IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE:	§	**Chapter 11**
ACADIANA MANAGEMENT GROUP, L.L.C., ET AL.[1]	§	**Case No. 17-50799**
Debtors.	§	**(Jointly Administered)**

OBJECTION TO DEBTORS' DISCLOSURE STATEMENT RELATING TO CHAPTER 11 PLAN OF ORDERLY LIQUIDATION FOR ACADIANA MANAGEMENT GROUP, L.L.C., ET AL.

NOW INTO COURT, through undersigned counsel, comes CHCT Louisiana, LLC ("CHCT"), and files this Objection (the "Objection") to the Debtors' *Disclosure Statement Relating to Chapter 11 Plan of Orderly Liquidation for Acadiana Management Group, L.L.C., et al.* (the "Disclosure Statement")[Dkt. #478], and with respect thereto asserts the following:

JURISDICTION

1. This Court has jurisdiction over the instant Chapter 11 cases and this Objection pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Disclosure Statement is a core proceeding as defined in 28 U.S.C. §157(b)(2).

[1] The debtors in these chapter 11 cases are AMG Hospital Company, L.L.C., Case No. 17-50800; AMG Hospital Company II, L.L.C., Case No. 17- 50801; Albuquerque - AMG Specialty Hospital, L.L.C., Case No. 17-50802; Central Indiana - AMG Specialty Hospital, L.L.C., Case No. 17-50803; Tulsa - AMG Specialty Hospital, L.L.C., Case No. 17-50804; LTAC Hospital of Louisiana - Denham Springs, L.L.C., Case No. 17-50805; Las Vegas - AMG Specialty Hospital, L.L.C., Case No. 17-50806; LTAC Hospital of Greenwood, L.L.C., Case No. 17-50807; LTAC of Louisiana, L.L.C., Case No. 17- 50808; Houma - AMG Specialty Hospital, L.L.C., Case No. 17-50809; LTAC Hospital of Edmond, L.L.C., Case No. 17-50810; LTAC Hospital of Wichita, L.L.C., Case No. 17-50811; AMG Realty I, L.L.C., Case No. 17-50812; CHFG Albuquerque, L.L.C., Case No. 17-50813; and AMG Realty Youngsville, L.L.C., Case No. 17-50814 (collectively, the "Debtors" and individually, a "Debtor").

BACKGROUND

2. On June 23, 2017 ("Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

3. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§1107 and 1108. No trustee or examiner has been appointed. On July 28, 2017, an unsecured creditors committee was appointed. *See* [Dkt. #116].

4. On November 17, 2017, the Debtors filed the Disclosure Statement. The Disclosure Statement describes that certain Plan of Reorganization for Acadiana Management Group, L.L.C., et al. (November 17, 2017)(the "Proposed Plan")[Dkt. #478, Ex. B].

5. The hearing on the adequacy of the Disclosure Statement is scheduled on an expedited basis for November 28, 2017.

PRELIMINARY STATEMENT

6. The Disclosure Statement cannot be approved for at least four principal reasons: (i) first, the Proposed Plan[2], as it presently stands, is patently unconfirmable insofar as it is predicated on an extraordinary remedy (substantive consolidation) that the Debtors cannot justify under the circumstances of these Chapter 11 cases; (ii) second, the Proposed Plan is the bad-faith product of conflicted management of the Debtors (collectively, the "Insiders") and advisors that have abandoned their fiduciary duties to the creditors of each of the Debtors' estates; (iii) third, the clearest example of this bad-faith conduct of the Insiders is the granting of unlawful third-party releases for these very same Insiders; and (iii) fourth, the Disclosure Statement lacks adequate information with

[2] Unless otherwise indicated, capitalized terms used in this Objection but not otherwise defined shall have the meanings ascribed to them under the Disclosure Statement or the Proposed Plan, as applicable.

respect to several material aspects of the Proposed Plan such that creditors cannot make an informed voting decision with respect to the Proposed Plan.

7. The Court should not approve the Disclosure Statement because the underlying Proposed Plan is "fatally and obviously flawed",[3] and proceeding to a confirmation hearing with such a patently unconfirmable plan would be a waste of the estates' and the Court's resources. The infirmities inherent in the Proposed Plan are substantial, preclude confirmation of the Proposed Plan, and must be addressed as soon as practicable (i.e., at the hearing on the Disclosure Statement).

8. Parties should not be heard to complain that the matters raised in this Objection can be addressed at the confirmation hearing, only to then contend at the confirmation hearing that there is no alternative to the Proposed Plan. Rather, the Debtors should be required to address the Proposed Plan's material deficiencies at this time.

A. Substantive Consolidation

9. A tent pole feature of the Debtors' Proposed Plan is the substantive consolidation of all of the Debtors' estates for voting and distribution purposes.[4] The Debtors have not (and cannot) satisfy their burden for approval of substantive consolidation under existing case

[3] *In re Mahoney Hawkes, LLP*, 289 B.R. 285, 294 (Bankr. D. Mass. 2002) (Hillman, CJ.) (quoting *In re Bjolmes Realty Trust*, 134 B.R. 1000, 1002 (Bankr. D. Mass. 1991) (Queenan, CJ)); *see also In re O'Leary*, 183 B.R. 338, 338-39 (Bankr . D. Mass. 1995) (Feeney, J.) ("Courts may refuse to approve disclosure statements that describe plans that cannot be confirmed.").

[4] Notably, the Disclosure Statement provides no information (much less adequate information) to justify ignoring the corporate separateness of the Debtors' estates, any background on which entity or entities required the shift towards substantive consolidation, or how the Debtors' Insiders are acting consistent with their fiduciary duties to the creditors of all the Debtors' estates.

law. As a result, the Disclosure Statement contains inadequate disclosure to substantiate the extraordinary relief requested by the Debtors.[5]

10. There are generally only two circumstances in which substantive consolidation has been found by Bankruptcy Courts to be appropriate: (1) where creditors dealt with the debtors as a single economic unit and did not rely on their separate identities, or (2) where the affairs of the debtors are so entangled that consolidation will benefit the estates of all of the debtors (*i.e.*, where "untangling is either impossible or so costly as to consume the [debtor's] assets").[6] Neither such circumstance is present here and the Disclosure Statement contains only a passing reference in support of substantive consolidation. These conclusory statements fall well short of containing the "adequate information" required by the Bankruptcy Code.

11. There is no information contained in the Disclosure Statement supporting the Debtors' contention that creditors relied on the Debtors conducting business as a single unit. Indeed, the evidence is quite the contrary. The Debtors' sophisticated prepetition lenders were well aware of which of the Debtors were obligors and guarantors under their secured loan documents based on separate entities.

12. Further, in connection with the use of cash collateral in this case, BOKF demanded liens from additional Debtor entities that were not previously obligated under the BOKF prepetition loan agreements. All of the prepetition loan agreements of the various lenders, including CHCT, were entered into with very specific of the Debtors' entities. By way of example, CHCT's loan documents only included with Youngsville and a few other

[5] *See Bank of New York Trust Co. v. Official Unsecured Creditors' Comm. (In re Pac. Lumber, Co.)*,584 F.3d 229, 249 (5th Cir. 2009) (“Substantive consolidation is an 'extreme and unusual remedy.’”).

[6] *See In re Ward*, 558 B.R. 771, 797 (Bankr. N.D. Tex. 2016) (Houser, J.) (noting Second and Third Circuit precedent enumerating two factors).

Debtor entities as Guarantors. BOKF likewise entered into loan documents with specific Debtor entities, not all of them. These transactions (and many others) demonstrate that creditors did not believe that they were dealing with the Debtors as a single economic unit.

13. The Disclosure Statement also contains inadequate information to support its position that its business affairs are so entangled that substantive consolidation is necessary or appropriate relief. The Debtors routinely have provided detailed information with respect to their distinct businesses, operations, and corporate and legal structures. Moreover, the Debtors each operate in a highly regulated industry, subject to individual licensing and regulatory oversight at each individual Debtor and are subject to stringent oversight at the federal, state, and local levels.[7] Additionally, the Debtors have already filed individual schedules of assets and liabilities and statements of financial affairs and have filed individual monthly operating reports for each of the 15 individual debtor entities during the pendency of these cases, clearly demonstrating that the Debtors' finances are not impracticably entangled.

14. In addition, the Insiders own various non-Debtor entities that are related Affiliates to the Debtors. If the Debtors were operated fully as a single enterprise and so intricately entangled to be substantively consolidated, these non-Debtor entities would necessarily have needed to be included in the bankruptcy filing, which they were not. Rather, the Insiders tried to shield these non-Debtor Affiliates from these bankruptcy cases in order to hold back assets to "contribute" to a reorganization. Further, there is also no evidence that the Debtors ignored corporate formalities in their dealings with counterparties.

[7] As noted in the Disclosure Statement, the Debtors are subject to oversight of various divisions within CMS. In addition, various state and local agencies may regulate some or all of the Debtors' hospitals and operations, including without limitation relating to facility licensing.

15. The proposed substantive consolidation would have several material adverse consequences on the Debtors, as well as on trade creditors of the subsidiaries of each individual estate, that are not adequately disclosed to holders of claims and interests entitled to vote on the Proposed Plan, including without limitation, (i) the transfer of potentially valuable claims and causes of actions that exist at one Debtor entity to a Litigation Trust for distribution to creditors of all of the Debtors' estates, including BOKF to the extent of the substantial deficiency claim, (ii) the merger into Newco with certain non-Debtor Affiliates and strapping the Debtors' estates with having to pay these non-Debtor entity's debts for the sole and exclusive benefit of the Insiders; and (iii) the extinguishment of various Intercompany Claims, which may be detrimental to the creditors of specific Debtor estates holding large intercompany claims.

16. Further, the Disclosure Statement contains inadequate information on the relative benefits and costs to each estates' creditors and stakeholders resulting from substantive consolidation. At bottom, nothing presented in the Disclosure Statement justifies the proposed substantive consolidation of each individual Debtor entity with all of the other Debtors' entities' estates, which would compel the creditors of all of the estates to share the proceeds of claims and causes of action with the creditors of all of the Debtors' estates.

17. It is also revealing that the Proposed Plan and Disclosure Statement provide that the proposed substantive consolidation is only for voting and distribution, but does not affect the legal and corporate structures of the Reorganized Debtor. The Disclosure Statement states that the Plan "will not result in the merger or otherwise affect the separate legal existence of each Debtor, other than with respect to voting and distributions under the

Plan."[8] In similar circumstances, courts have observed that such a proposed substantive consolidation (or "substantive consolidation light") is little more than a "deemed scheme" designed to "strip ... rights under the Bankruptcy Code [and] favor other creditors ...."[9] For instance, by substantively consolidating the estates, the Debtors no longer needs to be concerned about satisfying Bankruptcy Code section 1129(a)(10) (requiring an impaired accepting class) for each of the 15 Debtors. Under the Insider's direction and control, the Debtors are attempting to satisfy this confirmation requirement only once under a substantively consolidated plan.

18. CHCT has previously proposed to the Debtors a term sheet outlining a plan solely with respect to the LTAC Louisiana (BK Case No. 17-50808) and Central Indiana (BK Case No. 17-50803) bankruptcy estates, which will maximize value for these two estates and afford a materially better recovery to the Debtors' innocent trade creditors of these estates. A copy of these terms sheets are attached hereto collectively as "Exhibit A." The Debtors have refused to engage in substantive discussions regarding these individual Debtor plans since they impede the Insiders' personal plans for the exit of the assets in Newco to their sole and exclusive benefit. However, the consideration by this Court of separate plans for each of the 15 debtor entities is mandated by the Bankruptcy Code.

B. Bad Faith/Breach of Fiduciary Duties.

19. The second principal reason that the Disclosure Statement cannot be approved is because the Proposed Plan is the product of widespread conflicts of interest, bad faith and a derogation of fiduciary oversight by the Debtors. The Youngsville estate (and

[8] Disclosure Statement, at p. 6.

[9] *In re Owens Corning*, 419 F.3d 195, 216 (3d Cir. 2005).

Youngsville alone) may hold potentially valuable claims and causes of action against at least three Insiders of up to $7 million (the "Insider Claims"). The most pernicious aspect of the Debtors' Proposed Plan would be release of these valuable claims belonging to Youngsville based on inadequate consideration, which consideration is currently proposed to be paid for the benefit of all 15 bankruptcy estates and payment to BOKF.

20. In the Disclosure Statement, the Debtors disingenuously argue that the Insiders contribution of $3 million and the transfer of certain non-Debtor Affiliate assets should both (i) satisfy the Insider Claims and (ii) constitute new value so they retain their equity in the Newco. This proposal allows the Insiders to skate scotch-free through chapter 11 with a restructured entity having liabilities reduced by over $20 million, while creditors are left holding the bag for the Insiders' mess. This is a clear breach of the Debtors' fiduciary duties to creditors and the estates for the sole and exclusive benefit of the controlling Insiders personally.

21. The bad faith is so pervasive that the Debtors do not even shrink away from agreeing to pay from the Debtors' estates certain of the Insiders' debt on the non-Debtor Affiliates. The Debtors argue that this contribution is some form of new value to the estate, however, this will occur only after the current bankruptcy is stuck footing the bill for an additional $2.6 million of non-Debtor debt for the benefit of the Insiders. There can be no question that these Debtors have abandoned their fiduciary duties to the creditors in this case and instead "handed the keys over" to the Insiders and BOKF.

22. The Insiders' scurrilous intent in these cases is evident from its pre-bankruptcy merger of various distinct corporate entities to begin the process of substantive consolidation. On the eve of bankruptcy, the Insiders orchestrated mergers of certain entities to try and

consolidate entities which had common secured lenders into single entities and reduce the number of entities filing for bankruptcy protection. This was the first step in the Insiders' bad faith attempt to force substantive consolidation on its creditors without meeting any of the tests necessary to accomplish same and without considering the impact such merger would have on individual creditors.

C. Third Party Releases.

23. The Debtors have not provided any basis or legal support for providing the Insiders with third party releases. Indeed, the Debtors' ulterior intentions are further highlighted by spending multiple pages citing case law as to why any party pursuing avoidance of the Insider Transfers from the Insiders will face obstacles. The Debtors conveniently ignore significant contrary legal authority to many of the Insiders' alleged defenses since they are being forced by the Insiders to shield and protect them.

24. At first blush, the lengthy tome on the Insiders' possible legal defenses brings to mind the familiar Shakespeare quote, as modified, that "the Insiders doth protest too much, methinks.[10]" However, upon review of the full extent of the case law on these issues, including at least one of the issues currently on appeal to the United States Supreme Court[11], the Debtors are merely hiding the ball from creditors while furthering their bad faith attempt to protect the Insiders. The Debtors are even trying to indemnify the Insiders from potential state law causes of actions that individual creditors may hold against the Insiders. These provisions granting third party releases make the Proposed Plan patently unconfirmable.

[10] *Hamlet,* Act 3, Scene 2.

[11] *See Merit Management Group, LP v. FTI Consulting, Inc.*, No. 16-784 (addressing Section 546(e) of the Bankruptcy Code raised by the Debtors as justification for the Insider releases).

25. In addition, the Debtors propose transferring all other claims and causes of action to a Litigation Trust (subject to an Oversight Committee…to be named later), and the distribution of any proceeds recovered on account of such claims to all creditors of the Debtors' estates (including BOKF on account of its substantial deficiency claim). This proposal is provided without any analysis of the impact of such action on each individual estate.

D. Inadequate Information.

26. Finally, the Court should not approve the Disclosure Statement because it lacks "adequate information," as required under Bankruptcy Code Section 1125(a) and (b) on other critical matters that should be considered by those entitled to vote on the Proposed Plan. The Disclosure Statement also contains several improper statements that appear to be an attempt to insulate the Debtors' Insiders from potential liability.

27. The following is a summary overview of the key provisions under the Disclosure Statement that lack adequate information:

Section of Disclosure Statement	**Inadequate Information**
Global	There is no legal basis for the proposed substantive consolidation of the Debtor's estates. The Disclosure Statement should provide a comparison to a non-consolidated plan
Global	Should describe the term sheet provided by CHCT (for a plan which maximizes value for Youngsville's and LTAC Louisiana's bankruptcy estates)
Global	The Plan Documents should be provided not later than the beginning of the solicitation period (rather than five days before the deadline for voting) in order for creditors to make an informed decision about the Plan
Section V.A.	Should provide an explanation as to why the Other Affiliates are not parties to these cases.

Section V.B.	Should identify the number of employees at Debtor
Section V.C.	Should describe with, some particularity, each Debtors' leases and trade debts
Section VI (generally)	Should provide a Debtor-by-Debtor analysis of financial condition and performance during the pendency of these cases, and describe the anticipated future of the Debtors
Section VII (generally)	Should explain the actual or projected realizable value from recovery of preferential or otherwise voidable transfers and litigation likely to arise in a nonbankruptcy context, including actions against the Insiders
Section VII.B.	This section ("Releases of Causes of Action Against Management") should be limited to describing the effect of the proposed releases. The legal analysis is improper and erroneous, and ignores the prior mismanagement of the Debtors that contributed to these cases
Section VII.C.	There is insufficient disclosure regarding CHCT Louisiana LLC's Motion for Leave to Derivatively Pursue Avoidance Action Against August Joseph Rantz, III, August Joseph Rantz, IV, and Timothy W. Howard (Bankr. W.D. LA. Case No. 17-50799)
Section VIII (generally)	Does not enable creditors to compare whether they would obtain a better recovery the Plan versus a non-consolidated plan
Section VIII.A(d).	Does not provide for treatment of CHCT's claim secured by certain personalty
Section VIII.C.3.	Does not identify constituents of the Oversight Committee. Creditors should not have to wait for this information to be provided in the Plan Documents (on the schedule contemplated in the Disclosure Statement)

RELEVANT FACTUAL BACKGROUND

28. CHCT is a secured creditor of Debtor AMG Realty Youngsville, L.L.C. ("Borrower") pursuant to that certain Promissory Note dated September 30, 2015 in the original principal amount of $11,000,000.00 (the "Note"). The Note is secured by a first priority

security interest in certain immovable property, including the immovable property located at 310 Youngsville Highway, Lafayette, Louisiana, and other rights associated therewith (the "Real Property Collateral") as well as certain personal property of the Borrower, including without limitation, all rents, revenues, incomes, issues, profits, fixtures and other collateral related to the Real Property Collateral (collectively, the "Personal Property Collateral" and together with the Real Property Collateral, the "Youngsville Collateral"), pursuant to that certain Multiple Indebtedness Mortgage, Pledge of Leases and Rents and Security Agreement dated September 30, 2015 (the "Mortgage").

29. As additional security for the Loan, AMG, LTAC of Louisiana, LLC ("LTAC of Louisiana" or "Tenant"), AMG Hospital Company LLC ("AMGHCI"), AMG Hospital Company II, LLC ("AMGHCII") and AMG Hospital Company III LLC ("AMGHCIII", and together with AMG, Tenant, AMGHCI and AMGHCII, collectively, the "Guarantors") each executed and delivered to Lender a Continuing Guaranty dated September 30, 2015 (collectively, the "Guaranties"). Under the Guaranties, each of the Guarantors unconditionally guaranteed to Lender the prompt payment in full of all obligations due and owing to Lender by Borrower. The Guaranties are unsecured.

30. Prior to the Petition Date, the Insiders developed a convoluted, inter-connected web of entities and then merged multiple entities together the day before the filing. During depositions in this case, the Insiders testified that no analysis of the impact of these mergers was performed as to the impact of the mergers on creditors of the individual estates being merged. Further, immediately prior to the Petition Date, the Insiders orchestrated the Debtors to fully draw on the BOKF line of credit. Now the Insiders are

controlling the Debtors to attempt to protect the Insiders from legitimate liability, while ending up with a reorganized company built entirely on the backs of the creditors.

31. During discovery in this bankruptcy case, Debtors' representatives testified that from the proceeds of the Loan by CHCT to Youngsville (the "Loan Proceeds"), Youngsville transferred in excess of $6.5 million to the Insiders, for which Youngsville received no reasonably equivalent value.

32. Specifically, in late 2015, the Insiders received the Loan Proceeds (collectively, the "Insider Transfers"): (a) cash totaling $5,000,399.00 to Rantz III, (b) cash totaling $750,000.00 to Rantz IV, and (c) cash totaling $750,000.00 to Howard. Subsequently, Rantz III received additional monthly payments from Youngsville.

33. During a Rule 2004 examination of Rantz IV, he produced an exhibit outlining the Insider Transfers. By letter dated September 18, 2017, CHCT sent correspondence to Debtors' counsel requesting that Youngsville pursue recovery of the Insider Transfers for the benefit of all creditors and parties in interest in the Youngsville bankruptcy estate (the "Avoidance Pursuit Demand").

34. Debtors have responded verbally to the Avoidance Pursuit Demand that they are uncertain valid avoidance claims exist, or that certain defenses may exist to the recovery of the Insider Transfers. As a result, CHCT filed a Motion for Derivative Standing to pursue the recovery of the Insider Claims.

ARGUMENTS IN OBJECTION

I. The Court Should Deny Approval Of The Disclosure Statement Because The Proposed Plan Is Patently Unconfirmable.

The Court should not approve a disclosure statement if the underlying plan is "patently unconfirmable."[12] Where a plan is patently unconfirmable, approving the disclosure statement and proceeding with a full confirmation hearing would be an exercise in futility.[13] Rather, "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...."[14] Here, the Proposed Plan is patently unconfirmable and, therefore, the Court should deny approval of the Disclosure Statement that was filed a mere 10 days prior to the hearing to approve same, which timeframe includes the Thanksgiving holiday. The Proposed Plan includes material structural deficiencies that should be addressed at the earliest practicable time (i.e., the hearing on the Disclosure Statement), not at the confirmation hearing, where the Debtors/BOKF will undoubtedly contend that they have stepped in so far, they cannot turn back.

A. The Proposed Plan Is Patently Unconfirmable Since It Is Predicated On Substantive Consolidation Of All The Debtors.

A proposed Chapter 11 plan is "patently unconfirmable" where it "is so fatally and obviously flawed that confirmation is impossible."[15] This Court has an affirmative duty to ensure that the Proposed Plan described in the Disclosure Statement satisfies all requirements for

[12] *See In re EQK Bridgeview Plaza, Inc*., No. 10-37054-SGJ-l 1, 2011 WL 2458068, at *2 (Bankr. N.D. Tex. June 16, 2011) (declining to approve debtor's disclosure statement on the basis that the plan it described was patently unconfirmable); *see also In re US. Brass Corp*., 194 B.R. 420, 422 (Bankr. E.D. Tex. 1996) ("Disapproval of the adequacy of a disclosure statement may sometimes be appropriate where it describes a plan of reorganization which is so fatally flawed that confirmation is impossible.").

[13] *See, e.g., In re K Lunde, LLC*, 513 B.R. 587, 590 (Bankr. D. Colo. 2014) ("[T]he estate and parties should not bear the expense and effort required by the full confirmation process if there is a fatal flaw that makes the plan unconfirmable as a matter of law.").

[14] *In Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012) (citations and internal quotations omitted); *In re Main St. AC, Inc*., 234 B.R. 771, 775 (Bankr. N.D. Cal. 1999) ("It is now well accepted that a court may disapprove of a disclosure statement. . . if the plan could not possibly be confirmed."); *see also In re Hyatt*, 509 B.R. 707, 714 (Bankr. D.N.M. 2014).

[15] *In re Hawkes*, 289 B.R. at 294 (*quoting Bjolmes* Realty Trust, 134 B.R. at 1002); *see also EQK Bridgeview Plaza*, 2011 WL 2458068, at *2; *O'Leary*, 183 B.R. at 338-39 ("Courts may refuse to approve disclosure statements that describe plans that cannot be confirmed.").

confirmation.[16] The plan proponent must prove that a plan complies with each of the statutory requirements for confirmation under §§ 1129(a) and (b).[17]

No provision of the Bankruptcy Code provides for substantive consolidation.[18] Rather, substantive consolidation is an extraordinary, judicially-created remedy that the Fifth Circuit has observed should be seldom used.[19] Even when there are some justifications for substantive consolidation, "courts, particularly in the Fifth Circuit, warn that the power to consolidate is a drastic remedy to be used sparingly."[20] Courts have uniformly cautioned that substantive consolidation should be granted "sparingly" and in "rare case[s]."[21] Despite its "disarmingly innocent sound, consolidation in bankruptcy ... is no mere instrument of procedural convenience ... but a measure vitally affecting substantive rights."[22]

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[16] *See Liberty Nat 'l Enters. v. Ambanc La Mesa Ltd. P 'ship. (In re Ambanc La Mesa Ltd. P'ship.)*, 115 F. 3d 650, 653 (9th Cir. 1997); *In re Congoleum Corp.*, 362 B.R. 167, 175 (Dist. N. J. 2007).

[17] *See In re Arnold and Baker Farms*, 177 B.R. 648, 654 (9th Cir. BAP 1994).

[18] *Ward*, 558 B.R. at 793; see *In re AHF Development, Ltd.*, 462 B.R. 186, 195 (Bankr. N.D. Tex. 2011).

[19] *See, e.g., In re Amco Ins*., 444 F.3d 690, 695 (5th Cir. 2006); *FDIC v. Colonial Realty Co*., 966 F.2d 57, 61 (2d Cir. 1992); *Union Savings Bank v. Augie/Restivo Baking Company, Ltd*. (*In re Augie/Restivo Baking Company*), 860 F.2d 515, 518 (2d Cir. 1988); *see also In re Owens Corning*, 419 F.3d 195, 208-09 (3d Cir. 2005); *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 767 (9th Cir. 2000); *Reider v. FDIC* (In re Reider), 31 F.3d 1102, 1107 (11th Cir. 1994); *Flora Mir Candy Corp. v. R.S. Dickson & Co. (In re Flora Mir Candy Corp.)*, 432 F.2d 1060, 1062-63 (2d Cir. 1970); *In re Donut Queen, Ltd*., 41 B.R. 706, 709 (Bankr. E.D.N.Y. 1984).

[20] *AHF Development*, 462 B.R. at 195 (quoting *Pac. Lumber*, 584 F.3d at 249 (substantive consolidation is an "extreme and unusual remedy.") (citing In re Gandy, 299 F.3d 489, 499 (5th Cir. 2002); Ward, 558 B.R. at 793-94 (citing *AHF Development*, 462 B.R. at 194 (describing the approaches used by courts)).

[21] *Chemical Bank of New York v. Kheel*, 369 F.2d 845, 847 (2d Cir. 1966).

[22] *Flora Mir Candy Corp. v. R.S. Dickson & Co. (In re Flora Mir Candy Corp.)*, 432 F.2d 1060, 1062 (2d Cir. 1970).

Substantive consolidation should not be permitted simply because - as the Debtors seem to contend - it affords a simpler, quicker, or more convenient route to confirmation.[23] Instead, substantive consolidation is only appropriate through a plan in certain rare circumstances, and in fact "convenience alone is not sufficient reason to disturb the rights of impaired classes of creditors of a debtor not meeting confirmation standards."[24]

B. The Debtors Have Failed To Satisfy Their Heavy Burden To Justify The Extraordinary Remedy Of Substantive Consolidation.

The Fifth Circuit has not articulated a standard with respect to when substantive consolidation is appropriate. Courts have considered a number of factors in analyzing whether substantive consolidation is appropriate, but have noted that the Second Circuit's seminal decision *in Augie/Restivo* "distilled the factors courts have considered into two critical ones: (i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit ...; or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors."[25]

Application of these factors here strongly militates against substantive consolidations. First, to show creditor reliance, the Debtors must demonstrate that creditors actually and

[23] *See, e.g., Union Savings Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.)*, 860 F.2d 515, 520-21 (2d Cir. 1988); *Flora Mir*, 432 F.2d at 1063 (rejecting counsel's argument "that only consolidation will permit the quick consummation of an arrangement under Chapter XI.").

[24] *In re Tribune Co.*, 464 B.R. 126, 142 (Bankr. D. Del. 2011).

[25] *Ward*, 558 B.R. at 794 (internal quotations omitted); *In re Permian Producers Drilling, Inc*., 263 B.R. 510, 518 (W.D. Tex. 2000). Additional factors that have been considered by courts include (1) the degree of difficulty in segregating and ascertaining individual assets and liability; (2) the presence or absence of consolidated financial statements; (3) the profitability of consolidation at a single physical location; (4) the commingling of assets and business functions; (5) the unity of interests and ownership between the various corporate entities; (6) the existence of parent and inter-corporate guarantees on loans; and (7) the transfer of assets without formal observance of corporate formalities. Permian Producers Drilling, 263 B.R. at 518.

reasonably viewed the Debtors as a single economic unit.[26] Whether debtors purport to hold themselves out as a single unit (which, in any event, is not the case here) is irrelevant to the analysis; rather, the inquiry focuses on whether creditors actually viewed the debtors as a single unit.[27] There is no evidence that creditors dealt with the Debtors as a single economic unit or viewed them in such way. Indeed, the record reflects quite the opposite. The Debtors' prepetition lenders were all highly sophisticated banks and lending institutions and executed prepetition Loan Documents with specific Debtors, but not all of them. When BOKF agreed to allow the use of cash collateral in the Debtors' bankruptcy, they insisted that additional collateral from Debtors not previously obligated to BOKF be pledged, and BOKF argued that chapter 5 causes of actions held by all the Debtors be pledged to secure any deficiency for the use of the cash collateral. All of this displays that BOKF did not view the Debtors as a single economic unit prior to the bankruptcy filing.

It is further noteworthy that, of the five (5) creditors appointed to the Official Committee of Unsecured Creditors, a review of the claims register maintained in the distinct Chapter 11 cases of all the Debtor entities indicates that none of these creditors filed a proof of claim against all of the Debtors. Rather, the creditors filed claims against the distinct entities to which they did business, including attaching line-item detail of the amounts owed by that specific Debtor. All of these transactions evidence a high degree of knowledge between the Debtors and their creditors/contract counterparties as to which specific Debtor entities they were doing business with, and that such parties did not actually view the Debtors as a single economic unit.

[26] *See Augie/Restivo*, 860 F.2d 515, 518-19; *Owens Corning*, 419 F.3d at 207-08, 212.

[27] *See Augie/Restivo*, 860 F.2d at 518; *Owens Corning*, 419 F.3d at 207-08

Second, there is no evidence that the affairs of the Debtors are so entangled that consolidation will benefit the estates of all of the Debtors. Expounding on the second factor in *Augie/Restivo*, the Second Circuit observed that:

> entanglement of the debtors' affairs ... involves cases in which there has been a commingling of two firms' assets and business functions. Resort to consolidation in such circumstances, however, should not be Pavlovian. Rather, substantive consolidation should be used only after it has been determined all creditors will benefit because untangling is either impossible or so costly as to consume the assets.... Commingling, therefore, can justify substantive consolidation only where "the time and expense necessary even to attempt to unscramble them [is] so substantial as to threaten the realization of any net assets for all the creditors," or where no accurate identification and allocation of assets is possible.[28]

Moreover, as the Debtors have observed, they operate in a highly regulated industry, and are subject to oversight of various divisions within CMS, including without limitation, various state and local licensing agencies.[29] The regulating authorities are looking at specific corporate entities in granting licenses and permits to operate.

Unsecured trade creditors of some or all of the Debtors' subsidiaries stand to obtain a materially better recovery in these Chapter 11 cases through non-consolidation of the Debtors' entities than they otherwise would through the Debtors'/BOKF's proposed substantive consolidation. The Debtors would not have any difficulty in segregating and ascertaining individual assets and liabilities of all Debtor entities. Indeed, the Debtors have already accomplished this task when they filed detailed schedules of assets and liabilities and statements of financial affairs for each of the Debtor entities and by attaching detailed liquidation analysis to the Disclosure Statement by each Debtor entity.

[28] *Augie/Restivo*, 860 F.2d at 518-19 (internal citations omitted).

[29] Disclosure Statement Art. V.D.

It also bears emphasizing that the Debtors are not proposing to actually consolidate the Debtors' businesses into a single reorganized business. Rather, the Disclosure Statement and Proposed Plan provide that the Debtors' scheme relates only as to voting and distributions. In denying a request for "substantive consolidation light", the Third Circuit observed that:

> If Debtors' corporate and financial structure was such a sham before the filing of the motion to consolidate, then how is it that post the proposed plan's effective date this structure stays largely undisturbed, with the Debtors reaping all the liability-limiting, tax and regulatory benefits achieved by forming subsidiaries in the first place? In effect, the plan proponents seek to remake substantive consolidation not as a remedy, but as a stratagem to "deem" separate resources reallocated to [one entity] to strip the Banks of rights under the Bankruptcy Code, favor other creditors, and yet trump possible Plan objections by the Banks. Such "deemed" schemes we deem not Hoyle.[30]

Under the Proposed Plan, the Debtors/BOKF are proposing to do precisely what the Third Circuit rebuked in *Owens Corning*.

C. The Debtors' Provide No Purported Justifications For Substantive Consolidation; Indeed Any Potential Justifications Would Be Erroneous, Unsupported By Evidence, And/Or Inadequate.

Noticeably, the Debtors do not even try to justify substantive consolidation in the Disclosure Statement, because no such justification exists. Indeed, the Proposed Plan merely states that it "serve[s] as a motion by the Plan Proponents for the entry of a Bankruptcy Court order deeming the substantive consolidation of the Operating Debtors' Estates into a single Estate for certain limited purposes related to the Plan, including voting and distribution."[31] The Disclosure Statement, without even using the term "substantive consolidation" references that the

[30] *Owens Corning*, 419 F.3d at 216.

[31] Proposed Plan, at p. 20.

creditors of the various Debtors "are treated as against a single consolidated Estate without regard to the separate legal existence of the Debtors."[32]

The Debtors and Insiders do not even attempt to support this extraordinary relief with any justification, and indeed any such attempt would fail. The facts in this case refute any argument in favor of substantive consolidation. The Debtors have failed to provide a single shred of evidence that would support such a self-serving and conclusory claim. As reflected herein, the evidence tells a far different story. Accordingly, the Debtors have not and cannot satisfy their substantial burden in justifying the extraordinary remedy of substantive consolidation of the Debtors' estates. As a result, the Proposed Plan, as presented, cannot be confirmed and the Disclosure Statement, therefore, should not be approved.

II. The Proposed Plan Is The Bad-Faith Product Of Conflicted Insiders And Advisors That Have Abandoned Their Fiduciary Duties To The Creditors Of The Debtors

The Insiders have mismanaged the Debtors into bankruptcy with a scheme to exit this case with a restructured entity they own having stripped over $20 million of debt from their books, securing full releases of the Insiders, and even gaining the satisfaction of over $2.5 million of debt owed by non-Debtor Affiliates that the Insiders own. The Debtors have failed to fulfil their respective fiduciary obligations to stand up to this brazen Insider control and domination in derogation of the Debtors' fiduciary duties to this Court and the creditors of this estate.[33]

[32] Disclosure Statement, at p. 6.

[33] *See In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 525-26 (Bankr. E.D.N.Y. 1989)(noting that when a debtor-in-possession "defaults" on its fiduciary duties, "the Bankruptcy Code commands that stewardship of the reorganization effort must be turned over to an independent trustee.").

To fulfill its fiduciary duties to its creditors and the estate, a debtor-in-possession "must avoid self-dealing, conflicts of interest and the appearance of impropriety[.]"[34] The debtor-in-possession must "refrain from acting in a manner which could damage the estate. . .."[35] Congress has mandated that debtors-in-possession act as honest brokers exercising their fiduciary duties to the estate.[36] Indeed, the willingness of courts to leave debtors in possession "is premised upon an assurance that the officers and managing employees can be depended upon to carry out the fiduciary responsibilities of a trustee."[37]

The Debtors' Proposed Plan is plagued by conflicts of interest based on the Insiders' overt control and dominion of the Debtors, and such action will harm the individual bankruptcy estates of the Debtors at the expense of the Insiders.[38] Courts in the Fifth Circuit recognize that where conflicts of interest exist in connection with a proposed plan of reorganization, a proper remedy may be to ask the Court to appoint a trustee.[39] While CHCT has not filed a motion for appointment of a trustee, the Debtors and their advisors complete delegation of fiduciary duties to the Insiders certainly rises to the level that the Court should not permit the Proposed Plan to proceed.

III. The Amended Plan Improperly Grants Nonconsensual Releases To The Insiders.

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[34] *In re Bowman*, 181 B.R. 836, 843 (Bankr. D. Md. 1995).

[35] *In re Ionosphere Clubs, Inc.*, 113 B.R. 164, 169 (Bankr. S.D.N.Y. 1990)(citations omitted).

[36] *See Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 355 (1985).

[37] *Id.*

[38] *In re Patman Drilling Int'l, Inc.*, No. 07-34622, 2008 WL 724086, at *6 (N.D. Tex. March 14, 2008).

[39] *In re Kelso*, 196 B.R. 363, 371 (Bankr. N.D. Tex. 1996).

The Proposed Plan is also patently unconfirmable because it grants nonconsensual releases prohibited under the express terms of the Bankruptcy Code and binding Fifth Circuit precedent.[40] Under Section 524(e) of the Bankruptcy Code, 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."[41] In general, section 524 protects a debtor from "any subsequent action by a creditor whose claim has been discharged in a bankruptcy case. . . . A discharge in bankruptcy does not extinguish the debt itself, but merely releases the debtor from personal liability for the debt. Section 524(e) specifies that the debt still exists and can be collected from any other entity that might be liable."[42] "Section 524 prohibits the discharge of debts of nondebtors."[43]

The Fifth Circuit has held that "a non-consensual, non-debtor release through a bankruptcy proceeding is generally not available under United States law." [44] Indeed, the Fifth Circuit has explicitly prohibited such relief."[45] The Proposed Plan, however, provides for release and exculpation of the Insiders from any and all pre-petition and post-petition liability.[46] These releases are impermissible in the Fifth Circuit. Debtors may not release any claimholder's rights

[40] *Bank of New York Trust Co., NA v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.)*, 584 F.3d 229, 252-53 (5th Circ. 2009).

[41] 11 U.S.C. §524(e).

[42] *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 53 (5th Cir. 1993).

[43] *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995).

[44] *Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de C. V. (In re Vitro S.A.B. de C. V.)*, 701 F.3d 1031, 1059 (5th Cir. 2012); *See also Bank of New York Trust Co. v. Official Unsecured Creditors' Committee (In re Pac. Lumber Co.)*, 584 F.3d 229, 251-52 (5th Cir. 2009) ("In a variety of contexts, this court has held that Section 524(e) only releases the debtor, not co-liable third parties. These cases seem broadly to foreclose non-consensual non-debtor releases and permanent injunctions."); *In re Pilgrim's Pride Corp.*, No. 08-45664-DML- 11, 2010 WL 200000, at *5 (Bankr. N.D. Tex. Jan. 14, 2010) ("the ruling in *Pacific Lumber* is not limited to its facts.").

[45] *Id.*

[46] See Proposed Plan at §8.3 ("Management will be released from any claims the Estates have against them, including claims under Chapter 5 of the Bankruptcy Code").

against non-debtors absent their consent and Debtors do not have consent of any of their claimholders to release the claimholders' claims, or Debtors' estates' claims, against the Insiders.[47] There are no extraordinary circumstances comparable to the mass-tort claims discussed in *Vitro S.A.B. de C. V.* that justify the Court approving Debtors' proposed releases.[48]

The Debtors only purported justification to release the Insiders is the alleged value that the Insiders are contributing to the Plan. And yet, as noted above, even this "new value" is suspect given the fact that while the Insiders may contribute up to $3 million of cash to keep the Debtors operating through confirmation, Insiders' debt of $2.6 million on the non-Debtor Affiliates will be paid through this process. The argument that the Insiders are providing value for both releases and as alleged new value is illusory and further evidence of the breach of the Debtors' fiduciary duties to these estates.

A recent decision of Bankruptcy Court for the Southern District of New York in the *SunEdison* bankruptcy case is instructive.[49] A copy of the *SunEdison* opinion is attached hereto as "Exhibit B". Notably, the Court had previously confirmed the Debtors' Second Amended Joint Plan but set for separate hearing whether it could approve certain third-party releases included in the Plan, even without any party objecting to the proposed release provision.

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[47] *See In re Vitro S.A.B. de C. V.*, 701 F.2d at 1066 ("[W]e have 'largely foreclosed non-consensual non-debtor releases and permanent injunctions outside of the context of mass tort claims being channeled toward a specific pool of assets.' . . . [N]on-debtor releases, while possible in other circuits, are only appropriate in extraordinary circumstances. To that end, [the debtor] was required to show that something comparable to such circumstances was present here.").

[48] *See Pac. Lumber*, 584 F.3d at 252-53 ("[T]he essential function of the exculpation clause proposed here is to absolve the released parties from any negligent conduct that occurred during the course of the bankruptcy. The fresh start § 524(e) provides to debtors is not intended to serve this purpose.").

[49] *In re SunEdison, Inc., et. al.*, Case No. 16-10992 (SMB), entered on November 8, 2017.

The *SunEdison* court noted that the starting point of its analysis was whether "it has jurisdiction over the attempts to enjoin the creditors' unasserted claims against the third party."[50] The touchstone for bankruptcy jurisdiction over a non-debtor's claim "remains whether its outcome might have any 'conceivable effect' on the bankruptcy estate."[51] Importantly, "a financial contribution to the estate by the releasee, without more, does not confer subject matter jurisdiction to enjoin claims against the releasee."[52] Finally, the party asserting that the Court has subject matter jurisdiction "has the burden of proving by a preponderance of the evidence that jurisdiction exists."[53] As a result, the Court concluded that SunEdison failed to sustain its burden of proving that the Court had subject matter jurisdiction to approve the releases as drafted.[54]

Even where the court has jurisdiction, third party are proper only in rare and unique circumstances.[55] The test "is not 'a matter of factors and prongs,' and a third party release will not be tolerated 'absent findings of circumstances that may be characterized as unique'."[56] In this case, the Debtors have not argued, nor can they, that this Court has jurisdiction to enter third party releases against the Insiders. Simply put, the Debtors have not come close to sustaining

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[50] *Id.* at p. 12 (citing *Johns-Manville Corp. v. Chubb Indem. Ins. Co. (In re Johns-Manville Corp.)*, 517 F.3d 52, 65 (2d. Cir. 2008), *vacated & remanded on other grounds*, 557 U.S. 137 (2009), *aff'g in party & rev'g in part*, 600 F.3d 135 (2d Cir.), *cert. denied*, 562 U.S. 1082 (2010); *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 755 (5th Cir. 1995); *Shearson Lehman Bros., Inc. v. Munford, Inc. (In re Munford, Inc.*), 97 F.3d 449, 454 (11th Cir. 1996)).

[51] *Id.* (*quoting Marshall v. Picard (In re Bernard L. Madoff Inv. Sec. LLC*), 740 F.3d 81, 88 (2d Cir. 2014).

[52] *Id.* (*citing Manville*, 517 F.3d at 66).

[53] *Id.* (*citing Giammatteo v. Newton*, 452 F. App'x 24, 27 (2d Cir. 2011); *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)).

[54] *Id.* at p. 16.

[55] *Id.* at p. 13 (citing *Metromedia*, 416 F.3d at 142)).

[56] *Id.*

their burden of proving that the Court has subject matter jurisdiction to approve the releases. Even if this Court had subject matter jurisdiction to consider such third party releases, which it does not, the Debtors have failed to sustain their burden of proving rare or unique circumstances exist in this case. The only circumstance at play in this case is that the Insiders' orchestrated this entire ruse to exit bankruptcy owning a new company that is shed of debt, including additional non-Debtor assets unrelated to the bankruptcy estate whose debt has been satisfied by the bankruptcy estates, and for which they get released from any and all claims. As a result, the Proposed Plan is unconfirmable.

IV. The Disclosure Statement Fails To Provide Adequate Information As Required By Bankruptcy Code Section 1125.

A. A Disclosure Statement Should Not Be Approved If It Fails To Provide "Adequate Information".

Approval of a disclosure statement requires a debtor to provide "adequate information."[57] The Bankruptcy Code defines "adequate information" as "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the Proposed Plan."[58]

The determination of what constitutes adequate information is made on a case by case basis.[59] In determining whether a disclosure statement contains adequate information, courts look to, among other things, financial information, valuations, and projections relevant to the decision

[57] *See* 11 U.S.C. § 1125(a).

[58] *See Id.*

[59] *See In re Applegate Prop., Ltd*., 133 B.R. 827, 829 (Bankr. W.D. Tex. 1991) ("The issue of adequate information is usually decided on a case by case basis and is left largely to the discretion of the bankruptcy court.").

whether to accept or reject the Proposed Plan; information relevant to the risks posed under the Proposed Plan; and the actual or projected realizable value from recovery on litigation claims.[60] To the extent that a disclosure statement lacks information necessary for a proper evaluation of the proposed plan, then the disclosure statement cannot be approved.[61]

B. The Disclosure Statement Does Not Provide "Adequate Information," And, Therefore, Should Not Be Approved.

Section 1125(b) states that a debtor may not solicit acceptance or rejection of a plan of reorganization unless, at the time of or before solicitation, the debtor provides each holder of a claim or interest with a disclosure statement approved by the bankruptcy court that provides "adequate information." *See* 11 U.S.C. § 1125(b). The Bankruptcy Code defines "adequate information" as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtors' books and records . . . that would enable . . . a hypothetical investor of the relevant class to make an informed judgment about the plan . . . and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing such information.[62]

The issue of adequate information "is usually decided on a case by case basis and is left largely to the discretion of the bankruptcy court."[63] A court's "legitimate concern under Section 1125 is

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[60] *See In re US. Brass Corp*., 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996).

[61] *See In re Divine Ripe, L.L.C*., 554 B.R. 395, 405-13 (Bankr. S.D. Tex. 2016) (rejecting disclosure statement as lacking adequate information regarding, among other things, projections and financial information); *In re Fullmer*, No. 09-50086-RLJ-l 1, 2009 WL 2778303, at *2 (Bankr. N.D. Tex. Sept. 2, 2009) (rejecting disclosure statement that contained inadequate information about settlement); *Applegate Prop.*, 133 B.R. at 829-32 (rejecting disclosure statement for failing to disclose that insider had acquired claims to control voting on debtor's plan).

[62] 11 U.S.C. § 1125(a).

[63] *In re Applegate Prop., Ltd.*, 133 B.R. 827, 829 (Bankr. W.D. Tex. 1991).

assuring that hypothetical reasonable investors receive such information as will enable them to evaluate for themselves what impact the information might have on their claims on the outcome of the case, and to decide for themselves what course of action to take."[64]

Courts have identified several categories of key information that should be included in a disclosure statement as a predicate to court approval. These include, among other things:

a. the events that led to the filing of a bankruptcy petition;

b. a description of the available assets and their value;

c. the anticipated future of the company;

d. the source of information stated in the disclosure statement;

e. a disclaimer;

f. the present condition of the debtor while in chapter 11;

g. the scheduled claims;

h. the estimated return to creditors under a chapter 7 liquidation;

i. the accounting method utilized to produce financial information and the name of the accountants responsible for such information;

j. the future management of the debtor;

k. the chapter 11 plan or a summary thereof;

l. the estimated administrative expenses, including attorneys' and accountants' fees;

m. the collectability of accounts receivable;

n. financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the chapter 11 plan;

o. information relevant to the risks posed to creditors under the plan;

p. the actual or projected realizable value from recovery of preferential or otherwise voidable transfers;

q. litigation likely to arise in a nonbankruptcy context;

[64] *Id.* at 831 (emphasis in original); *See also In re Ferguson*, 474 B.R. 466, 470-471 (Bankr. D. S.C. 2012) (same) (denying approval of disclosure statement as not containing adequate information).

r. tax attributes of the debtor; and

s. the relationship of the debtor with affiliates.[65]

The Disclosure Statement fails to provide basic and critical information regarding the Proposed Plan, including without limitation: (a) a description of each individual Debtor's available assets and their value; (b) Debtors' anticipated future; (c) the Debtors' scheduled claims; (d) the accounting method utilized to produce financial information contained in the Disclosure Statement; (e) the "Plan Documents" as defined in the Proposed Plan, which do not even have to be provided to creditors until five days prior the end of voting on the Proposed Plan; (f) financial information, data, valuations or projections as to each of the Debtor's entities relevant to the creditors' decision to accept or reject the Proposed Plan; (g) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers and litigation likely to arise in a nonbankruptcy context, including actions against the Insiders; (h) information about the Debtors ownership and/or funding of airplanes and boats for the benefit of the Insiders; and (i) a thorough discussion of the Insiders' control and dominion of the Debtors.

The Disclosure Statement also provides woefully inadequate information with respect to the Debtors' proposal to substantively consolidate all of the Debtors' estates together. Other than one conclusory statement (unsupported by evidence) referencing substantive consolidation of the Debtors' estates, the Disclosure Statement and Proposed Plan are bereft of any information supporting such extraordinary relief. More importantly, the Debtors have not provided any information as to the relative recoveries to the stakeholders of each of the Debtors' entities to enable them to compare whether they would obtain a better recovery under a substantively

[65] *See In re Divine Ripe, L.L.C.*, 554 B.R. 395, 402 (Bankr. S.D. Tex. 2016) (denying approval of an insufficient disclosure statement); *See also In re US. Brass Corp.*, 194 B.R. 420, 424 (Bankr.E.D. Tex. 1996); *In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984).

consolidated plan versus a non-consolidated plan. As the plan proponents, the Debtors bear the burden of demonstrating an adequate rationale for the proposed substantive consolidation.[66] The Debtors have failed miserably to satisfy this burden.

RESERVATION OF RIGHTS

CHCT continues to analyze and review the Disclosure Statement, the Proposed Plan, and the Debtors' proposed valuations materials in respect of the same, and reserves all rights in connection with confirmation of the Disclosure Statement and Proposed Plan. This Objection is submitted without prejudice to, and with a full reservation of, CHCT's rights to supplement or amend this Objection in advance of, or in connection with, the hearing to approve the Disclosure Statement and/or confirmation of the Proposed Plan. Nothing herein is intended to be a waiver by CHCT of any right, objection, argument, claim, or defense with respect to any matter, including any matters in respect of the Disclosure Statement and the Proposed Plan, all of which are hereby expressly preserved.

[66] *Owens Corning*, 419 F.3d at 212.

Dated: November 21, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2017, a true and correct copy of the foregoing was served by Electronic Case Filing system for the United States Bankruptcy Court for the Western District of Louisiana.

Dated: November 21, 2017 /s/ *Lacey E. Rochester*