) of the Bankruptcy Code sets forth certain mandatory requirements with respect to chapter 11 plans. See 11 U.S.C. § 1123(a). As demonstrated below, the Plan complies fully with each such requirement. Section 1123(b) of the Bankruptcy Code sets forth certain permissive provisions that may be incorporated into a chapter 11 plan. See 11 U.S.C. § 1123(b). Each such provision of the Plan is consistent with section 1123(b) of the Bankruptcy Code.

1. Section 1123(a)(1): Designation of Classes of Claims and Interests

Section 1123(a)(l) of the Bankruptcy Code requires that a plan designate classes of claims and interests, other than claims of a kind specified in Bankruptcy Code sections 507(a)(2) (administrative expenses), 507(a)(3) (claims arising during "gap" period in an involuntary case), and 507(a)(8) (priority tax claims). In addition to Administrative Claims, DIP Facility Claims and Priority Tax Claims (which are not required to be classified), Article III of the Plan designates five Classes of Claims and two Classes of Equity Interests. The Claims and Equity Interests placed in each Class are substantially similar to other Claims or Equity Interests in each such Class. Valid business, factual, and legal reasons exist for classifying the various Classes of Claims and Equity Interests in the manner set forth in the Plan, and such Classes do not unfairly discriminate between Holders of Claims or Equity Interests. As a result, the Plan satisfies the requirements of sections 1122 and 1123(a)(1) of the Bankruptcy Code.

2. Section 1123(a)(2): Specification of Unimpaired Classes

Section 1123(a)(2) of the Bankruptcy Code requires that the Plan specify Classes of Claims or Equity Interests that are not Impaired under the Plan. Article III of the Plan specifies whether each Class of Claims and Equity Interests is Impaired or not Impaired under the Plan. Therefore, the Plan satisfies the requirements of section 1123 (a)(2) of the Bankruptcy Code.

3. Section 1123(a)(3): Specification of Treatment of Impaired Classes

Section 1123(a)(3) of the Bankruptcy Code requires that a plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). Article III of the Plan sets forth the treatment of each Impaired Class of Claims or Equity Interests. Therefore, the Plan satisfies section 1123 (a)(3) of the Bankruptcy Code.

4. Section 1123(a)(4): Equal Treatment Within Each Class

Section 1123(a)(4) of the Bankruptcy Code requires that the Plan provide the same treatment for each claim or equity interest within a particular class unless the holder of such claim or equity interest agrees to receive less favorable treatment than other class members. The Plan provides for such similar treatment in each Class, except in cases where a Holder within a Class has consented to less favorable treatment. Two Creditors, W.Y. Campbell and Morgan Stanley, holders of Class 5 General Unsecured Claims, consented to less favorable treatment than that received by other Creditors in Class 5. Otherwise, all Creditors in each Class received substantially identical treatment. Therefore, the Plan therefore complies with section 1123(a)(4) of the Bankruptcy Code.

5. Section 1123(a)(5): Adequate Means for Implementation

Section 1123 (a)(5) of the Bankruptcy Code requires that a chapter 11 plan provide adequate means for its implementation. The Plan, together with the documents and agreements included in the Plan Supplement, provides adequate and proper means for implementation of the Plan, including, without limitation, (i) the retention by the Reorganized Debtors of all property of the estates and the continued existence of the Debtors as Reorganized Debtors, (ii) the New Organizational Documents that will govern the Reorganized Debtors after the Effective Date, (iii) the selection and appointment of a new board of directors of Reorganized J.L. French Automotive Castings, Inc., (iv) entry into the DIP Facility Exit Credit Documents and the CapitalSource Exit Credit Documents, (v) the cancellation of Equity Interests, and (vi) the issuance of the New Common Stock and Warrants. Thus, the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

6. Section 1123(a)(6): Prohibition on of Nonvoting Equity Securities

Section 1123 (a)(6) of the Bankruptcy Code prohibits the issuance of nonvoting equity securities and requires the Reorganized Debtors' charter to so provide. Article V of the Plan provides that the Reorganized J.L. French Automotive Castings, Inc. Certificate of Incorporation and the Reorganized J.L. French Automotive Castings, Inc. By-Laws will, among other things, authorize the issuance of New Common Stock and prohibit the issuance of non-voting securities pursuant to section 1123(a)(6) of the Bankruptcy Code. The Second Amended and Restated Certificate of Incorporation and Second Amended and Restated By-Laws included in the Plan Supplement includes such prohibitions on the issuance of nonvoting equity securities. Thus, the Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code.

7. Section 1123(a)(7): Plan's Provisions Regarding Selection of Officers and Directors of Reorganized Debtors Are Consistent With Public Policy

Section 1123(a)(7) of the Bankruptcy Code requires a plan to contain provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner and selection of any officer, director or trustee under the plan. The provisions of the Plan and the Reorganized Debtors' certificates of incorporation, bylaws or other organizational documents regarding the manner of selection of officers and directors of the Reorganized Debtors are consistent with the interests of creditors and equity security holders and with public policy in that they provide for fundamental majority rule while protecting the interests of minority shareholders as well. Prior to the Confirmation Hearing, the Stockholders' Agreement was amended to provide additional protections for minority shareholders and such amended Stockholders' Agreement, together with a blackline showing the changes, were filed with the Bankruptcy Court [filed August 28, 2009, docket no 250]. Specifically, the Stockholders' Agreement was amended to provide Board observer rights to shareholders who

(i) then hold at least 5% of the common stock, (ii) are then among the largest four shareholders (including any shareholder entitled to designate a board member) and (iii) either has no right to designate a director or has exercised such right by designating an individual who is not an officer, director, member, employee or principal of such shareholder. In addition, each 5% plus shareholder will be entitled to receive the agenda and minutes of each board meeting and the presentation materials provided to directors at each such meeting contemporaneously with the distribution of same to the directors of each board meeting. Accordingly, the Plan satisfies the requirements of section 1123 (a)(7) of the Bankruptcy Code.

8. Section 1123(a)(8): Inapplicable

Section 1123 (a)(8) of the Bankruptcy Code applies only to individual debtors and is not applicable in these Chapter 11 Cases.

9. Section 1123(b)(1): Plan Impairs Certain Classes and Leaves Others Unimpaired

Section 1123(b)(l) of the Bankruptcy Code provides that a plan may "impair or leave unimpaired any class of claims, secured or unsecured, or of interests." 11 U.S.C. § 1123(b)(l). Article III of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims or Equity Interests under the Plan. Unimpaired Classes are: Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims). All other Classes are impaired: Class 3 (First Lien Claims), Class 4 (Second Lien Claims), Class 5 (General Unsecured Claims), Class 6 (Preferred Equity Interests and Class 7 (Common Equity Interests). Thus, the Plan satisfies the requirements of section 1123(b)(1) of the Bankruptcy Code.

10. Section 1123(b)(2): Treatment of Executory Contracts and Unexpired Leases

Section 1123(b)(2) of the Bankruptcy Code allows a Plan to provide for assumption, assumption and assignment, or rejection of executory contracts and unexpired leases

pursuant to section 365 of the Bankruptcy Code. Article VI of the Plan provides for the assumption of the executory contracts and unexpired leases of the Debtors that have not been previously been rejected and that are not rejected pursuant to the Plan. The Debtors included in the Plan Supplement a list of the executory contracts and unexpired leases that they will reject, effective upon confirmation of the Plan, and Article VI of the Plan provides that the Confirmation Order will constitute an order under Section 365 of the Bankruptcy Code authorizing such rejection. Article VI also provides that as to all other executory contracts and unexpired leases of the Debtors not included in the list of rejected contracts and leases in the Plan Supplement, those remaining contracts are assumed, effective upon confirmation of the Plan, and Article VI of the Plan provides that the Confirmation Order will constitute an order under Section 365 of the Bankruptcy Code authorizing such assumption. Thus, the Plan satisfies the requirements of section 1123(b)(2) of the Bankruptcy Code.

11. Section 1123(b)(3): Settlement or Retention of Claims or Interests

Section 1123(b)(3)(A) of the Bankruptcy Code provides that a plan may provide for the settlement or adjustment of any claim or interest belonging to a debtor or its estate, and section 1123(b)(3)(B) of the Bankruptcy Code provides that a plan may provide for the retention and enforcement of any claim or interest belonging to a debtor or its estate. The Plan accomplishes both. First, Article X.A. of the Plan provides that, subject to certain exceptions, the provisions of the Plan constitute a compromise and settlement of all Claims and counterclaims resolved pursuant to the Plan, including certain Claims belonging to the Debtors and their Estates. Second, Article X.H. of the Plan provides for the preservation, retention and enforcement by the Reorganized Debtors of Claims, Causes of Action, rights, and defenses not expressly settled or released under the Plan. Thus, the Plan satisfies the requirements of section 1123(b)(3) of the Bankruptcy Code.

12. Section 1123(b)(4): Inapplicable

Section 1123(b)(4) of the Bankruptcy Code provides that a plan may provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims and interests. Under the Plan the Debtors are not selling their assets, therefore section 1123 (b)(4) of the Bankruptcy Code is not applicable in these Chapter 11 Cases.

13. Section 1123(b)(5): Modification of Rights of Secured Creditors

Section 1123(b)(5) of the Bankruptcy Code allows a chapter 11 plan to modify the rights of secured creditors. Article III of the Plan modifies the rights of secured creditors by providing certain of the Holders of Class 3 Claims and all of the Holders of Class 4 Claims with equity in the Reorganized Debtors in exchange for their Claims. Specifically, the Plan provides the First Lien Term Loan Lenders with 95% of the common stock in the Reorganized Debtors in exchange for their approximate $160 million of secured debt, and the Plan provides the Second Lien Lenders 5% of the common stock (plus certain out-of-the-money warrants) in the Reorganized Debtors in exchange for their approximate $64 million of secured debt. Thus, the Plan satisfies the requirements of section 1123 (b)(5) of the Bankruptcy Code.

14. Section 1123(b)(6): Other Appropriate Provisions

Section 1123(b)(6) of the Bankruptcy Code is a catchall provision that permits inclusion of any appropriate provision as long as it is not inconsistent with applicable provisions of the Bankruptcy Code. The Plan contains certain other implementation provisions consistent with the applicable provisions of the Bankruptcy Code, including without limitation, as set forth in Article V of the Plan, the creation of the Retained Professional Escrow Account, the provision of tail coverage under a directors' and officers' insurance policy, and, as set forth in Article VIII of the Plan, mechanisms for the resolution of Disputed Claims. The Plan also provides for

(a) deemed substantive consolidation, and (b) certain releases, exculpations, indemnifications and injunctions, which are more fully discussed below.

a. Substantive Consolidation

Article I.C. of the Plan is premised upon substantively consolidating the Debtors for certain limited purposes, and provides that the Plan serves as a motion to approve the limited consolidation, and provides Holders of Claims and Equity Interests the opportunity to object. The Disclosure Statement expressly advised Holders of the proposed limited consolidation and explained the impact of such limited consolidation. No Holder objected. The Plan provides that, except for Class 2 Claims, each and every Claim in the Debtors' Chapter 11 Cases against any of the Debtors shall be deemed filed against the consolidated Debtors, and shall be deemed a single consolidated Claim against and obligation of all of the consolidated Debtors. Such limited consolidation does not affect (other than for Plan voting and distribution purposes): (i) the legal and corporate structures of the Reorganized Debtors; or (ii) pre- and post-Petition Date Liens, guarantees and security interests, if any, that are required to be maintained in connection with (x) contracts that were entered into during the Debtors' Chapter 11 Cases or that have been or will be assumed pursuant to section 365 of the Bankruptcy Code and this Plan, (y) the terms of the DIP Facility, the DIP Facility Exit Credit Documents, the CapitalSource Exit Credit Documents, the New Common Stock and the Class 4 Warrants, or (z) the other terms and conditions contained in the Plan. Moreover, notwithstanding the limited consolidation, each of the Reorganized Debtors will be deemed a separate and distinct entity, properly capitalized, vested with all of the assets of such Debtor as they existed prior to the Effective Date and having the liabilities and obligations provided for under the Plan.

Absent deemed substantive consolidation for voting and distribution purposes, the Debtors would need to litigate the identity of the applicable Debtor entity against which each

Claim resides and the legal theory in support of Claims asserted against the seven Debtors. Here, the Creditors did not object to the limited deemed substantive consolidation contained in the Plan, and creditor consent can provide basis for substantive consolidation. See In re Owens Corning, 419 F.3d 195, 211 (3rd Cir. 2005). The Creditors voted overwhelmingly in favor of the Plan, both in the number of creditors voting for the Plan and the dollar amount of claims the supporting Creditors hold. Therefore, the deemed limited substantive consolidation contained in the Plan is not inconsistent with applicable provisions of the Bankruptcy Code.

b. Release, Injunction, Indemnification and Exculpation Provisions

Article X of the Plan contains provisions that provide for the release of certain non-debtor parties, injunctions precluding certain causes of action from being asserted, and the exculpation and indemnification of certain parties involved in these Chapter 11 Cases. Specifically, Articles X.A., B. and C. of the Plan provide, respectively, for (i) the mutual release of certain parties (the "Releasees") germane to the Plan or the agreements embodied therein (the "Mutual Releases by Releasees") and (ii) the release of the Releasees by each Holder of a Claim that has affirmatively voted to accept the Plan and who is entitled to receive a distribution under the Plan (the "Third Party Release" and, together with the Mutual Releases by Releasees, the "Releases"). Further, Articles XI.C and D of the Plan, respectively, provide for a post-confirmation injunction and the exculpation and indemnification of certain parties instrumental to these Chapter 11 Cases.

These provisions of the Plan are appropriate and comport with applicable provisions of the Bankruptcy Code and decisions of the Court of Appeals for the Third Circuit.

i. The Release of Estate' Claims Is a Valid Exercise of the Debtors' Business Judgment and Should be Approved

Section 1123 (b)(3)(A) of the Bankruptcy Code provides that a debtor may settle and release its claims against third parties, and plan provisions that propose to release a debtor's claims should be reviewed as settlements subject to the debtor's business judgment. See e.g., In re WCI Cable, Inc., 282 B.R. 457, 469 (Bankr. D. Ore. 2002) ("I find that the release and injunction provisions of . . . the WCI plan are submitted for approval by the court pursuant to § 1123(b)(3)(A) and [Bankruptcy Rule 9019(a)]"). Article X of the Plan provides that, on the Effective Date, the provisions of the Plan constitute a good-faith compromise and settlement of all Claims or controversies resolved pursuant to the Plan. Accordingly, to the extent the releases, injunction, indemnification and exculpation provisions of the Plan release or enjoin claims belonging to Debtors or the Estates, such provisions should be approved as a valid exercise of Debtors' business judgment. See., e.g., In re PWS Holding Corp., 303 F.3d 308, 315 (3d Cir. 2002) (affirming confirmation of debtor's plan enjoining fraudulent conveyance actions by creditors that debtor could itself have pursued under 11 U.S.C. § 544(b)); Huddleston v. Nelson Bunker Hunt Trust Estate, 117 B.R. 231, 233-34 (N.D. Tex. 1990) (confirming plan containing release of claims against banks to extent such claims were derivative of debtor's claims).

ii. The Release and Injunction Provisions of the Plan With Respect To Third Party Claims Are Reasonable and Appropriate and Should be Approved

Section 1141(d) of the Bankruptcy Code provides in relevant part that "[e]xcept as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of the plan (A) discharges the debtor from any debt that arose before the date of such confirmation . . . ." 11 U.S.C. § 1141(d). Pursuant to section 1141(d), upon confirmation of a plan, a chapter 11 debtor receives a "discharge" of claims against it. Section 524(e) of the

Bankruptcy Code, governing the effect of such discharge, provides, however, that the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. §524(e).

The Court of Appeals for the Third Circuit ("Third Circuit") has held that section 524(e) of the Bankruptcy Code is not "a per se rule barring any provision in a reorganization plan limiting the liability of third parties" and therefore a release provision that "does not affect the liability of third parties, but rather sets forth an appropriate standard of liability . . . is outside of the scope of 524(e)." In re PWS Holding Corp., 228 F.3d 224, 246 (3d Cir. 2000). Rather, bankruptcy courts are authorized to issue permanent injunctions against or authorize releases of claims by non-debtors against other non-debtors under a chapter 11 plan where such relief represents an important step in the success of the overall plan of reorganization. See, e.g., In re United Artists Theatre Co., 315 F.3d 217, 227 (3d Cir. 2003) ("The 'hallmarks of permissible non-consensual releases' are 'fairness, necessity to the reorganization, and specific factual findings to support these conclusions.' . . . Added to these requirements is that the releases 'were given in exchange for fair consideration.'") (quoting Gillman v. Continental Airlines (In re Continental Airlines), 203 F.3d 203, 214 (3d Cir. 2000)).

This Court has approved third-party releases and injunctions in confirmed chapter 11 plans under appropriate circumstances. See, e.g., In re Vencor. Inc., 284 B.R. 79 (Bankr. D. Del. 2002) (denying post-confirmation motion for relief from plan to pursue litigation against third party released under plan, where appropriate factual record was established at confirmation hearing to approve release provisions over objections); In re Int'l Wireless Commc'ns Holdings, Inc., 1999 Bankr. LEXIS 1832 (Bankr. D. Del. 1999) (confirmation order approving plan containing third-party release and injunction). Moreover, the majority of Circuit

Courts of Appeals that have ruled on the issue, have held that such third-party releases and injunctions are permissible under appropriate circumstances. See, e.g., In re Dow Corning Corp., 280 F.3d 648, 656-57 (6th Cir. 2001) (authorizing third-party injunction on basis that "[s]ection 1123 (b)(6) permits a reorganization plan to 'include . . . any appropriate provision not inconsistent with the applicable provisions of this title); In re Drexel Burnham Lambert Group. Inc., 960 F.2d 285, 293 (2d Cir. 1992) (holding bankruptcy court has jurisdiction to approve release of identified non-debtor third parties in plan); In re A. H. Robins Co., 880 F.2d 694, 701 (4th Cir. 1988) (approving release and permanent injunction in favor of insurance company, executives and law firms.

This Court also has held that plan provisions that release potential claims of voting parties will be upheld as to parties voting in favor of the plan. See In re Zenith Elecs. Corp., 241 B.R. 92, 111 (Bankr. D. Del. 1999) (approving consensual releases of voting party's potential claims); In re Int'l Wireless Commc'ns Holdings, Inc., No. 9802007, 1999 Bankr. LEXIS 1853, at *24-25 (Bankr. D. Del. Mar. 26, 1999) ("[A]s to each creditor or shareholder who voted for the Plan which contains the Release language, we have no hesitation in concluding that they have consented to the Release and are bound thereby under contract law.").

No Holder of a Claim or Equity Interest has objected to scope of effect of the Third Party Releases. For that reason alone the Court may approve the Third Party Releases as to parties described in the Plan as giving and receiving such Releases. Moreover, the Releases, as a practical matter, allow the Reorganized Debtors, their vendors and customers to focus on the future and the recovery of the automotive industry -- particularly where so many of such vendors and customers have undergone, are undergoing, or are likely to undergo financial restructurings not unlike these Chapter 11 Cases. The Releases provide a basis for moving on, without any

hangover of uncertainty from prior business dealings. As demonstrated, the Court is authorized, and in these Chapter 11 Cases should approve the Releases.

iii. The Common Sense Exculpation and Indemnification Provisions of Article X of the Plan are Consistent with the Debtors' Obligations under State Law and its Commitments to the Principal Parties to the Plan and Should Be Approved

The exculpation and indemnification provisions of Article X of the Plan provide reasonable commitments to those parties that were instrumental to Debtors' restructuring efforts and the formulation of the Plan. The beneficiaries of the proposed exculpation and indemnification have contributed substantial value to Debtors through, among other things, their participation in the formulation of the Plan. The efforts of those persons and entities in negotiating and ultimately formulating the Plan, as well as the agreements to compromise their claims, now enable the Debtors to implement the settlements embodied in the Plan. This Court has approved comparable provisions in other cases. See, e.g., In re Zenith Elecs. Corp., 241 B.R. 92, 111 (Bankr. D. Del. 1999) (finding releasees were instrumental in formulating plan and had made substantial contribution to reorganization by designing and negotiating restructuring and agreeing to compromise of claims).

The exculpation and indemnification provisions of the Plan are also consistent with the Debtors' obligations to its employees, officers and directors under Delaware state corporate law. Moreover, where, as here the protections are being extended to the key participants in the Plan process, the protections are limited in that they will not apply to acts or omissions constituting gross negligence or willful misconduct. Such provisions are now commonplace in chapter 11 plans and Delaware courts are authorized to approve them. See, e.g., PWS Holding Corp., 228 F.3d at 246-47 (approving plan provisions that did not "eliminate

liability but rather limit[ed] it to willful misconduct or gross negligence," noting such provision was "commonplace provision in Chapter 11 plans").

As demonstrated, the deemed substantive consolidation, and the release, injunction, indemnification and exculpation provisions contained of the Plan, are consistent with applicable provisions of the Bankruptcy Code, as required by section 1123(b)(6) of the Bankruptcy Code, and should be approved as part of the Plan.

15. Section 1123(c): Inapplicable

Section 1123 (c) of the Bankruptcy Code applies only to bankruptcy cases involving individuals and is inapplicable to these Chapter 11 Cases.

16. Section 1123(d): Cure of Monetary Defaults

Section 1123 (d) of the Bankruptcy Code provides that all cures of monetary defaults proposed under a plan shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law. The Plan provides for the satisfaction of default Claims associated with each executory contract and unexpired lease to be assumed pursuant to the Plan in accordance with section 365(b)(1) of the Bankruptcy Code. The Plan provides that all cure amounts will be determined in accordance with the underlying agreements and applicable nonbankruptcy law. Thus, the Plan satisfies the requirements of section 1123 (d) of the Bankruptcy Code.

Based upon the foregoing, the Plan complies fully with the requirements of sections 1122 and 1123 of the Bankruptcy Code, as well as with all other provisions of the Bankruptcy Code, and thus satisfies the requirement of section 1129(a)(l) of the Bankruptcy Code.

B. Section 1129(a)(2): The Debtors Have Complied With Applicable Provisions of Bankruptcy Code

Section 1129(a)(2) of the Bankruptcy Code provides that a court may confirm a plan only if "[t]he proponent of the plan complies with the applicable provisions of this title." 11 U.S.C. § 1129(a)(2). The legislative history of section 1129(a)(2) indicates that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126 of the Bankruptcy Code. See H.R. Rep. No, 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of section 1129 (a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); see also 7 Collier on Bankruptcy ¶1129.03[2] (15th rev. ed. 2008) (collecting cases) (stating that, with respect to compliance with section 1129 (a)(2), courts "have focused on compliance by the plan proponent with the disclosure and solicitation requirements of sections 1125 and 1126"). As set forth below, Debtors has complied with the applicable provisions of the Bankruptcy Code, including the provisions of sections 1125 and 1126 of the Bankruptcy Code regarding disclosure and plan solicitation.

a. Compliance with Section 1125 of the Bankruptcy Code

On August 17, 2009, after notice and a hearing, this Court entered the Disclosure Statement Order approving the Disclosure Statement as containing "adequate information" of a kind and in sufficient detail to enable hypothetical, reasonable investors typical of the holders of Claims and Equity Interests to make an informed judgment whether to accept or reject the Plan. On August 18, 2009, the Debtors commenced their solicitation of votes to accept or reject the Plan as attested to in its Affidavit of Service filed with the Court on August 21, 2009 [docket no. 243]. On August 31, 2009, the Debtors filed their Declaration of Terri Marshall of BMC Group, Inc. Regarding Publication of Confirmation Hearing Notice and Claims Bar Date Notice [docket

no. 254], attesting to the fact that they published notice of the Confirmation Hearing in the following national and local newspapers: Wall St. Journal, Detroit News and Free Press, Sheboygan Press, Milwaukee Journal Sentinel and Glasgow Daily Times. Sheboygan, Wisconsin and Glasgow, Kentucky are the locations of the Debtors' corporate headquarters and manufacturing plants.

Such declarations and affidavits establish that, in compliance with the Disclosure Statement Order: (a) the Solicitation Packages, including the Disclosure Statement, Plan, Plan Supplement, Ballots and the additional solicitation materials approved by the Court, were transmitted to each Creditor that was entitled to vote to accept or reject the Plan; and (b) certain non-voting materials approved by the Court in the Disclosure Statement Order were provided to holders of Claims and Equity Interests that were not entitled to vote to accept or reject the Plan. The Debtors did not solicit acceptances of the Plan by any Holder of Claims or Equity Interests prior to Court's approval of the Disclosure Statement.

The deadline for voting to accept or reject the Plan was August 31, 2009. The results of the vote in respect of the Plan are discussed in more detail below.

b. Compliance with Section 1126 of the Bankruptcy Code

Section 1126 of the Bankruptcy Code specifies the requirements for acceptance of a chapter 11 plan. Under section 1126 of the Bankruptcy Code, only holders of allowed claims and allowed equity interests in impaired classes of claims or equity interests that will receive or retain property under the plan on account of such claims or interests may vote to accept or reject the plan. Section 1126 of the Bankruptcy Code provides, in pertinent part:

> (a) The holder of a claim or interest allowed under section 502 of [the Bankruptcy Code] may accept or reject a plan.
>
> (f) Notwithstanding any other provision of this section, a Class that is not impaired under a plan, and each holder of a claim or interest of such Class,

are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such Class from the holders of claims or interests of such Class is not required.

(g) Notwithstanding any other provision of this section, a Class is deemed not to have accepted a plan if such plan provides that the claims or interests of such Class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

11 U.S.C. §§ 1126(a), (f) and (g).

In accordance with section 1126 of the Bankruptcy Code, the Debtors solicited acceptances of the Plan from the Holders in each Class of Impaired Claims that are to receive distributions under the Plan. The Impaired Classes entitled to vote under the Plan are Class 3 (First Lien Claims); Class 4 (Second Lien Claims) and Class 5 (General Unsecured Claims). The Plan reflects that Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims) are unimpaired, and thus, are deemed to have accepted the Plan, and that Class 6 (Preferred Equity Interests) and Class 7 (Common Equity Interests) receive nothing under the Plan and are deemed to have rejected the Plan.

As to impaired classes entitled to vote to accept or reject a plan of reorganization, section 1126(c) of the Bankruptcy Code specifies the requirements for acceptance of the plan by classes of claims:

(c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S.C. § 1126(c).

On September 1, 2009, the Debtors filed the Declaration of Terri Marshall Of BMC Group, Inc. in Connection with Voting on the Debtors' First Amended Joint Plan of

Reorganization Under Chapter 11 of the Bankruptcy Code (the "Vote Certification"), attesting to the tabulation of all Ballots received by the Voting Agent on or before the Voting Deadline (August 31, 2009) from Holders of Claims and attesting to the results of the tabulation as follows:

a. Class 3 (First Lien Claims). Class 3 voted unanimously in favor of the Plan. Thirty Holders of Class 3 Claims, holding $210,549,428.63 in Allowed Claims, voted in favor of the Plan. No Holder of Class 3 Claims voted against the Plan.

b. Classes 4 (Second Lien Claims). Class 4 voted unanimously in favor of the Plan. Ten Holders of Class 4 Claims, holding $64,295,170.50 in Allowed Claims, voted in favor of the Plan. No Holder of Class 4 Claims voted against the Plan.

c. Class 5 (General Unsecured Claims). Class 5 voted as follows: twenty four (24) Holders of Class 5 Claims, holding $220,123.51 in Allowed Claims, voted to accept the Plan, and three (3) Holders of Class 5 Claims holding $4,138.09 in Allowed Claims voted to reject the Plan. Accordingly, eighty nine percent (89%) of the voting Class 5 Creditors voted to accept the Plan, and those creditors held ninety eight percent (98%) of the total dollar amount of such Claims. Therefore Class 5 voted to accept the Plan.

The Vote Certification filed with the Court establishes that all Creditor Classes entitled to vote on the Plan voted overwhelmingly to accept the Plan. However, because Class 6 Preferred Equity Interests and Class 7 Common Equity Interests are receiving nothing under the Plan, they are deemed to have rejected the Plan, and the Debtors must confirm the Plan under the cramdown provisions of section 1129 (b) of the Bankruptcy Code.

The Debtors, who are the proponents of the Plan, have complied with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules and the Disclosure Statement Order in transmitting the Solicitation Packages and in tabulating the votes with respect to the Plan, thereby complying with sections 1125 and 1126 with respect to the Disclosure Statement and voting on the Plan. The Debtors have complied with all applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court. Thus, the Plan satisfies the requirements of section 1129 (a)(2) of the Bankruptcy Code.

C. Section 1129(a)(3): The Plan has been Proposed in Good Faith and not by any Means Forbidden by Law

Section 1129(a)(3) of the Bankruptcy Code requires that a plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). As the U.S. Supreme Court said in NLRB v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984), the primary goal of Chapter 11 is to promote the restructuring of a debtor's obligations so as to preserve the business and avoid liquidation and the attendant loss of jobs (emphasis added). A plan proponent's good faith is established if the plan is "proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code." In re Zenith Elecs. Corp., 241 B.R. 92, 107 (Bankr. D. Del. 1999).

The Debtors, as proponents of the Plan, and their respective officers, directors and professional advisors acted in good faith in the negotiation and formulation of a chapter 11 plan that preserves the business and the attendant jobs, substantially delevers the capital structure so that the Debtors may compete for more and new business and obtain additional financing, and frees up income for capital investment. The Plan is based upon extensive, arms' length negotiations between and among the Debtors and all of the Holders of large secured and unsecured Claims against the Debtors, as well as the Debtors' Principal Customers, and represents the culmination of months of intensive prepetition and post-petition negotiations and discussions amongst all parties. The Plan is supported by substantially all of the Debtors' principal Creditors. The release, exculpation, settlement and compromise, indemnification and preservation of Debtors' Causes of Action provisions contained in the Plan are consistent with the Debtors' purpose of effectuating a successful chapter 11 reorganization. Thus, the Plan satisfies the requirements of section 1129 (a)(3) of the Bankruptcy Code.

D. Section 1129(a)(4): Plan Provides that Payments Made by Debtors for Services or Costs and Expenses Are Subject to Court Approval

Section 1129(a)(4) of the Bankruptcy Code provides that the Court shall confirm a plan only if "[a]ny payment made or to be made by the proponent, by the debtor . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4). Therefore, the Debtors must disclose to the Court all professional fees and expenses, and such fees and expenses must be subject to Court approval.

It is sufficient for the purposes of section 1129 (a)(4) that a plan expressly limit any payment of professional fees to those fees and expenses allowed by the Court. See, e.g., In re Elsinore Shore Assocs., 91 B.R. 238, 268 (Bankr. D.N.J. 1988) (requirements of section 1129(a)(4) of Bankruptcy Code satisfied where plan provided for payment of only "allowed" administrative expenses); In re Future Energy Corp., 83 B.R. 470, 488 (Bankr. S.D. Ohio 1988) ("Court approval of payments for services and expenses is governed by various Code provisions -- e.g., §§ 328, 329, 330, 331, and 503(b) - and need not be explicitly provided for in a Chapter 11 plan.").

The Plan provides that Professional Fee Claims submitted by estate professionals will be entitled to payment only if and to the extent they are approved by the Court. The Plan also provides that all other Administrative Claims will be entitled to payment only to the extent they are Allowed Claims. Thus, the Plan satisfies the requirements of section 1129 (a)(4) of the Bankruptcy Code.

E. Section 1129(a)(5): The Debtors Have Disclosed all Necessary Information Regarding the Reorganized Debtors' Officers and Directors

Section 1129(a)(5) of the Bankruptcy Code requires that: (a) a plan proponent disclose the identity and affiliations of each proposed officer, director or voting trustee of the reorganized debtor; (b) the appointment or continuance of such officer, director or voting trustee be consistent with the interests of creditors and equity security holders and with public policy; and (c) that the identity and compensation of any insiders to be retained or employed by the reorganized debtor be disclosed (11 U.S.C. § 1129(a)(5)(B)).

On August 31, 2009, the Debtors filed their Notice of Officer and Directors of Reorganized Debtors (docket no. 255), disclosing the identity and affiliations of the individuals proposed to serve after confirmation of the Plan as a director or officer of the Reorganized Debtors. The notice shows that the new shareholders of the Debtors have appointed a number of directors affiliated with their organizations and experienced in the automotive industry, and that a number of independent directors with experience in the automotive and related industries were also appointed.

The notice also shows that the Debtors' current President and Chief Executive Officer, Thomas Musgrave, and the Debtors' current Chief Financial Officer J. Timothy Gargaro, will remain in their positions. Prior to his employment with the Debtors, Musgrave served for four years as President and Chief Operating Officer of Ryobi Die Casting, Inc., and after that he served for four years as President of automotive business Freudenberg-NOK. Musgrave began his career at AlliedSignal Corp. and its successor company, Honeywell, where he spent 17 years. He became President and CEO of the Debtors in November 2008.

The Debtors' CFO, J. Timothy (Tim) Gargaro has over 30 years experience in the automotive industry. He served as CFO and Treasurer at Ring Screw Works for 4 years.

Gargaro also spent 10 years at Lear Corporation, serving first as the Director of Audit, and then as Vice President of Finance for Europe, Chrysler and the Ford Divisions. He has served as CFO for five tier-one automotive suppliers, including Delco Remy and Exide Technologies, and joined the Debtors as the CFO in April 2009.

The appointment to, or continuance in, such office of each such individual is consistent with the interests of Holders of Claims against and Equity Interests in the Debtors and with public policy. Thus, the Plan satisfies the requirements of section 1129 (a)(5) of the Bankruptcy Code.

F. Section 1129(a)(6): The Plan Does Not Contain Rate Changes Subject to Jurisdiction of any Governmental Regulatory Commission

Section 1129(a)(6) of the Bankruptcy Code requires that any regulatory commission having jurisdiction over the rates charged by a debtor in the operation of its businesses approve any rate change provided for in the plan. 11 U.S.C. § 1129(a)(6). This provision is inapplicable to Debtors because the Plan does not provide for or contemplate a change in any rates subject to the jurisdiction of any governmental regulatory agency.

G. Section 1129(a)(7): The Plan Satisfies the "Best Interests of Creditors" Test with Respect to Each Holder of Claims and Equity Interests Rejecting or Deemed to be Rejecting the Plan

Section 1129(a)(7) of the Bankruptcy Code provides, in relevant part:

> With respect to each impaired class of claims or interests –
>
> (A) each holder of a claim or interest of such class –
>
> (i) has accepted the plan; or
>
> (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date.

11 U.S.C. § 1129(a)(7). This section is commonly referred to as the "best interests of creditors" test, and focuses on individual dissenting parties rather than classes of claims. See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434 (1999). The test requires that each holder of a claim or equity interest either accept a plan or receive or retain under such plan property having a present value, as of the effective date, not less than the amount such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code. See id. at 442. As section 1129(a)(7) of the Bankruptcy Code makes clear, this liquidation analysis applies only to holders of non-accepting Impaired Claims or Equity Interests.

In these Chapter 11 Cases, some Holders of Class 5 Claims voted to reject the Plan, and all holders of Class 6 and Class 7 Equity Interests are deemed to have rejected the Plan, however, none has a credible argument that it would receive more in a chapter 7 liquidation than it is receiving under the Plan. The Liquidation Analysis contained in the Plan Supplement provides a reasonable estimate of the liquidation values of the Debtors (approximately $27 million to $55.7 million) upon a hypothetical conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code. The First Lien Revolving Lender has an Allowed Claim of approximately $50 million secured by a first priority lien on substantially all of the Debtors' assets. That leaves only approximately $6 million to be distributed to the First Lien Term Loan Lenders in any such chapter 7 liquidation, a 4% recovery, while under the Plan the First Lien Term Loan Lenders are receiving an estimated 42% recovery. All other Holders of Claims and Equity Interests, including all of Class 5 (General Unsecured Claims), Class 6 (Preferred Equity Interests) and Class 7 (Common Equity Interests) would receive nothing in a chapter 7 liquidation. Therefore, each Holder of an Impaired Claim or Equity Interest has either has accepted the Plan or will receive or retain under the Plan on account of such Claim or Equity

Interest property of a value, as of the Effective Date, that is not less than the amount that such Claim Holder or Equity Interest Holder would receive pursuant to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code. Thus, the Plan satisfies the requirements of section 1129 (a)(7) of the Bankruptcy Code in all respects.

H. Section 1129(a)(8): Acceptance by or Unimpairment of Each Class

Subject to the exceptions contained in section 1129(b) of the Bankruptcy Code including the "cram-down" provisions discussed below, section 1129 (a)(8) of the Bankruptcy Code requires that each class of claims or equity interests must either have accepted the plan or not be impaired under the plan. A class of claims accepts a plan if the holders of at least two-thirds in dollar amount and more than one-half in the number of claims that actually vote on the plan vote to accept the plan. See 11 U.S.C. § 1126(c). A class of interests accepts a plan if holders of at least two-thirds of the amount of interests that actually vote on the plan vote to accept the plan. See 11 U.S.C. § 1126(d).

Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims) are unimpaired under the Plan and deemed as a matter of law to have accepted the Plan. Class 6 (Preferred Equity Interest) and Class 7 (Common Equity Interests) are receiving nothing under the Plan and are deemed as a matter of law to have rejected the Plan. Class 3 (First Lien Claims), Class 4 (Second Lien Claims) and Class 5 (General Unsecured Claims) are Impaired by the Plan and were entitled to vote on the Plan. As attested in the Vote Certification, Classes 3, 4 and 5 voted to accept the Plan. However, since Classes 6 (Preferred Equity Interests) and 7 (Common Equity Interests) are deemed to have rejected the Plan, the Plan does not meet the requirements of section 1129 (a)(8) of the Bankruptcy Code and the Plan could only be confirmed under the provisions of section 1129 (b) of the Bankruptcy Code.

I. Section 1129(a)(9): Payment of Administrative and Certain Priority Claims

Section 1129(a)(9) of the Bankruptcy Code requires that persons holding allowed claims entitled to priority under section 507 (a) of the Bankruptcy Code receive specified cash payments under the plan. In accordance with section 1129(a)(9)(A) of the Bankruptcy Code, Articles II and III.B.1. of the Plan provides for the payment in full, in cash, of all Administrative Claims, Priority Tax Claims and Other Priority Claims on the later to occur of (a) the Effective Date and (b) the date on which such Claim becomes an Allowed Claim, unless the Holder consents to other treatment, and subject to the right to make installment payments on Priority Tax Claims. Therefore, the Plan satisfies the requirements of section 1129 (a)(9) of the Bankruptcy Code.

J. Section 1129(a)(10): At Least One Class of Impaired Claims has Accepted the Plan

Section 1129(a)(10) of the Bankruptcy Code requires the affirmative acceptance of a plan by at least one class of impaired claims, ". . . determined without including any acceptance of the plan by any insider." 11 U.S.C. § 1129(a)(10). Class 3 First Lien Claims is Impaired and voted to accept the Plan. The Debtors are not aware of any insiders in class 3. Thus, the Plan satisfies the requirements of section 1129 (a)(10) of the Bankruptcy Code.

K. Section 1129(a)(11): The Plan is Not Likely to Be Followed By Liquidation or the Need for Further Reorganization

Section 1129(a)(11) of the Bankruptcy Code provides that a court may confirm a plan only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). This so-called "feasibility test" requires that the Court to determine (1) whether there is a reasonable prospect of the Reorganized Debtors being able to meet their financial obligations

under the Plan in the ordinary course of their business, and (2) that confirmation of the Plan is not likely to be followed by liquidation or the need for further financial reorganization. Courts generally focus on the adequacy of the proposed capital structure, the earning power of the business, the ability of management, the probability of the continuation of the same management, the provisions for adequate working capital, in determining whether a plan is feasible.

As described in detail in the Disclosure Statement, while most of the Debtors' product lines are profitable, the Debtors had an over-leveraged balance sheet and they were ultimately unable to service the debt when automotive industry sales volumes dropped so precipitously. The Plan now represents a radical departure from that over-leveraged balance sheet, as more than $220 million of secured debt will be discharged under the Plan, and the Debtors will emerge from chapter 11 protection encumbered only by a $50 million four-year secured term loan, and the Debtors will have access to $15 million of additional working capital financing.

Also in connection with the negotiation of the terms of the Plan, the new shareholders agreed to keep in place the Debtors' leadership team, President and CEO Tom Musgrave, who joined the Debtors in November 2008, and CFO Tim Gargaro who joined the Debtors in April 2009, both of who led the Debtors through the prepetition negotiations and the Chapter 11 Cases.

The Debtors ability to meet their obligations under the Plan is analyzed in the Financial Projections prepared by the Debtors' management in consultation with their financial advisors. The Financial Projections are included in the Plan Supplement and discussed in Article XVIII of the Disclosure Statement. The Financial Projections show that: (a) the Debtors will have sufficient cash on hand on the Effective Date to make all payments required under the Plan

on the Effective Date; (b) the Debtors will be able to pay their vendors and service providers in the ordinary course of business on agreed terms in the period immediately after the Effective Date and for the several years covered by the Financial Projections; and (c) the Debtors will generate earnings sufficient to service the approximate $65 million of secured debt that they will be parties to on and after the Effective Date for the term of that debt.

The Debtors have met the feasibility test of section 1129 (a)(11) in that: (i) they will continue to operate under the same capable management that led the Debtors through their prepetition negotiations and successful Chapter 11 Cases; (ii) they have will have a dramatically reduced debt burden: (iii) they have negotiated certain accommodations agreements with their Principal Customers that will provide them with price increases and/or new business, which should enable them to generate the revenues assumed by the Financial Projections; and (iv) they will have $15 million of new working capital once the Plan is confirmed. The Plan is feasible because, as demonstrated by the Financial Projections, there is a reasonable likelihood that the Reorganized Debtors will meet their financial obligations under the Plan in the ordinary course of business, and confirmation of the Plan is not likely to be followed by the liquidation or need for further financial reorganization of the Reorganized Debtors. Thus, the Plan satisfies the requirements of section 1129 (a)(11) of the Bankruptcy Code.

L. Section 1129(a)(12): All Statutory Fees Have Been or Will Be Paid

Section 1129(a)(12) of the Bankruptcy Code requires the payment of "[a]ll fees payable under section 1930 [title 28, the United States Code], as determined by the court at the hearing on confirmation of the plan . . . ." 11 U.S.C. § 1129(a)(12). Section 507 of the Bankruptcy Code provides that "any fees and charges assessed against the estate under [section 1930,] chapter 123 of title 28" are afforded priority as administrative expenses. 11 U.S.C. §

507(a)(2). The Plan provides that, on the Effective Date, and thereafter as may be required, the Reorganized Debtors shall pay all fees required to be paid pursuant to section 1930 of title 28 of the United States Code. The Plan also provides that the Reorganized Debtors shall continue to file all required reports and pay all fees required to be paid pursuant to 28 U.S.C. § 1930 for each chapter 11 entity until the cases are closed, converted or dismissed. Thus, the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

M. Section 1129(a)(13): Plan Adequately and Properly Treats Retiree Benefits

Section 1129(a)(13) of the Bankruptcy Code provides that a court may confirm a plan only if "[t]he plan provides for the continuation after its effective date of payment of all retiree benefits." 11 U.S.C. § 1129(a)(13). Article VI of the Plan provides that the Debtors' obligations, if any, to pay "retiree benefits," as such term is defined in section 1114 of the Bankruptcy Code, shall survive the Effective Date and become an obligation of the Reorganized Debtors unless such retiree benefits are modified in accordance with the provisions of section 1114 of the Bankruptcy Code. Accordingly, the Plan satisfies the requirements of section 1129 (a)(13) of the Bankruptcy Code.

N. Section 1129(a)(14): Domestic Support Obligations – Inapplicable

The Debtors are not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. Accordingly, section 1129 (a)(14) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

O. Section 1129(a)(15): The Debtors Are not Individuals – Inapplicable

A. The Debtors are not individuals. Accordingly, section 1129 (a)(15) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases.

P. Section 1129(a)(16): Transfers in Accordance With Non-Bankruptcy Law

B. Section 1129(a)(16) of the Bankruptcy Code requires all transfers of property of a plan to be made in accordance with any applicable provisions of non-bankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business or commercial corporation or trust. The Debtors are moneyed businesses and/or commercial corporations. Accordingly, section 1129(a)(16) of the Bankruptcy Code is inapplicable in these Chapter 11 Cases. Nevertheless, if section 1129(a)(16) applied, the Plan would be in compliance because all transfers of property under the Plan are to be made in accordance with any applicable provisions of non-bankruptcy law.

Q. Fed. R. Bankr. P. 3016(a): Identification of Plan Proponents

As required by Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtors as the Plan proponents.

III.

THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129(B) OF THE BANKRUPTCY CODE

Section 1129(b) of the Bankruptcy Code permits the Court to "cram down" a plan over the dissenting vote of an impaired class or classes of claims or equity interests and confirm a plan notwithstanding such dissenting votes. See 11 U.S.C. § 1129(b)(l). Section 1129(b)(l) of the Bankruptcy Code provides, in pertinent part, that:

> Notwithstanding § 510(a) of this title, if all of the applicable requirements of [§ 1129(a) of the Bankruptcy Code] other than [the requirement contained in § 1129(a)(8)] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. §1129(b)(l). Thus, the Court may "cram down" a plan over the dissenting vote of an impaired class or classes as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes. The plan proponent bears the burden of proof by a preponderance of the evidence. In re Briscoe Enters., Ltd. II, 994 F.2d 1160,1163-64 (5th Cir. 1993).

As described above, Classes 6 (Preferred Equity Interests) and 7 (Common Equity Interests) are deemed to have rejected the Plan in accordance with section 1126(g) of the Bankruptcy Code (collectively the "Rejecting Classes"). As demonstrated below, the Plan does not discriminate unfairly, and is fair and equitable with respect to the Rejecting Classes and, accordingly, the Plan can be confirmed pursuant to section 1129(b) of the Bankruptcy Code.

A. The Plan Does Not Discriminate Unfairly With Respect To Rejecting Classes

Section 1129(b)(l) of the Bankruptcy Code only prohibits discrimination with respect to the class or classes that do not accept the plan to the extent such discrimination is "unfair." See e.g., In re 11,111, Inc., 117 B.R. 471, 478 (Bankr. D. Minn. 1990). A plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if classes comprising similarly situated claims or interests receive treatment under the plan that is not equivalent and there is no reasonable basis for the disparate treatment. See e.g. In re Kennedy, 158 B.R. 589, 599 (Bankr. D.N.J. 1993); In re Resorts Int'l. Inc., 145 B.R, 412 (Bankr. D.N.J. 1990); In re Buttonwood Partners, Ltd., 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990).

In these Chapter 11 Cases all holders of preferred stock, including anyone holding options, warrants and other rights to acquire preferred stock, are in Class 6. Similarly, all holders of common stock, including anyone holding options, warrants and other rights to acquire common stock, are in Class 7. Accordingly, there are no similarly situated Holders of Equity

Interests not in Classes 6 or 7, and, therefore, no basis exists for a holder of Class 6 or Class 7 Equity Interests to complain that the Plan discriminates, let alone discriminates unfairly.

B. The Plan is Fair and Equitable With Respect To the Rejecting Classes

Sections 1129(b)(2)(B) and (C) of the Bankruptcy Code provide that a plan is "fair and equitable" with respect to a class of unsecured claims and a class of equity interests, respectively, as long as holders of junior claims or interests do not receive or retain under the plan on account of such junior claims or interests any property. See 11 U.S.C. §§ 1129(b)(2)(B)(ii) and (C)(ii). There are no Holders of claims or interests junior to Class 6 and Class 7 Equity Interests and, therefore, no distributions to a junior class are possible. Therefore, the treatment of the Equity Interests of the Rejecting Classes is fair and equitable.

Moreover, as described in the Going Concern Valuation contained in the Plan Supplement, the post-Effective Date going concern value of the Reorganized Debtors is between $120 million and $150 million. The Allowed Claims of the First Lien Lenders are in excess of $210 million, and they hold liens on substantially all of the assets of the Debtors. Thus, Classes junior in priority to Class 3 (which accepted the Plan), like Classes 6 and 7, can have no complaint under Bankruptcy Code Section 1129 (b) if they receive nothing on their Equity Interests. Based upon the Going Concern Valuation, the Plan, as required by section 1129(b) of the Bankruptcy Code, does not discriminate unfairly and is fair and equitable with respect to all Rejecting Classes.

IV.

CONCLUSION

For all of the foregoing reasons, and based on such further arguments and evidence as may be presented at the Confirmation Hearing, the Debtors respectfully submit that

the Plan should be confirmed and that the Court should enter the Confirmation Order attached hereto as Exhibit 1.

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