IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: ALTO MAIPO DELAWARE LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 21-11507 (KBO) (Jointly Administered) **H'rg Date: Apr. 5, 2022 at 10:00 a.m. (ET)** **Obj. Deadline: March 29, 2022 at 4:00 p.m. (ET)** **Re: D.I. 314, 369, and 402**

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OBJECTION TO DEBTORS' MOTION SEEKING APPROVAL OF DISCLOSURE STATEMENT FOR THE JOINT CHAPTER 11 PLAN OF REORGANIZATION OF ALTO MAIPO SPA AND ALTO MAIPO DELAWARE LLC PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE AND FOR RELATED RELIEF

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's tax identification number in the jurisdiction in which it operates, are: Alto Maipo SpA (761-2) (Chile) and Alto Maipo Delaware LLC (1916) (Delaware). The location of the corporate headquarters and the service address for Alto Maipo SpA is Los Conquistadores 1730, Piso 10, Santiago, Chile.

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The Official Committee of Unsecured Creditors (the "Committee") of Alto Maipo SpA ("Alto Maipo") and Alto Maipo Delaware LLC ("Alto Maipo Delaware"), debtors and debtors in possession (together, "Alto Maipo" or the "Debtors") in these chapter 11 cases (the "Chapter 11 Cases"), by and through its undersigned counsel of record, respectfully submits this objection (the "Objection") to the *Debtors' Motion for an Order (I) Approving the Disclosure Statement; (II) Approving Solicitation and Voting Procedures, Including (A) Fixing the Record Date, (B) Approving the Solicitation Packages and Procedures for Distribution, (C) Approving the Form of the Ballots and Establishing Procedures for Voting, and (D) Approving Procedures for Vote Tabulation; (III) Scheduling a Confirmation Hearing and Establishing Notice and Objection Procedures ; and (IV) Granting Related Relief*, filed on March 15, 2022 [Docket No. 369] (the "Motion") along with the *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Alto Maipo SpA and Alto Maipo Delaware LLC Pursuant to Chapter 11 of the Bankruptcy Code* originally filed on March 1, 2022 [Docket No. 314] and filed as revised on March 22, 2022 [Docket No. 402] (collectively, the "Disclosure Statement"). In support of this Objection, the Committee respectfully represents as follows:[1]

I. PRELIMINARY STATEMENT

1. As the Court expressed at the hearing on March 24, 2022, at least one significant issue concerning feasibility exists – whether the MLP PPA (as those terms are defined herein) may

[1] The Committee retains standing to object to the Disclosure Statement even though the Plan does not propose to provide any distribution to Committee constituents. *See In re Zenith Elecs. Corp.*, 241 B.R. 92, 98–99 (Bankr. D. Del. 1999) (finding that an equity committee "as an official committee in this case, does have standing to appear and be heard on any issue in the case. 11 U.S.C. § 1109(b). Thus, we conclude that it has standing to object to the Disclosure Statement."). Here, the Plan proposes to provide no distribution to general unsecured creditors and in turn classifies general unsecured creditors under Class 4 as a nonconsenting, impaired class. As such, there can be no dispute that unsecured creditors' claims will be directly affected by the terms of the Plan and the Committee has standing to oppose the Motion and the relief requested by it.

be assumed and enforced. Docket No. 420. Although that concern was noted in a separate context, it and other concerns warrant denial of the Motion and/or approval of the Disclosure Statement on the basis that the Plan is patently unconfirmable and the Disclosure Statement does not contain "adequate information" as required by section 1125 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (as amended, the "Bankruptcy Code").

2. Due to the insider relationship of AES Andes and its affiliates with the Debtors and the benefits sought to be provided to AES Andes and its affiliates (which already hold 93% of existing equity) under the Plan, the Disclosure Statement should be assessed under a heightened scrutiny standard. These benefits include increasing AES Andes' ownership stake in the reorganized Debtors to 100%, providing Class 7 intercompany creditors with the ability to have its claims "reinstated" and providing insider parties with valuable releases, all the while leaving general unsecured creditors out of the money.

3. Regardless of the standard employed, denial of the Motion is appropriate. The Plan is predicated on approval of an RSA (as defined below), the terms of which are themselves subject to objection on several grounds, including (but not limited to the fact) that the RSA's requisite 2/3 support has not been achieved. The absence of the requisite support by parties to the RSA renders the Plan "dead upon arrival." Yet, even if such support were to arise, denial of the assumption of the RSA for any other reason will render the Plan unconfirmable because RSA approval is an express condition to the Plan going Effective. *See* Docket No. 401 at 50.

4. Second, denial is appropriate due to a lack of adequate information. Among its information flaws, the Disclosure Statement fails to: (i) disclose whether the Debtors will or will not seek foreign recognition and the effect of that decision on, among other things, their ability to successfully reorganize; (ii) provide necessary details concerning the Debtors' relationship with

AES Andes, why AES Andes should not be held responsible for significant project overruns and why AES Andes and other insiders are entitled to releases; (iii) the nature of litigation claims and potential water rights; (iv) the hydrology of the Project (as defined below); and (v) how the Debtors will meet their debt obligations under the Plan.

5. In addition, while the Plan and Disclosure Statement appear to exclude general unsecured creditors under Class 4 as a "Releasing Party," any disclosure statement that ultimate may be approved should expressly provide the Class 4 claim holders are not subject to the release provision under the Plan.

6. Further, the Court should require the Debtors to file their proposed Plan Supplement at least 21 days before the confirmation hearing and the confirmation hearing should begin no earlier than May 23, 2022 (rather than on May 12, 2022), given the significant amount of Plan related discovery that remains needed.

7. For these and other reasons noted below, the Motion and Disclosure Statement should be denied.

II. BACKGROUND

A. *The Debtors and the Chapter 11 Cases*

8. Alto Maipo is a special purpose company, incorporated under Chilean law for the purpose of developing, constructing, and operating a run-of-river hydroelectric energy project in the Santiago Metropolitan Region of Chile, approximately 30 miles southeast of the city of Santiago. The hydroelectric energy project (the "Project") that is presently under construction will consist of two run-of-river hydroelectric plants which, once completed, will provide significant zero-emissions energy to Chile's electric grid.

9. On November 16, 2021, Alto Maipo formed Alto Maipo Delaware.

10. On November 17, 2021 (the "Petition Date"), each of the Debtors commenced their Chapter 11 Cases by filing petitions for relief under chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors continue to operate their businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases.

11. On the Petition Date, the Debtors filed the *Declaration of Javier Dib In Support of Chapter 11 Petitions and First Day Motions* [Docket No. 13] (the "Dib Declaration"). The Dib Declaration provides that the Debtors' operations are allegedly troubled by decreased energy prices but what is even more problematic for the Project's estimated revenue is:

> the significant impact that climate change has had on the energy supply available to the Project. The tributary rivers whose flow will power the Hydroelectric Plants begin at the peaks of the Andes Mountains, and are primarily fed by seasonal snowmelt from the glaciers on these peaks. Unfortunately, in recent years, climate change has had a devastating impact on precipitation in the Andes Mountains, with the result that the rivers that will supply the Project have experienced a steep decline in overall water flow.

Dib Declaration at ¶ 32.

12. Javier Dib, the CRO and Board President of Alto Maipo, served in various capacities at AES Andes, S.A. ("AES Andes"), which was one of the major sponsors of Alto Maipo at its inception and is the primary shareholder of Alto Maipo as of the Petition Date.

13. On the Petition Date, the Debtors also filed the *Motion to Authorize Alto Maipo SpA to Act as Foreign Representative of the Debtors* [Docket No. 11] (the "Motion to Seek Foreign Recognition"). On November 18, 2021, the Bankruptcy Court entered an Order granting the Motion to Seek Foreign Recognition, which explicitly authorized Alto Maipo to act as a foreign representative and to seek recognition of the Chapter 11 Cases with a foreign court in order to

effectuate the Debtors' restructuring. However, the Debtors did not immediately seek recognition or commence a parallel proceeding in Chile upon entry of this order nor has it sought such recognition since. In fact, at the February 16, 2022 hearing in this court, the Debtors' counsel indicated that the Debtors had altered their proposed course on foreign recognition since the Petition Date. Specifically, the Debtors' counsel stated that "the debtors have not sought and do not currently intend to seek recognition in Chile." [Excerpts of the February 16, 2022 Hearing Transcript are attached as **Exhibit A**, pp. 25:23 – 26:7].

14. On December 20, 2021, the Debtors filed their *Schedules of Assets and Liabilities* [Docket Nos. 173 and 175] (as amended, the "Schedules"). As disclosed in the Schedules, the majority of the Debtors' assets and creditors are located in Chile.

B. *The Committee*

15. On January 31, 2022, the Office of the United States Trustee (the "United States Trustee") appointed the Committee. *See* Docket No. 231. The three members of the Committee are: (i) Compañía Industrial El Volcán S.A.; (ii) Comunidad de Aguas Canal El Manzano; and (iii) Parque Arenas SpA. That evening, the Committee selected the undersigned attorneys as its counsel. The Committee and its proposed counsel immediately began investigating the acts, conduct, assets and liabilities and financial condition of the Debtors pursuant to 11 U.S.C. § 1103(c)(2).

C. *The Restructuring Support Agreement*

16. Prior to the Petition Date, the Debtors reached agreement on the terms of a restructuring support agreement which has already been folded into the Plan, subject to a future hearing on the assumption of that agreement. In connection therewith, the Dib Declaration appended a certain restructuring support agreement, dated November 16, 2021 ("Original RSA," and as amended, the "RSA") and attached thereto as Exhibit A.

17. On November 23, 2021, the Debtors entered into *Amendment No. 1 to the Restructuring Support Agreement* (the "First Amendment") which was subsequently filed with the Court as Exhibit A to the *Notice of Filing of Amended Restructuring Support Agreement* [Docket No. 100].

18. On December 17, 2021, the Court entered the *Final Order Granting Debtors' Motion to (I) Authorize Debtors in Possession to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 362, 363 and 364; (II) Grant Superpriority Administrative Expense Claims to DIP Lender(s) Pursuant to 11 U.S.C. §§ 364 and 507; (III) Modify Automatic Stay Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507; and (IV) Grant Related Relief* [Docket No. 166] (the "Final DIP Order"). That certain approved DIP Credit Agreement (the "DIP Credit Agreement") was appended thereto as Annex A.

19. On January 31, 2022, the Debtors entered into *Amendment No. 2 to the Restructuring Support Agreement* (the "Second Amendment"). *See* Docket No. 314.

20. On February 28, 2022, the Debtors entered into *Amendment No. 3 to the Restructuring Support Agreement* (the "Third Amendment"). *See* Docket No. 341.

21. On March 7, 2022, the Debtors filed a motion seeking authorization from the Court to assume the RSA, and appended the Third Amendment thereto as Exhibit B. *See* Docket No. 341. The RSA serves to, among other things, establish and lock in the classification and priority of claims and interests, establish and lock in recoveries thereon, and establish and lock in certain releases, including third-party releases. *See* RSA at § 1.04(a) (mandating that the Debtors comply with the restructuring terms of the RSA, subject only to their fiduciary duties); RSA, Exhibit A (providing in Plan Term Sheet for treatment of claims and interests); RSA, Exhibit A, and Annex 1 to Exhibit A at 42 (providing in Plan Term Sheet for releases, including purportedly consensual

third-party releases). It is without dispute that the Committee has not been consulted in any negotiations regarding the terms of the RSA.

22. Moreover, the current terms of the Debtors' proposed exit from chapter 11, as set forth in the Plan and RSA, provide for the conveyance of all equity of the Debtors to the Debtors' insider, AES Andes, with no distribution to unsecured creditors.

D. *The Plan and Disclosure Statement*

23. On February 28, 2022, the Debtors filed the *Joint Chapter 11 Plan of Reorganization of Alto Maipo SpA and Alto Maipo Delaware LLC Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 313] (the "Plan").

24. On March 1, 2022, the Debtors filed the *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Alto Maipo SpA and Alto Maipo Delaware LLC Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 314] (the "Disclosure Statement"), appending the Second Amendment to a copy of the original RSA, which was appended as Exhibit E to the Disclosure Statement.

25. On March 15, 2022, the Debtors filed the Motion. A hearing on the Motion and to consider approval of the Disclosure Statement is scheduled for April 5, 2022.

26. On March 22, 2022, the Debtors filed a revised version of the Disclosure Statement [Docket No. 402] and black line versions of the Plan and Disclosure Statement [Docket No. 403].

27. At bottom, the Plan is a vehicle designed to effectuate an transaction among the Debtors, certain creditors and their insiders, that will benefit those parties at the expense of general unsecured creditors. The Plan confers a flurry of benefits upon the Debtors' insiders, all while making no distribution to general unsecured creditors. Such benefits include, but are not limited to:

- Transferring all of the Debtors' equity to AES Andes (Plan, §§ 3.3(e); 4.3);

- Providing each Holder of an Allowed Alto Maipo Senior Secured Obligation with a pro rata share of the 1L Secured Obligations and Amended & Restated 2L Secured Obligations (Plan, § 3.3(a));

- Providing each Holder of an Allowed Secured Claim with either (a) Cash in an amount equal to their Allowed Secured Claim or (b) their collateral (Plan, § 3.3(b));

- Providing for substantial payment of Strabag's Other Claims that are unsecured (Plan, § 3.3(f));

- Allowing for the reinstatement of Intercompany Claims (Plan, § 3.3(g));

- Providing for the distribution of proceeds of any CNM Arbitral Award to the Debtors' insiders (Plan, § 4.3(h));

- Providing insiders with a release of claims held by certain creditors and interest holders eligible to vote ("Third Parties"), unless those Third Parties affirmatively "opt out" of granting such releases, in contravention of this Court's decision in *In re Emerge Energy Services LP*. Case No. 19-11563, 2019 WL 7634308, at *18 (Bankr. D. Del. Dec. 5, 2019) (holding that the Court could not conclude that "the failure of a creditor or equity holder to return a ballot or Opt-Out Form manifested their intent to provide a release. Carelessness, inattentiveness, or mistake are three reasonable alternative explanations.") (Plan, § 9.3(c)); and

- Providing broad releases of claims of the Debtors against their insiders without opportunity for an independent, fulsome investigation of such claims, including whether such claims could enhance the value of the Debtors' estates (Plan, § 9.3 (a)-(b)).

E. ***The Debtors' MLP Assumption and Stay Motions***

28. On March 10, 2022, the Debtors filed a *Motion for Entry of an Order Approving Assumption of Agreement with MLP* [Docket No. 350] (the "MLP Assumption Motion"). The Assumption Motion seeks authority for Alto Maipo to assume a Power Purchase Agreement ("PPA") with Minera Los Pelambres ("MLP"). That same day, the Debtors filed a *Motion for Entry of an Order (I) Enforcing the Automatic Stay, (II) Declaring Void Ab Initio Any Purported Termination of the Agreement by MLP, and (III) Granting Related Relief* [Docket No. 352] (the "MLP Stay Motion," together with the MLP Assumption Motion, the "MLP Motions"). On March

11, 2022, the Debtors also filed a motion seeking to keep exhibits filed with the MLP Assumption Motion under seal [Docket No. 353] (the "Motion to Seal").

29. On March 17, 2022, MLP filed a limited objection to challenge the service of process of the MLP Motions [Docket No. 378]. On that same date, the Office of the United States Trustee ("UST") filed an objection to the Motion to Seal. [Docket No. 380] (the "UST Objection").

30. Several parties filed joinders to or statements in support of the MLP Motions, including the Committee [Docket No. 381]. The Debtors and MLP respectively filed a reply [Docket No. 395] and sur-reply [Docket No. 409] to the MLP Motion and the Debtors filed a reply to the UST Objection [Docket No. 396].

31. On March 24, 2022, the Court held a hearing to consider the MLP Motions. From the outset, the Court noted a feasibility concern highlighted by the MLP PPA and the dispute surrounding it. The Court stated that the enforceability of the PPA "creates a humongous feasibility issue for the Debtors' plan" and should be addressed "sooner rather than later." [Excerpts of the March 24, 2022 Hearing Transcript are attached as **Exhibit B**, pp. 24-3 to 24-9 Docket No. 420] (the "March 24 Transcript"). Ultimately, the Court found it could hear the pending motions, and calendared a further hearing for March 31, 2022 to schedule substantive briefing on jurisdictional and other issues.

III. ARGUMENT

32. There are two general bases on which a disclosure statement should not be approved: (i) the underlying plan is patently unconfirmable; and (ii) the disclosure statement does not contain adequate information. *See* 11 U.S.C. § 1125(a)(1); *In re Am. Cap. Equip., LLC*, 688 F.3d 145, 154–55 (3d Cir. 2012). Here, both reasons exist. Before addressing those objections, the Committee believes it is important to address the appropriate standard of review.

A. *The Disclosure Statement Should Be Adjudged Under the Heightened Scrutiny Standard*

33. The Plan and RSA upon which the Disclosure Statement is premised upon propose a significant insider transaction that, if granted, will provide insiders with payments, new equity and valuable releases all while leaving general unsecured creditors with no recovery. Given this, the Court should apply a heightened pleading standard in reviewing the Disclosure Statement rather than the business judgment standard.

34. It is well established that bankruptcy courts apply heightened scrutiny "when the transaction [in] question is with an insider of the debtor." *In re MSR Hotels & Resorts, Inc.*, No. 13-11512 (SHL), 2013 WL 5716897, at *1 (Bankr. S.D.N.Y. Oct. 1, 2013) (citing *In re Innkeepers USA Tr.*, 442 B.R. 227, 231 (Bankr. S.D.N.Y. 2010)); *see also In re Astra Health*, 623 B.R. 793, 801 (Bankr. E.D. Wash. 2021) ("Heightened scrutiny is warranted when an insider benefits from a compromise or release that a debtor in possession proposes on behalf of its bankruptcy estate."); *In re Family Christian, LLC*, 533 B.R. 600, 628 (Bankr. W.D. Mich. 2015) ("The insider nature of the relationship again requires this court to view this attempt to bypass certain requirements of a plan with heightened scrutiny."); *In re eToys, Inc.*, 331 B.R. 176, 200 (Bankr. D. Del. 2005) (applying heightened scrutiny to transaction with insider because "[w]hen faced with such divided loyalties, directors [and officers] have the burden of establishing the entire fairness of the transaction to survive careful scrutiny by the courts.") (brackets in original). "In applying heightened scrutiny, courts are concerned with the integrity and entire fairness of the transaction at issue, typically examining whether the process and price of a proposed transaction not only appear fair but are fair and whether fiduciary duties were properly taken into consideration." *Innkeepers*, 442 B.R. at 231. Here, the undisputed facts demonstrate the insider beneficial nature

of the proposed Plan and Disclosure Statement as evidenced by the Debtors' ownership and debt structure.

35. At the time of its incorporation in 2011 as a special purpose company under Chilean law, Alto Maipo's sponsors were AES Andes and Antofagasta plc (through MLP). Alto Maipo's initial shareholders were Norgener Renovables SpA ("Norgener"), an affiliate of AES Andes which held 60% of Alto Maipo's equity interests, and MLP, which held the remaining 40% of Alto Maipo's equity interest. *See* Dib Declaration at 6.

36. In 2017, the Project and Alto Maipo underwent a restructuring process. *Id.* More specifically, Antofagasta (*e.g.*, MLP) ceased being a sponsor and AES Andes, through its interest in Norgener, assumed MLP's equity stake. Simultaneously, AES Andes awarded a 6.7% equity stake in Alto Maipo to Strabag, one of Alto Maipo's contractors. *Id.* at 7.

37. In addition to its significant equity position, AES Andes appears to maintain board control. In addition to Javier Dib (Board President of Alto Maipo), Roberto Salazar Esperante and Alfredo Manuel Del Carril have served on the board of Alto Maipo, and Javier Dib has served on the boards of the various AES Andes subsidiaries. *See* Dib Declaration at 1-2. As such, AES Andes is an insider and has wielded enormous influence over the activities of Alto Maipo before the Petition Date.

38. In addition to holding 93% of equity in Alto Maipo, the following AES Andes group members filed the following claims, which in total assert more than $1 billion: (A) AES Andes S.A. for $1,089,142,102 (filed as and defined herein as "Claim No. 21"); (B) AES Corporation for $6,138,048 (filed as and defined herein as "Claim No. 24"); AES Electric Ltd. For $301,536 (filed as and defined herein as "Claim No. 22/Amended Claim No. 19"). More specifically, Claim No. 21 is comprised of the following:

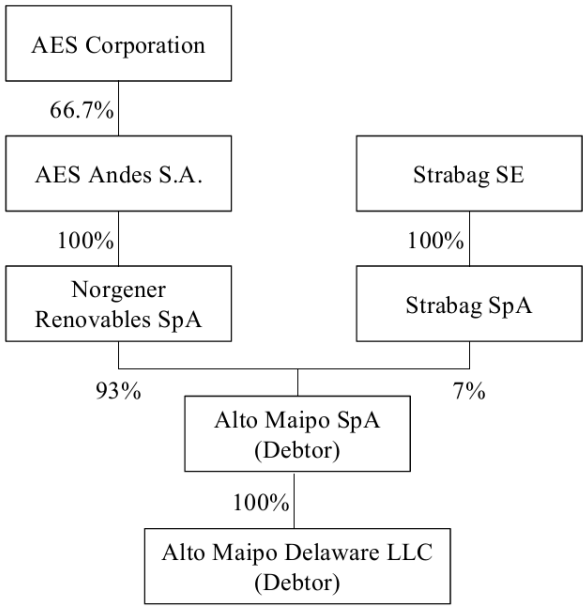
- Subordinated Loans in connection with 2013 Contribution Agreement ($349,540,725);
- Subordinated Loans in connection with 2017 Contribution Agreement ($33,712,462);
- Subordinated Loans in connection with 2018 Contribution Agreement: ($44,380,076);
- Novation Agreement dated October 29, 2021 ($437,787,538);
- Accounts Receivable in connection with the intercompany payables related to management and technical assistance fees and costs, among other alleged obligations ($14,655,218); and
- Accrued Interest ($209,073,081).

39. Claim No. 24 seeks $6,138,048 and is comprised of intercompany payables allegedly due from Alto Maipo. Claim No. 22/Amended Claim No. 19 appears to be based on intercompany payables of $301,635 allegedly due from Alto Maipo.

40. In addition to allegedly being owed more than $1 billion of debt, shareholders of Alto Maipo received millions in payments before the Petition Date. According to Alto Maipo's Statement of Financial Affairs, AES Andes received approximately $11 million in payments within the one-year period before the Petition Date. Strabag received over $21 million in the 90 days before the filing of the petition, and conceivably much more within the year of the Petition Date. The Committee believes that significant additional amounts were paid to AES Andes and other shareholders prior to the year before the Petition Date.

41. Similarly, Norgener and AES Andes, two key parties to the RSA, are undoubtedly "insiders" of the Debtors as defined in section 101(31) of the Bankruptcy Code. *See* 11 U.S.C. § 101(31). Norgener and AES Andes are both statutorily "insiders" because they are "affiliates," defined in the Bankruptcy Code as any "entity that directly or indirectly owns, controls, or holds the power to vote, 20 percent or more of the outstanding voting securities of the debtor." *Id.* §

101(2)(A). As set forth below in the diagram reproduced from page 9 of the Dib Declaration, Norgener holds power to vote 93% of the equity interests in Alto Maipo, and AES Andes, in turn, holds 100% of the equity interests in Norgener:



42. It is manifest that the transaction proposed in the Plan and RSA were negotiated pre-petition and with a high degree of insider control – just the circumstances for which heightened scrutiny is appropriate.

B. *The Plan Is Unconfirmable Given That It Is Predicated on an Unapproved (and Unapprovable) RSA and Fails to Address Feasibility-Related Gating Issues*

43. It is black letter law that a disclosure statement describing a plan that cannot be confirmed cannot be approved, regardless of the amount of disclosure it contains. *See, e.g., In re Am. Capital Equip., LLC*, 688 F.3d 145, 154 (3d Cir. 2012).

44. Courts may deny approval of disclosure statements where the plans they describe are "patently unconfirmable." *See, e.g., In re Moshe*, 567 B.R. 438, 447 (Bankr. E.D.N.Y. 2017 (denying approval of disclosure statement where plan failed to provide for appropriate rate of interest on cure payments). "A plan is patently unconfirmable where (1) confirmation defects

cannot be overcome by creditor voting results and (2) those defects concern matters upon which all material facts are not in dispute or have been fully developed at the disclosure statement hearing." *In re Am. Capital Equip., LLC,* 688 F.3d 145, 154–55 (3d Cir. 2012). Soliciting votes on an unconfirmable plan "would be futile," *In re Quigley Co.,* 377 B.R. 110, 116 (Bankr. S.D.N.Y. 2007), and it is therefore "incumbent upon the court to decline approval of the disclosure statement and prevent diminution of the estate." *Moshe*, 567 B.R. at 444 (quoting *In re Pecht,* 57 B.R. 137, 139 (Bankr. E.D. Va. 1986)). Section 1125(b) of the Bankruptcy Code conditions solicitation of a plan upon "a written disclosure statement approved . . . by the court as containing adequate information." 11 U.S.C. § 1125(b). Section 1125(a) of the Bankruptcy Code defines "adequate information" as information "in sufficient detail, as far as is reasonably practicable . . . that would enable [] a hypothetical investor . . . to make an informed judgment about the plan." 11 U.S.C. § 1125(a)(1).

45. Here, the Plan provides that the "Effective Date shall not occur unless and until each of the following conditions ('Conditions Precedent') have occurred or been waived in accordance with the terms herein: 1. the Bankruptcy Court shall have entered the Confirmation Order, which shall be a Final Order, the form and substance consistent in all respects with the [RSA] . . . . [and] 2. the [RSA] shall remain in full force and effect and shall not have been terminated at any time[.]"

46. However, the effectiveness of the RSA is dependent upon the support of no less than 2/3 of the "Supporting Senior Lenders" and the support of no less than 2/3 of the "Consenting Creditors." Although a prior iteration of the RSA may have exceeded that approval requirement, the current Third Amended version may not have even a simple majority, as the Debtors have recently provided that the RSA is supported by only "approximately 50% of the Alto Maipo Senior

Secured Obligations." *See* Assumption Motion at ¶ 24. Absent 2/3 support, the RSA and thus the Plan fails by its own terms. And even if the hurdle is met, the Motion, for the reasons that the Committee has demonstrated in connection with its objection to the RSA, should not be approved. And, by its terms, the Plan cannot go effective if the RSA is not approved. *See* Docket No. 401 at 50.

47. The Disclosure Statement fails because the Plan is patently unconfirmable under its own terms. Section 8.1(b) of the Plan provides as a "Condition[] Precedent to the Effective Date" that "the Restructuring Support Agreement shall remain in full force and effect and shall have not been terminated at any time." Plan, § 8.1(b). For the reasons set forth herein, and more fully in the *Objection of Official Committee of Unsecured Creditors to Debtors' Motion for Entry of an Order Authorizing the Debtors to Assume Restructuring Support Agreement* [D.I. 387], the Debtors should not be authorized to assume the RSA. Absent an Order from this Court authorizing such assumption, the RSA terminates under its own terms. *See* RSA, § 3.01(t) ("[T]his Agreement shall automatically terminate upon the occurrence of an event set forth in . . . Section 3.01(t). . . . [Section 3.01] (t)[:] the failure of the Bankruptcy Court to enter an order by January 31, 2022 authorizing and directing the Company to assume the RSA or otherwise approving the RSA [such deadline having been subsequently extended]."). As such, the RSA should be rendered ineffective, and the Plan should be deemed patently unconfirmable as currently constructed.[2]

48. Yet beyond the RSA, the Court has already noted at least one feasibility issue – the assumption and enforceability of the MLP PPA. And until those issues are addressed, the Plan appears unconfirmable. As noted below, there are several other issues that appear to render the

[2] Of course, conditions precedent can be waived as noted at Section 8.2 of the Plan; however, given the amount of time and effort devoted by the parties to the RSA, the likelihood that the conditions precedent regarding the RSA will be waived is problematic.

Plan unconfirmable or at least the Disclosure Statement insufficient due to a lack of sufficient disclosure.

49. For example, under the current proposed terms of the Disclosure Statement and Plan, Class 7 intercompany claims may be reinstated while the claims of non-insider unsecured creditors are not entitled to any distribution. *See* Disclosure Statement, § 2.2(c). The Committee submits that this unfairly discriminates against general unsecured creditors in violation of section 1129(b)(1) of the Bankruptcy Code, and alone renders the Plan patently unconfirmable such that the approval of the Disclosure Statement should be denied. In any event, however, the Committee reserves all of its rights to argue that any such construct unfairly discriminates against general unsecured creditors under 11 U.S.C. 1129(b)(1), or any other applicable legal basis, at or before any hearing convened to consider confirmation of the Plan.

C. *The Disclosure Statement Does Not Contain Sufficient Information Or Otherwise Seek Support of a Plan That Is Unconfirmable*

50. As the Third Circuit Court of Appeals has observed, it is critical that a disclosure statement contain sufficient information because creditors and the Bankruptcy Court rely upon the disclosure statement as the basis upon which to evaluate the proposed plan. *See Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("Given this reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information.'"); *see also Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996) ("[D]isclosure requirements are crucial to the effective functioning of the federal bankruptcy system [because] creditors and the bankruptcy court rely heavily on the debtor's disclosure statement in determining whether to approve a proposed reorganization plan . . . ."). The Third Circuit has called the filing of a disclosure statement with adequate information a "pivotal concept in reorganization under the Code." *Onieda Motor*

Freight, Inc., 848 F.2d at 417. "The importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court." *Id.*

51. Whether a disclosure statement contains adequate information for purposes of section 1125 of the Bankruptcy Code is within the sole discretion of the Bankruptcy Court and is to be determined on a case by case basis. *Tex. Extrusion Corp. v. Lockheed Corp.* (*In re Tex. Extrusion Corp.*), 844 F.2d 1142, 1157 (5th Cir. 1988); *In re River Village Assocs.*, 181 B.R. 795, 804 (E.D. Pa. 1995). However, as a general rule, "[t]he plan proponent bears the ultimate risk of nonpersuasion on the questions of compliance with the requirement to disclose adequate information . . . ." *In re Michelson*, 141 B.R. 715, 720 (Bankr. E.D. Cal. 1992). The Bankruptcy Code does not set forth the type of information that a disclosure statement must include, though certain courts have identified the following non-exclusive list:

1. The circumstances that gave rise to the filing of the bankruptcy petition;
2. A complete description of the available assets and their value;
3. The anticipated future of the debtor, with accompanying financial projections;
4. The source of the information provided in the disclosure statement;
5. The condition and performance of the debtor while in chapter 11;
6. Information regarding claims against the estate, including those allowed, disputed, and estimated;
7. A liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
8. The accounting and valuation methods used to produce the financial information in the disclosure statement;
9. Information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors, and/or officers of the debtor;
10. A summary of the plan of reorganization;
11. An estimate of all administrative expenses, including attorneys' fees and accountants' fees;
12. The collectability of any accounts receivable;
13. Any financial information, valuations or *pro forma* projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
14. Information relevant to the risks being taken by the creditors and interest holders;
15. The actual or projected value that can be obtained from avoidable transfers;
16. The existence, likelihood and possible success of nonbankruptcy litigation;
17. The tax consequences of the plan; and

18. The relationship of the debtor with affiliates.

In re Ferretti, 128 B.R.16, 18-19 (Bankr. D. N.H. 1991); *see also In re Scioto Valley Mortg. Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (setting forth substantially similar list); Alan N. Resnick & Henry J. Somer, 7 *Collier on Bankruptcy* ¶ 1125.02[2] (16th Ed.) (collecting cases setting forth substantially similar lists). Here, the Disclosure Statement lacks adequate information in at several critical ways.

(1) *There Is No Mention of How and When the Debtors Will Seek Enforcement of the Plan Abroad and the Impact Such a Decision May Have on Plan Feasibility*

52. Under section 1129(a)(11) of the Bankruptcy Code, the Court must find that confirmation of a plan "is not likely to be followed by the liquidation, or need for further financial reorganization." 11 U.S.C. § 1129(a)(1). When a plan contemplates the emergence of a reorganized debtor, the plan's feasibility will be dependent upon a number of considerations. Thus, to be feasible for purposes of section 1129(a)(11), a plan and disclosure statement must take into account the possibility that creditors may, even following confirmation, continue the pursuit of claims against the debtor or the debtor's assets. *See Sherman v Harbin (In re Harbin)*, 486 F.3d 510, 517 (9th Cir. 2010); *see also In re McCall*, 44 B.R. 242 (Bankr. E.D. Pa. 1984) (finding the debtor's plan and disclosure statement failed to take into account what might happen if a creditor were successful in pending litigation for constructive trust against debtor's assets.).

53. Here, it is respectfully submitted that the Debtors must commit now to whether they will seek recognition of the Plan in Chile in order to demonstrate that the Plan is feasible. The Debtors' assets are almost exclusively in Chile and the Debtors' creditors are principally in Chile. Although the Debtors obtained relief from the Bankruptcy Court to seek recognition under Chilean law, they have yet to seek such recognition. In fact, the Debtors' counsel has recently stated at public hearings that the Debtors do not plan to seek recognition. Amazingly, there is little or no

discussion specifically addressing the ramifications of seeking such recognition, or not, in the Disclosure Statement.

54. The issues of recognition and the possible enforcement of the Plan and its terms are essential in determining whether the Plan is feasible. Assuming for the moment that the discharge and any other injunctive relief incorporated into the Plan would apply to foreign creditors and governmental agencies (which the Committee does not concede), the challenge for the Debtors will be enforcing such provisions abroad. The possibility that general unsecured creditors in these proceedings may pursue actions beyond the United States is particularly acute given that Class 4 creditors will not receive payment under the Plan and may be inclined to seek redress for their claims notwithstanding the injunction provisions of the Plan.

55. If the Debtors' Plan is not recognized under Chilean law, then certain provisions of the Plan, including the discharge of certain Chilean claims and the disposition of certain Chilean property, may be problematic, and lead to collection activities that potentially could threaten the feasibility of the Plan. In addition, understanding whether the Debtors will seek recognition is relevant to both "[t]he anticipated future of the debtor, with accompanying financial projections" as well as "[i]nformation relevant to the risks being taken by the creditors and interest holders." *In re Ferretti*, 128 B.R. at 18-19; *In re Scioto Valley Mortg. Co.*, 88 B.R. at 170-71. Knowing whether the Debtors will seek recognition is just the type of information an investor in the reorganized Debtors would seek. 11 U.S.C. § 1125(a)(1).

56. The Debtors commenced the Chapter 11 Cases more than four months ago, and now they attempt to confirm their Plan. In the absence of recognition, the Plan may fail. At the very least, the Disclosure Statement must discuss the impact that seeking recognition (or not) might

have on the feasibility of the Plan. The time has now come for the Debtors to disclose how they intend to proceed in Chile.

57. What is more, even if the Debtors were to seek recognition in Chile they do not address at all whether a Chilean court would grant recognition. Indeed, there appears to be significant risk that the Debtors' Plan might not be eligible for recognition in its current formulation under Chilean law by failing to respect the principle of equality of treatment among creditors. *See* Section 305 of Law No. 20000720 on Restructuring and Liquidation of Companies and Individuals (the "Chilean Insolvency Act"). Furthermore, Section 61 of the Chilean Insolvency Act provides that a debt restructuring agreement "shall be equal for all creditors of the same class or category, unless there is an agreement to the contrary, in accordance with the provisions of Articles 64 . . . ." C.B.L. § 61(2).

58. As applied here, the Debtors have not provided adequate information about whether they will seek foreign recognition, the consequences of that decision, or whether the Plan could ever be recognized under Chilean law. Indeed, Chilean law seemingly would not authorize the Plan's proposed treatment or Intercompany Claims in Class 7 or Strabag's Other Claims in Class 6, which as discussed herein, appear to provide for the unequal treatment of creditors who should be similarly situated. *See id*. at sections 61(2) and 305; *see also* subsection (3) below.

(2) *The Disclosure Statement Fails to Provide Necessary Details of the Debtors' Relationship with AES, Why AES or Other Parties Should Not Be Held Accountable for Significant Project Overruns, or Why They and Other Shareholders Are Entitled to Favorable Treatment, Including Releases*

59. At bottom, the Plan provides insiders, affiliates, directors and officers and others shareholders with significant benefits while leaving general unsecured creditors totally out of the money. Such treatment is not adequately explained.[3]

60. First, AES Andes and its affiliates are undoubtedly "insiders" of the Debtors as defined in section 101(31) of the Bankruptcy Code. *See* 11 U.S.C. § 101(31). Norgener and AES Andes are both statutorily "insiders" because they are "affiliates," defined in the Bankruptcy Code as any "entity that directly or indirectly owns, controls, or holds the power to vote, 20 percent or more of the outstanding voting securities of the debtor." *Id.* § 101(2)(A). Norgener holds power to vote 93% of the equity interests in Alto Maipo, and AES Andes, in turn, holds 100% of the equity interests in Norgener. In addition, "[c]ourts uniformly treat this definition of 'insider' as illustrative of types of insider relationships but not as exclusive, and instead refer to the definition [as] 'one who has a sufficiently close relationship with the debtor that his conduct is made subject to closer scrutiny than those dealing at arms length with the debtor.'" *In re Die Fliedermaus LLC*, 323 B.R. 101, 110-11 (Bankr. S.D.N.Y. 2005) (citation omitted).[4] Actual control is not necessary

[3] To the extent such consideration is being given on account of existing equity, it renders the Plan nonconfirmable.

[4] There is reason to believe that Strabag SpA ("Strabag") would, at minimum, qualify as a non-statutory insider of the Debtors by virtue of, among other things, its ownership of seven percent (7%) of Alto Maipo's equity interests, its longstanding relationship with Alto Maipo, and its economic leverage over the Debtors. Although Strabag was party to the Original RSA, it does not appear to be a current supporter of the pending RSA and has yet to execute a joinder to the current version of the RSA (*i.e.*, as amended by the Third Amendment). The text of the Third Amendment asserts that the parties thereto anticipate the likelihood that Strabag eventually will execute a joinder to the current RSA. *See, e.g.*, Third Amendment, ¶ 3 ("Each Consenting Creditor acknowledges and agrees that the terms and provisions under the heading "Strabag" of the Restructuring Term Sheet … will only become effective if and when Strabag executes a joinder agreement agreeing to become bound by the terms of this Amendment No. 3."). Regardless, Strabag's non-statutory insider status is relevant to the Court's consideration of this Motion.

for a person to be deemed a non-statutory insider. *Schubert v. Lucent Tech. Inc. (In re Winstar Communications, Inc.)*, 554 F.3d 382, 396 (3d Cir. 2009). "[T]he question 'is whether there is a close relationship [between debtor and creditor] and ... anything other than closeness to suggest that any transactions were not conducted at arm's length." *Id.* at 396-97 (quoting *Anstine v. Carl Zeiss Meditec AG (In re U.S. Med., Inc.)*, 531 F.3d 1272, 1277 (10th Cir. 2008)).

61. Given AES Andes' status as an insider, the Debtors' and AES Andes' prepetition relationship and activities deserve heightened scrutiny. Yet, there is no information in the Disclosure Statement regarding the potential claw back exposure of AES Andes, why such potential claims are being released under the Plan, and why these claims are not being preserved for the benefit of unsecured creditors.

62. The amounts at issue are significant. As noted above, there were significant project overruns. The Project's cost of construction increased 70% over the Debtors' original budget. *See* Dib Declaration at 3. Alto Maipo underwent two major restructurings within four years prior to the Petition Date. *Id.* at 6-8. Since the Petition Date, the Debtors have been required to make updates to their financial projections to address the multi-million dollar liquidity shortfalls. "Following the execution of the Amended RSA, routine updates to the Debtors' forecasting revealed near-term hydrology predictions for the Maipo Valley that were worse than anticipated, leading to a significant near-term liquidity gap that would affect the Debtors' ability to perform under the Original RSA upon emergence from the Chapter 11 Cases." *See* Disclosure Statement, Docket No. 402, page 25, section 5.4. This led to another amendment of the RSA dated February 28, 2022.

63. Notwithstanding such losses, there has not been any reasonable explanation regarding the role AES Andes or Debtors' management has played in the restructurings, the losses

that precipitated them and whether duties to unsecured creditors may have been breached by the previous or present board of directors during this period. Of particular note, the Disclosure Statement does not address why an independent chief restructuring officer or crisis manager was not appointed in order to navigate what appears to be a consistent pattern of revisiting the capital structure and future projections of the operations of the Project. Without such explanation, the Court should deny approval of the Disclosure Statement. 11 U.S.C. § 1125(a)(1).

64. Moreover, the basis of why AES Andes is purportedly entitled to receive 100% new equity is unclear. On the surface, the Plan suggests that AES Andes is receiving the new equity on account of the DIP financing (which at present has been drawn down by approximately $10 million).[5] Additionally, the Disclosure Statement indicates that "the Debtors, through Lazard, are preparing to market the Amended & Restated Working Capital Facility to confirm whether superior terms are available from third parties, which process will be completed well in advance of the Effective Date." *See* Disclosure Statement, Docket No. 402 at 48. However, if a third party, rather than AES Andes, provides the Amended & Restated Working Capital Facility, the Plan and

[5] "In its simplest terms, the absolute priority rule requires that creditors of a debtor in bankruptcy reorganization receive payment of their claims in their established order of priority, and that they receive payment in full before lesser interests—such as those of equity holders—may share in the assets of the reorganized entity." *In re W.R. Grace & Co.*, 475 B.R. 34, 174 (D. Del. 2012), aff'd sub nom. *In re WR Grace & Co.*, 729 F.3d 332 (3d Cir. 2013) (citation omitted). The absolute priority rule arose from the judicial concern that because a debtor proposed its own reorganization plan, the plan could be too good a deal for the owners of the debtor. *In re Armstrong World Indus., Inc.*, 432 F.3d 507, 512 (3d Cir. 2005). "The absolute priority rule was later codified as part of the fair and equitable requirement of 11 U.S.C. § 1129(b). Under the statute, a plan is fair and equitable with respect to an impaired, dissenting class of unsecured claims if (1) it pays the class's claims in full, or if (2) it does not allow holders of any junior claims or interests to receive or retain any property under the plan on account of such claims or interests." *Id.* Said another way, under the absolute priority rule, equity holders cannot receive a distribution unless dissenting unsecured creditors receive payment in full or consent to such treatment. *In re Mallinckrodt PLC*, No. 20-12522 (JTD), 2022 WL 404323, at *45 (Bankr. D. Del. Feb. 8, 2022). Here, because the Plan has at least one impaired nonconsenting class (e.g., Class 4), the cramdown standard and absolute priority rule apply. As such, to the extent that AES Andes is receiving any equity on account of its prepetition equity position, the Plan must fail.

Disclosure statement are unclear on whether AES Andes will still receive equity if it is not the provider.

65. In addition, the Disclosure Statement does not contain sufficient information for creditors because the basis for the proposed releases is not adequately addressed in the Disclosure Statement. First, there is no explanation as to what claims the Debtors may have against AES Andes and other affiliates, including claims due to cost overruns or avoidable transfers and why such claims are to be released. In fact, based upon information and belief, the decision to grant such releases is not supported by any independent assessment. To the contrary, it appears to be rubber stamped by the board, which is populated by AES Andes employees and/or otherwise controlled by AES Andes. The absence of such disclosure is fatal. Fed. R. Bankr. P. 3016(c); *see also In re Lower Bucks Hosp.*, 571 F. App'x 139, 142–43 (3d Cir. 2014).

66. Similarly troubling is the disparate treatment being provided to Class 7 Intercompany Claims, which may be "reinstated" or "cancelled, released, and extinguished." Specifically, the Plan provides that "On the Effective Date, each Holder of an Allowed Intercompany Claim shall have its Claim: (a) Reinstated or (b) cancelled, released, and extinguished and without any distribution, in each case, at the Company's election with the consent of the Required Consenting Creditors." *See* Plan, Docket No. 401 at 29. The Plan fails to account for why such treatment is justified. Such disclosure is required. 11 U.S.C. § 1123(a)(4) ("a plan shall . . . provide the same treatment for each claim or interest of a particular class. . ."); *In re Hyatt*, 509 B.R. 707, 713 (Bankr. D. N.M. 2014) (stating it is appropriate to "consider claim classification and treatment issues before creditors vote on the Plan and a confirmation hearing is held").

67. Likewise, it is unclear whether Strabag, the holder of approximately 7.0% of the Debtors' equity, will be paid on account of its unsecured "Strabag's Other Claims" if a certain "Tunnelling Contract" between Strabag and Alto Maipo is not assumed. While there is no doubt that the Debtors seek to assume the Strabag Contract under the Plan § 6.23, the revised Plan does not indicate whether Strabag' s treatment under Class 6 will remain if assumption is not approved or whether it will be placed in Class 4. This issue needs to be clarified before any disclosure statement is approved.

(3) *The Disclosure Statement Fails to Adequately Address Litigation Claims Under Chilean Environmental Law or Related Water Rights Issues*

68. The Disclosure Statement also does not adequately address the litigation claims asserted against the Debtors relating to water rights and Chilean environmental law. The Debtors briefly describe the proofs of claim asserted in the Chapter 11 Cases which relate to environmental and water rights litigation in section 4.1(b) of the Disclosure Statement, but summarily state that the holders of these claims with a purported value in excess of $1 Billion "do not hold a valid Claim." Likewise, while the Disclosure Statement identifies "Environmental Regulations and Litigation" as a risk factor, the Debtors only state that:

> Further, environmental groups may continue to challenge the Reorganized Debtors' operations. Despite the fact that the Debtors have prevailed in all legal challenges that have been brought against the Project as of the date hereof, certain appellate processes have yet to be exhausted, and it is possible that the Debtors could face further environmental litigation in the future.

See Disclosure Statement, Docket No. 402 at § 7.4(g).

69. Notably, it is the Committee's understanding that these claims may be existential in nature to the reorganized Debtors' operations because if they are successful it will impair the Debtors' access to water and ability generate electricity. As such, the Debtors should provide a

schedule of all relevant litigation claims, a summary of the nature of the litigation claims, and the procedural posture of the litigation.

70. Moreover, a review of the information provided in the Disclosure Statement would lead creditors to believe that all the pending litigations deal strictly with "claims," rather than the issue of water/property "rights," without any explanation or support. As discussed above, the Debtors have not committed to how or when they will seek recognition and how the Plan would be enforceable against Chilean creditors. Without taking a position on recognition or saying the litigation claims concern property rights, the water rights claims may not be dischargeable and the disposition of certain property may never be enforceable. *See In re Sugarloaf Holdings, LLC*, Case No 18-27705, Doc No. 427 (Bankr. D. Utah 2022) (holding that water rights could not be sold free and clear under section 363(f) of the Bankruptcy Code because water rights are not property that someone owns).

(4) *The Debtors Fail to Provide Hydrology Details in the Disclosure Statement*

71. Fourth, the Debtors must provide hydrological details which will enable creditors to determine if the Debtors' plan is feasible. The Debtors have already restructured out-of-court twice, and they did so unsuccessfully. One would contemplate that by now, the Debtors are in a position to provide detailed projections about the water that will be available to generate electricity at their plant. In the Debtors' first-day pleadings, the Debtors identified environmental changes and decreased precipitation as the root cause of their financial problems and the need to commence the Chapter 11 Cases. Indeed, Section 5.1 of Article V of the Disclosure Statement identifies "Shifting Hydrological and Market Factors" as a cause for the commencement of the Chapter 11 Cases, but fails to discuss how environmental changes and decreased precipitation will impact the reorganized Debtors' finances or provide any solid numbers or projections. Surprisingly, the Debtors did not include this information within the Valuation Analysis which the Debtors filed as

Exhibit C to their revised Disclosure Statement. For example, the Alto Maipo's management projections assume, despite their internal data showing a decline in water flow particularly over the last few years, that climate change will somehow be paused in that the water available for the project will remain the same over the term of the PPA and beyond. Moreover, the PPA appears to only require the purchase of "85% of the Maximum Energy for each Withdrawal Point" instead of the assumed 100% in the financial models, yet this information is not disclosed or analyzed when making the revenue estimations for the sale of electric energy under PPA. The Valuation Analysis and the Financial Projections attached to the Disclosure Statement as Exhibit F fail to account for the aforementioned static water flow and contractual impediments. Detailed and accurate information is: relevant to "[t]he anticipated future of the debtor, with accompanying financial projections;" "financial information, valuations or pro forma projections … relevant to creditors' determinations of whether to accept or reject the plan;" and "[i]nformation relevant to the risks being taken by the creditors and interest holders." *In re Ferretti*, 128 B.R. at 18-19; *In re Scioto Valley Mortg. Co.*, 88 B.R. at 170-71.

72. Accordingly, without this information, the Disclosure Statement does not contain "adequate information."

(5) *The Debtors Fail to Provide Sufficient Details as to How They Will Meet Their Debt Obligations Under the Plan*

73. Section 1129(a)(11) of the Bankruptcy Code requires a debtor to demonstrate that confirmation of a plan is not likely followed by a liquidation or further financial reorganization. The Disclosure Statement acknowledges this requirement in Section 8.4 of Article VIII, Feasibility. Within Section 8.4, the Debtors state they have analyzed their ability to meet their obligations under the Plan, and "based on such analysis, the Debtors believe they will be able to make all payments required under the Plan while conducting ongoing business operations."

However, the Debtors fail to provide any analyses, illustration or projection in the Disclosure Statement demonstrating their ability to make such payments under the Plan. Instead, they provide financial projections in Exhibit F to their revised Disclosure Statement that simply provide: (i) projected Income Statement Detail through earnings before interest, taxes, depreciation and amortization ("EBIDTA") and (ii) Unlevered Free Cash Flow Bridge Detail, without any details regarding their projected debt service obligations (*e.g.*, debt amortization and interest payments) and their ability to meet those obligations. This detail is particularly important given the Debtors' two prior attempts, albeit unsuccessful, to restructure their debt.

74. Furthermore, the Debtors' business plan, on which the financial projections included in Exhibit F to the updated Disclosure Statement are based, does not even reflect the terms of the Third Amendment but the Second Amendment. As such, the Debtors should at least provide a schedule of their projected debt service, incorporating the terms of the Third Amendment, as compared to their Unlevered Free Cash Flow Bridge Detail to demonstrate their ability to meet their debt obligations under the Plan. Understanding whether the Debtors will meet their obligations under the Plan is relevant to both "[t]he anticipated future of the debtor, with accompanying financial projections" as well as "[i]nformation relevant to the risks being taken by the creditors and interest holders." *In re Ferretti*, 128 B.R. at 18-19; *In re Scioto Valley Mortg. Co.*, 88 B.R. at 170-71.

(6) *The Plan and Disclosure Statement Should Clearly State the Releases Contained in the Plan Do Not Apply to Class 4 Creditors*

75. The Plan provides for releases of the Debtors and other interested parties under the Plan by claimants that, *inter alia*, are eligible to vote to accept or reject the Plan or have been deemed to accept the Plan. *See* Plan at Sections 1.1.117 and 9.3(c). However, the Plan provides for no distributions to general unsecured creditors and, therefore, such creditors are deemed to

have rejected the Plan, and are not entitled to vote to accept or reject the Plan. In light of this disenfranchisement, it appears that Class 4 general unsecured creditors do not constitute a "Releasing Party" bound by the releases contained in the Plan. *See* Plan at Section 1.1.117; *In re Chassix Holdings, Inc*., 533 B.R. 64, 79 (Bankr. S.D.N.Y. 2015) (stating that a "Bankruptcy Court should be wary of imposing third party releases on creditors . . . who have not affirmatively manifested their consent to them."). However, there is no affirmative statement in the Plan that sets forth the fact that Class 4 creditors are not bound by such releases.

D. *Certain Other Relief Should Be Modified*

76. The above-noted objections are sufficient to justify denial of the Disclosure Statement as filed. However, even assuming those issues can be addressed, and the Disclosure Statement is corrected, certain other aspects of relief sought by the Motion should be modified. Primarily, the Debtors propose to file and serve a plan supplement within 14 days of the Plan confirmation hearing. The Plan Supplement, as defined in the Plan, will contain the following documents: the Exit Facility; Intercreditor Agreement; Assumed Executory Contracts; new organizational documents; and a list of a new board of directors. [*See* Docket No. 401 at 16-17]. These are significant documents, and the time for creditors to review these documents is too short, and should be expanded to at least 21 days prior to the confirmation hearing. This is particularly true if objections are due 10-14 days before the confirmation hearing. And while the Debtors' proposed timeline to file Plan Supplement comports with the Local Rule, the circumstances of this case warrant a longer period, particularly due to foreign creditors being located on another continent. *See* Local Rule 3016-2 ("The plan proponent must file any plan supplement on or before seven (7) days prior to the earlier of (a) the deadline for submission of ballots to vote to accept or reject a plan, or (b) the deadline to object to confirmation of the plan, unless otherwise ordered by

the Court."). It is respectfully requested that such period be expanded to at least 21 days before the confirmation hearing.

77. In addition, the Committee avers that the confirmation hearing should not occur on May 12, 2022 as the Debtors request. Rather, given the significant plan related discovery that will need to occur and the Dentons global partners meeting that begins on May 12, 2022 (being held outside the US), the Committee requests that any confirmation hearing should begin no earlier than May 23, 2022.

IV. RESERVATION OF RIGHTS

78. There are a number of provisions in the Plan which the Committee believes violate the Bankruptcy Code rendering it non-confirmable, and/or where the Debtors have not met their burden as to how each of the confirmation standards have been met. In addition, the adequacy of the Debtors' proposed Disclosure Statement is questionable. The Committee reserves all objections to confirmation of any proposed plan and all related rights, whether based on objections raised herein or not.

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WHEREFORE, the Committee requests that the Court (i) deny the Motion, (ii) not approve the Disclosure Statement, and (iii) grant such other and further relief to the Committee as the Court may deem just and proper.

Dated: March 29, 2022
Wilmington, Delaware

BENESCH, FRIEDLANDER, COPLAN & ARONOFF LLP

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Exhibit A

(Transcript of February 16, 2022 Hearing)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
ALTO MAIPO DELAWARE LLC, *et al.*,	Case No. 21-11507 (KBO)
	Courtroom No. 3
	824 North Market Street
	Wilmington, Delaware 19801
Debtors.	February 16, 2022
	11:00 A.M.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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somehow seeking relief from the cash collateral orders to correct the scrivener's error. There is no request before Your Honor to revisit those orders and the only request before Your Honor is in the context of the committee's motion to interpret those orders in the course of ruling on the request to revive the challenge period.

Reading the order as a whole, there really can be no question about the intent of the parties, and that intent being to put in place a 75-day challenge period. Harmonizing the reference to a recital makes no change to the substantive rights of the parties, and I would contrast that to the relief that the committee seeks, which would undo stipulations that were intentionally put in the orders, which were discussed in the colloquy at the hearing on the interim orders and on which all parties since that time have relied.

We cite in our papers, Your Honor, both our papers and the lender's papers, to a number of cases where courts have done just that in order to correct a scrivener's error and harmonize internally references in an order. And I'll also note that courts have looked unkindly on adversaries who sought to take advantage of that kind of a scrivener's error to modify substantive rights.

Turning to the concerns that the committee has raised about the cross-border nature of these cases, and limiting it again, Your Honor, to the contested matters

that's before you, the debtors have not sought and do not currently intend to seek recognition in Chile. So I honestly think the concerns or questions that the committee may have raised about the impact of their relief being denied on a potential case brought under the UNCITRAL Model Law has nothing to do with the relief that is before the Court or the status of the debtors' cases.

Your Honor, we advised -- turning just to the budget point on the challenge period, we have no objection to the entry of the declaration to the extent that Mr. Harrison wants to move that declaration into evidence as his declarant's direct testimony. I believe that some of the other objectors and lenders did want to be heard on that point, however.

THE COURT: Okay.

MR. BAREFOOT: So, unless Your Honor has any questions, those are the remarks that the debtors had in relation to the relief requested.

THE COURT: Okay. I have no questions at this time. Thank you very much. I understand that there's been a series of joinders and objections filed by the lenders. I assume you wish to be heard and I'll turn the podium over to Mr. Rosenblatt first.

MR. ROSENBLATT: Thank you and good morning, Your Honor. It's Andrew Rosenblatt from Norton Rose Fulbright.

Exhibit B

(Transcript of March 24, 2022 Hearing)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 21-11507(KBO)
ALTO MAIPO DELAWARE LLC, *et al.*,	.
	. (Jointly Administered)
	.
	. 824 Market Street
	. Wilmington, Delaware 19801
	.
Debtors.	. Thursday, March 24, 2022
. . . . .	. 11:00 a.m.

TRANSCRIPT OF ZOOM HEARING
BEFORE THE HONORABLE KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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when to schedule the motions and the renewed objection deadline for MLP.

I'll say another thing, though. It seems to me, upon giving great thought to the stay motion, that it's a waste of time. The uncertainty surrounding the enforceability of this contract creates a humongous feasibility issue for the debtors' plan; that probably needs to be addressed sooner rather than later. And I'm worried that the stay motion is a complete distraction.

And so, in addition to thinking about the schedule on these motions, you need to think about how you're going to move this case forward to a successful completion. I have concerns, I have concerns here. And if you would like to seek the assistance of a judicial mediator or a formal judicial mediator, that may be something that you should be thinking about, because I'm being told that you need to emerge quickly and I, quite frankly, am not sure how we're going to get that done.

So, again, I don't have the full issues in front of me and it's clear to me that you do, and you have been talking and thinking about these issues for a length of time. And so I don't want to step out, but those are my immediate observations over this issue and I fear that we need to pick the appropriate path going forward or this case could be unsuccessful.