IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Vesttoo Ltd., *et al.*,[1] Debtors.	Chapter 11 Case No. 23-11160 (MFW) (Jointly Administered) **Hearing Date: Nov. 8, 2023, at 10:30 a.m. ET** **Objection Deadline: Nov. 1, 2023, at 4:00 p.m. ET**

NOTICE OF FILING OF PROPOSED REDACTED VERSIONS OF (I) THE MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS PURSUANT TO SECTION 1121(d)(1) OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER TERMINATING EXCLUSIVE PERIODS FOR DEBTORS TO PROPOSE AND SOLICIT ACCEPTANCES OF A PLAN, (II) EXHIBITS C AND D TO THAT MOTION, AND (III) THE DECLARATION OF RICHARD NEWMAN IN SUPPORT OF THAT MOTION

PLEASE TAKE NOTICE that, on October 22, 2023, the Official Committee of Unsecured Creditors appointed in the above-captioned cases (the "**Committee**") filed the *Motion of the Official Committee of Unsecured Creditors Pursuant to Section 1121(d)(1) of the Bankruptcy Code for Entry of an Order Terminating Exclusive Periods for Debtors to Propose and Solicit Acceptances of a Plan* (the "**Exclusivity Motion**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**").

PLEASE TAKE FURTHER NOTICE THAT the Committee intends to file the *Motion of the Official Committee of Unsecured Creditors to (I) Authorize it to Redact and File Under Seal Certain Information Contained in the Motion of the Official Committee of Unsecured Creditors Pursuant to Section 1121(d)(1) of the Bankruptcy Code for Entry of an Order Terminating Exclusive Periods for Debtors to Propose and Solicit Acceptances of a Plan, as Well as in*

[1] Due to the large number of debtor entities in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at https://dm.epiq11.com/vesttoo.

Documents Supporting that Motion, and (II) Require the Debtors to Demonstrate Why Such Information Requires Protection (the "**Motion to Seal**") with the Court. The Motion to Seal will seek authorization to file under seal the Exclusivity Motion, Exhibits C and D to the Exclusivity Motion, and the Declaration of Richard Newman in Support of the Exclusivity Motion (the "**Newman Declaration**"). The Motion to Seal will further seek authorization to publicly file redacted versions of the Exclusivity Motion, Exhibit C to the Exclusivity Motion, and the Newman Declaration and authorization to publicly file a slip sheet in lieu of Exhibit D to the Exclusivity Motion because the Debtors have designated the entirety of that document as confidential.

PLEASE TAKE FURTHER NOTICE THAT, on October 22, 2023, pursuant to Rule 9018-1(d) of the Court's Local Rules of Bankruptcy Practice and Procedure, the Committee filed, attached hereto as **Exhibit A**, a proposed redacted version of the Exclusivity Motion, including the following redacted documents:

- Redacted version of the Exclusivity Motion
- Redacted version of Exhibit C to the Exclusivity Motion
- Slip sheet in lieu of Exhibit D to the Exclusivity Motion
- Newman Declaration

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Dated: October 22, 2023
Wilmington, Delaware

GREENBERG TRAURIG, LLP

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EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Vesttoo Ltd., *et al.*,[1]	)	Case No. 23-11160 (MFW)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	**Hearing Date: Nov. 8, 2023, at 10:30 a.m. ET**
	)	**Objection Deadline: Nov. 1, 2023, at 4:00 p.m. ET**

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS PURSUANT TO SECTION 1121(d)(1) OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER TERMINATING EXCLUSIVE PERIODS FOR DEBTORS TO PROPOSE AND SOLICIT ACCEPTANCES OF A PLAN

The Official Committee of Unsecured Creditors (the "**Committee**") hereby moves (the "**Motion**"), pursuant to section 1121(d)(1) of title 11 of the United States Code (the "**Bankruptcy Code**"), this Court for the entry of an Order, substantially in the form attached hereto as Exhibit A, terminating the exclusive periods for Vesttoo Ltd. ("**Vesttoo**") and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "**Debtors**") to propose and solicit acceptances of a plan (together, the "**Exclusive Periods**").[2] In support of the Motion, the Committee relies on the *Declaration of Richard Newman* (the "**Newman Dec.**") filed contemporaneously herewith and respectfully states as follows:

PRELIMINARY STATEMENT

1. The Committee files this Motion to stop the Debtors from continuing their wasteful pursuit of a dead-on-arrival reorganization or going concern "Trade Forward" strategy

[1] Due to the large number of debtor entities in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at https://dm.epiq11.com/vesttoo.

[2] The Committee seeks to reduce the Exclusive Periods by approximately 36 days. The Debtors' exclusive period to file a plan expires on December 14 or 15, 2023 (depending on the Debtor), which is 120 days after the Petition Dates. The Committee has set the hearing for this Motion for November 8, 2023, which is approximately 36 days before the expiration of the Debtors' exclusivity.

that has depleted the Debtors' available cash rapidly to a shocking degree. The Debtors' only prepetition business was based on the fraud orchestrated by their former CEO and his accomplices. As a result, the Debtors have no ongoing business and have not generated any revenue since filing these cases. The Committee – which represents the only creditor constituency in these cases – has been clear that it does not support the Debtors' continued pursuit of a going concern business given the mounting losses and little potential upside, if any. On the contrary, the Committee seeks to have the cash resources of the Debtors preserved for the prosecution of claims against the parties that facilitated, aided and abetted, failed to prevent, or participated in the fraud that caused devastating harm to cedents and other unsecured creditors. Any plan premised on continued investment in the business, therefore, is doomed to fail at significant and prejudicial cost to the estates and their creditors. Permitting the Debtors to retain the exclusive right to propose a plan serves no beneficial purpose for unsecured creditors. The excessive spending of the Debtors on developing a new business plan will inevitably result in the exhaustion of the Debtors' cash to the extreme detriment of creditors. Terminating exclusivity now will save the estates at least $8.5 million in cash based on the Debtors' current monthly operational cost expenditures. (Newman Dec. ¶ 13). The Debtors' exclusivity should be terminated so that the Committee can propose a simple liquidating plan and bring an end to the Debtors' unfair, unrestrained, and wasteful spending.

2. With no revenue and no DIP financing, the Debtors operate solely from the available cash as of the filing date. At the commencement of these chapter 11 cases, the Debtors claimed to have approximately $30 million in cash[3] and another approximately [redacted] in so-

[3] Ami Barlev First Day Hearing Testimony, August 23, 2023 Hr'g Tr. at 29:11-16.

called "restricted cash."[4] However, since the filing date, the Debtors have spent millions of dollars of the estate's limited cash resources in an ill-fated and wholly inappropriate attempt to transform the Debtors' prepetition business tainted by fraud into a startup fintech company. They have done so without the support of the Committee and without transparency as to the amount and uses of the Debtors' cash. The Debtors' stubborn pursuit of a business transaction in the face of strident Committee opposition caused the Debtors to burn through [redacted] in August and September *before* accounting for accrued estate professional fees. (Newman Dec. ¶ 8). In other words, the Debtors spent nearly [redacted] of their unrestricted cash on the filing date in the first six weeks of these proceedings. This high rate of operational spending does not include the millions of dollars in accrued and upcoming estate professional fees.

3. Vesttoo – viewed as the Madoff of insurance – never operated as a business or as a going concern without revenue from the fraud of CEO Yaniv Bertele ("**Bertele**"), Chief Financial Engineer Alon Lifshitz ("**Lifshitz**"), and others both inside and outside of Vesttoo. As detailed in the Debtors' First Interim Report [Docket No. 118] (the "**Interim Report**"), Vesttoo, from inception, relied on fraudulent letters of credit and standby letters of credit (collectively, "**LOCs**") in nearly all reinsurance transactions during their roughly five years of operations. According to the Interim Report, Bertele forged and Vesttoo posted billions of dollars of fraudulent LOCs. Not surprisingly, the Vesttoo brand is now toxic in the industry and cannot be rehabilitated. There has been wide-spread media reporting across the globe of the Debtors' ignominious demise. As a result of operating a business with revenue from admittedly

[4] As of the filing of the Motion, the Debtors have yet to file their Schedules of Assets and Liabilities, Statements of Financial Affairs, and September Monthly Operating Reports; the Debtors have only filed their Monthly Operating Reports for the month ending August 31, 2023 on the evening of October 19, 2023. Nonetheless, the Debtors provided cash flow information to the Committee's professionals on a confidential basis that reveals the Debtors, at the time of filing the instant petitions, had approximately [redacted] in unrestricted cash and another approximately [redacted] in "restricted cash." (Newman Dec. ¶ 8).

fraudulent contracts, the Debtors have no ongoing revenue or ability to collect any prepetition accounts receivable.

4. Despite these obvious barriers to marketing and closing a going concern transaction or restructuring, the Debtors pushed forward with development of a new business plan to create an algorithm-based startup business. At the same time the Debtors were orchestrating their ill-conceived strategy to reinvent the Debtors' business plan, they failed to provide even routine financial information to the Committee while burning through precious cash at an alarming rate of over [redacted] per month (*excluding estate professional fees*) by retaining unnecessary employees and professionals. (Newman Dec. ¶ 8). To add insult to injury, the Debtors made significant unauthorized post-petition payments to professionals and have promoted a narrative that seeks to exonerate current board members and management from liability even though they were directors or executives while the fraud of Bertele, Lifshitz and others occurred. The Committee does not share in this narrative. The Committee is actively investigating claims against those parties that benefitted from the fraud and failed to take actions to stop the harm to creditors from occurring. This investigation is comprehensive and global in scope. Permitting the Debtors to maintain exclusivity will not help move these cases forward. Terminating exclusivity will allow the Committee to file a straightforward liquidating plan.

5. By their own admission,[5] the "foundation" of the Debtors' business was premised on the use of fraudulent LOCs. Approximately four billion dollars of purported LOCs were completely fabricated.[6] For more than 60 reinsurance transactions, comprising the entirety of the Debtors' business since inception, Vesttoo promised insurance company counterparties – which

[5] "[T]the LOCs that were ***the foundation of Vesttoo's business*** were largely ***illusory***." [Docket No. 118 at 13] (emphasis added).

[6] The Committee incorporates by reference the Debtors' Interim Report filed at docket number 118. The details regarding the Debtors' fraud, discussed in further detail below, are shocking.

hold virtually all of the claims in these cases – LOCs that simply did not exist. In the Debtors' own words, "***essentially all*** except one of the LOCs ***from three separate banks***, to the tune of billions of dollars of collateral, appear to have been fraudulent." [Docket No. 118 at 11 (emphasis in original)]. The fallout from this fraud is stark. The insurance company counterparties that were defrauded hold claims that likely exceed $1 billion.[7] The Debtors' management team is comprised of Vesttoo employees and directors who were with Vesttoo while the fraud that gave rise to these chapter 11 proceedings was executed. Continued reliance on the leadership of this management team is unfairly prejudicing the ability of unsecured creditors to recover some of their substantial losses before the Debtors' cash runs out.

6. Against this backdrop, the Committee is outraged by the Debtors' actions in these cases, given the following:

- The Debtors have no revenue-generating business.
- In August and September, the Debtors spent [redacted] on costs that provided no benefit to unsecured creditors. In September alone, the Debtors burned through [redacted] of cash in addition to accruing millions more in restructuring professional fees.
- The Debtors employ upwards of 70 people and want to continue to utilize a large pool of "ordinary course" professionals. The Debtors provided an updated cash flow analysis on October 16, 2023, that includes proposals for reducing staff to [redacted]
- The Debtors made unauthorized post-petition transfers of nearly $1 million or more to their unretained professionals.
- To conduct their speculative sale process, the Debtors have proposed to retain an investment banker at a cost of $100,000 per month plus a minimum transaction fee of $3.25 million.
- In the days preceding the filing of this Motion, the Debtors released an "assessment" of the sale value of an ongoing business or separate sale of the intellectual property. The assessment is dated August 23, 2023, but the Debtors

[7] The cedents – which include all members of the Committee – are the dominant creditors in these cases, as the Debtors have no secured or other funded debt and only had about $2 million of trade debt.

waited until October 12, 2023 to provide it to the Committee. This typifies the lack of transparency by the Debtors that has plagued these cases since day one. The "assessment," which utilizes an unspecified methodology and includes no supporting data or comparables, sets out speculative value ranges and fails to establish that a sale process will produce results that will pay off the Debtors' post-petition expenditures, let alone provide a recovery for creditors.

- To give the Debtors an opportunity to present their business plan, the Committee met with the Debtors and their professionals on October 17, 2023. That meeting is described in paragraph 38 below. The Debtors and their professionals presented their Trade Forward strategy under which [redacted]

- After careful consideration of the risks posed by the Debtors' Trade Forward approach, the Committee voted unanimously not to pursue it.

7. Early termination of exclusivity, albeit uncommon, is warranted here as termination will facilitate moving the cases forward. While unwinding the fraud – and the inevitable litigation that will follow – may be complex, exiting these cases is not. No one is more motivated to maximize value than the Committee, which has given the Debtors ample opportunity to present their views. If a going concern could yield value, the Committee would be the first to support that approach. Unfortunately, however, the prospects for a successful sale process of the Debtors' business assets are limited, at best. The protection, investigation, and prosecution of claims litigation is the Committee's highest priority, as those claims are the only meaningful assets left to creditors.

8. Unlike typical debtors in large chapter 11 cases that have multiple constituencies to bring to the table to attempt to reach a consensual restructuring, negotiations regarding a chapter 11 plan in these cases would be simple and efficient because the Committee's constituency, the Debtors' unsecured creditors, are the only viable beneficiaries of a restructuring. Because the Debtors have lost all credibility with their only material constituency

– the worldwide reinsurance markets – maintaining exclusivity serves no purpose. To prevent the Debtors from further squandering the estates' precious resources, the Committee should be permitted to file, solicit, and confirm a plan. The Committee believes it can confirm a plan by year-end at a fraction of the costs that the Debtors are incurring.[8]

9. Accordingly, the Court should terminate the Debtors' Exclusive Periods to permit the Committee to file a liquidation plan and quickly exit from these chapter 11 cases.

JURISDICTION

10. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue is proper in this District and before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

11. The statutory predicate for the relief sought herein is section 1121(d)(1) of the Bankruptcy Code.

12. Pursuant to Del. Bankr. L.R. 9013-1(f), the Committee consents to the Court entering a final order in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

BACKGROUND

I. The Debtors

13. Vesttoo was founded in 2018 by Bertele, Lifshitz, and Ben Zickel ("**Zickel**"). [Docket No. 118, at 2]. It started in Israel and expanded to New York, London, Hong Kong, Seoul, Tokyo, and Dubai. [*Id.*]. Vesttoo described itself as "a market-leading provider of financial technology that allowed insurance and reinsurance companies to transfer their

[8] The Committee has also considered whether to seek appointment of a chapter 11 trustee or convert the cases to chapter 7. Ultimately, however, the Committee believes that this would only increase costs, and that terminating exclusivity to allow the Committee to file a plan will be the most efficient way to conclude these cases.

insurance risks and/or related collateral security obligations to capital market investors through a technological reinsurance transaction platform, reinsurance-related financial instruments, and other contracts." [*Id.* at 1].

14. As described in the Debtors' other filings in these chapter 11 proceedings, reinsurance is a transaction whereby an insurance company (the "reinsured" or "cedent") cedes or transfers to another insurer (the "reinsurer") a portion of the risk that the cedent underwrote under certain of its policies, along with a portion of the premium. In the Debtors' case, the assumed insurance risks were placed into segregated accounts or protective cells (the "**Reinsurance Cells**") created under Bermudian law. [Docket No. 12 at 3].

15. A Debtor entity, together with third party capital market investors to whom the Debtor entity sold equity interests, became the beneficial owners of the Reinsurance Cells. [*Id.* at 4]. As part of the agreements related to the Reinsurance Cells, there was an agreement for collateral security to be posted for the Reinsurance Cells' obligations to the reinsured or cedent. [*Id.*]. That security typically took the form of LOCs issued for the benefit of the reinsured or cedent. [*Id.*].

16. The Debtors have no secured lenders and did not issue any funded debt. [Docket No. 12 at 8]. The Debtors have trade debt owed to various vendors, consultants, and law firms of about $2.3 million. [*Id.*]. The vast majority of the Debtors' debt is comprised of claims – likely totaling more than $1 billion – of the insurance companies that entered into reinsurance contracts with the Reinsurance Cells and were defrauded by the Debtors with respect to the LOCs.

II. The Committee

17. On August 31, 2023, the Office of the United States Trustee for the District of Delaware appointed five members to the Committee, one of whom was substituted by the

successor-in-interest of that member's claims on September 20, 2023. [Docket Nos. 95, 151]. Each Committee member is a cedent, and they collectively constitute the Debtors' largest creditors. The Committee members are: Clear Blue Specialty Insurance Company and its subsidiaries, Porch.com, Inc., Markel Bermuda Limited, Proventus Holdings, LP, and United Automobile Insurance Co. The Committee has proposed to retain Greenberg Traurig LLP as its legal counsel and Alvarez & Marsal ("**A&M**") as its financial advisor.

III. Prepetition Events Leading to the Bankruptcy Filing

18. On September 7, 2023, the Debtors filed the Interim Report in which they describe certain results of their investigation into the widespread wrongdoing that ultimately led to the commencement of these chapter 11 cases. [Docket No. 118]. As set forth in the Interim Report and above, the Debtors' business model relied heavily upon collateral security that typically took the form of LOCs. [*Id.* at 6]. In mid-July 2023, media reports indicated that certain LOCs had been fabricated by insiders of the Debtors. [*Id.* at 7]. Shortly after the media reports, the Debtors began an investigation into the fraud allegations. [*Id.*].

19. On August 1, 2023, the Debtors announced the layoff of about 75% of their staff and the closing of offices in Tokyo, Hong Kong, and Seoul but maintained staff in Tel Aviv, New York, London, Dubai, and Bermuda. [Docket No. 12 at 10].

20. The Debtors also placed Bertele, Lifshitz, and Ehud "Udi" Ginati ("**Ginati**"), Vesttoo's Senior Director of Capital Markets, on paid leave during the pendency of the investigation and appointed Ami Barlev ("**Barlev**"), who had been a director of the Debtors since June 2021, as interim CEO. [*Id.* at 1; Docket No. 118 at 19]. The board appointed an Ad Hoc Special Committee, comprised of directors Chris Gottschalk ("**Gottschalk**") and Pasha Romanovski ("**Romanovski**"), to direct the Debtors' investigation into the fraud and subsequent

litigation and to determine "the future path for the Debtors." [Docket No. 118 at 19]. Gottschalk and Romanovski were appointed to the board by private equity funds with large investments in the Debtors. [*Id.*]. Thus, the Debtors have no independent officers or directors.

21. With respect to the findings of the Debtors' investigation, "the forensic and documentary evidence has confirmed that a conspiracy to perpetuate a fraudulent scheme relating to the LOCs existed." [Docket No. 118 at 9]. Notably, the Debtors believe that "***essentially all*** except one of the LOCs ***from three separate banks***, to the tune of billions of dollars of collateral, appear to have been fraudulent." [*Id.* at 11 (emphasis in original)]. The Debtors further reported that all or nearly all of the LOCs supporting the 65 transactions Vesttoo closed since 2020, with collateral supposedly totaling $3.932 billion, perhaps more, were fraudulent. [*Id.*].

22. The investigation implicated numerous employees and senior management of the Debtors including, but not limited to, Bertele, Lifshitz, and Ginati, who actively participated in the fraudulent conduct related to the LOCs. [Docket No. 118 at 9]. The fraudulent conspiracy involved entities and individuals throughout the world. [*Id.* at 9]. Participants in the conspiracy are alleged to have, among other things, falsified LOCs, impersonated bank employees, created fictitious personas, forged documents and signatures, and created a fake phone number to divert calls to one of the supposed LOC issuers from auditors seeking to verify LOCs to a number controlled by a Vesttoo insider. [*Id.*].

23. As a result of the extensive fraud coming to light, Vesttoo's only insurance company subsidiary, Vesttoo Alpha P&C Ltd. ("**Alpha P&C**"), has been placed in winding up proceedings in Bermuda. [Docket No. 12 at 4; Docket No. 118 at 1]. Likewise, certain of the Reinsurance Cells are currently subject to a petition to commence proceedings in Bermuda and

the appointment of Joint Provisional Liquidators ("**JPLs**") to exercise control over the Reinsurance Cells.

24. The Debtors' investigation did not address claims against those who facilitated or aided and abetted the fraud. As described in paragraph 33 below, the Committee is investigating claims against those who actively participated in or failed to prevent the fraud, including third parties such as banks, auditors, brokers, and others.

IV. The Chapter 11 Proceedings

25. On August 14 and 15, 2023 (the "**Petition Dates**"), the Debtors filed with this Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code. Since the Petition Dates, the Debtors have done very little to efficiently move these cases to conclusion. Instead, as described below, they have squandered precious estate resources, have failed or been slow to provide basic information,[9] and have even made multiple unauthorized payments to professionals, without advance notice to the Committee, all in the futile pursuit of an unworkable reorganization or going concern transaction.

A. Post-petition Cash Burn

26. Since the Petition Dates, the Debtors have had no meaningful business operations or revenue. The Committee understands that the JPLs control the Reinsurance Cells and that the Debtors have no substantial role in their continued administration or management. Thus, not surprisingly, the Debtors have generated virtually no revenue since the Petition Dates. Kroll Associates UK Limited ("**Kroll**"), which was retained through the Debtors' counsel, has confirmed that the Debtors are not expected to generate any business revenue in the next 13 weeks. (Newman Dec. ¶ 7).

[9] For example, two months into these cases, the Debtors have not filed their required schedules, statements, and September operating reports; they only filed their monthly operating reports for August on the evening of October 19.

27. Yet, during these chapter 11 cases, the Debtors have retained 74 full-time employees. [Docket No. 10 at 4; Docket No. 12 at 18]. Of those 74 employees, 61 are employed in Israel, 6 are employed in the United Kingdom, and 7 are employed in the United States. [Docket No. 10 at ¶ 12]. The Debtors have represented that during these chapter 11 cases, these employees "will continue to interface with customers and counterparties and respond to inquiries and concerns regarding the business, ongoing marketing efforts, and administration of these chapter 11 cases." [*Id.*]. Despite multiple inquiries from the Committee's professionals, however, the Debtors have not explained why it is necessary for the continued retention of so many employees when the company essentially is out of business. For example, on an October 2, 2023 phone call with Kroll, A&M requested a detailed list of employees including: (i) descriptions of roles and responsibilities; (ii) salary and benefit costs; and (iii) underlying details of the Debtors' planned staffing reductions. (Newman Dec. ¶ 9). A&M followed up with Kroll via email on October 5, 2023, and did not receive a response until October 16, 2023. (Newman Dec. ¶ 9).

28. Proposed payments to "ordinary course" professionals are another example of the Debtors' wasteful use of cash. On October 19, 2023, the Debtors filed their motion for the retention of ordinary course professionals (the "**OCP Motion**"). [Docket No. 263]. Those "ordinary course" professionals include a variety of legal services, including Bermudian and Israeli counsel, regulatory advisory services, and accounting and tax advisory services. Even though the Court has not considered the OCP Motion yet or authorized payments to any estate professionals, the Debtors have made more than $310,000 in post-petition payments to proposed "ordinary course" professionals in violation of Section 549 of the Bankruptcy Code. [Docket No. 263-2, Schedule 1]. Because the Debtors' business was entirely based on a fraudulent

scheme and they have no current business operations, the Debtors have no need to incur obligations to pay professionals in the ordinary course of business. The Debtors, instead, should file retention applications as required under the Bankruptcy Code to provide the requisite Court oversight and review of the scope, nature, and extent of the services to be performed by such professionals.

29. The Debtors only recently provided an initial cash flow forecast. (Newman Dec. ¶ 6). The Debtors' total cash burn for August and September was approximately [redacted] ***without accounting for restructuring professional fees***. (Newman Dec. ¶ 8). The forecast shows that this cash burn will continue. In particular, as reflected in an updated cash flow forecast the Debtors provided on October 16, 2023, the Debtors are projected to spend an additional [redacted], on average, per month going forward. (Newman Dec. ¶ 8). Thus, even though the Debtors have no operating business and are not generating revenue, they are spending millions every month (in addition to accruing significant professional fees associated with these cases), which significantly depletes resources that should be available for creditors, with no explanation as to how this benefits creditors.

B. Unauthorized Post-petition Payment of Professional Fees

30. The Committee recently received the alarming news that the Debtors made post-petition payments to certain professionals, including Kroll, without prior approval or Court order. These payments totaled nearly $1 million in September. The Committee demanded the immediate return of such funds to the Debtors' estates, as these funds were improperly disbursed in violation of Bankruptcy Code § 549.[10] The funds have not been returned yet; instead, the

[10] The Committee's correspondence regarding the OCP Motion and the Debtors' unauthorized payment of professional fees is attached hereto as Exhibit B.

Debtors propose that the funds will not be clawed back until some indeterminate time in the future, if ever.[11]

C. The Debtors' Internal Investigation

31. The Debtors, through counsel and Kroll, have been investigating the fraudulent LOCs. The Debtors' investigation has been focused on a review of the Debtors' books and records, including emails, and interviews with former and current employees. The Debtors have not filed any motions under Rule 2004 to investigate claims against third parties. As to their internal investigation, the Debtors have identified Bertele, Lifshitz, Ginati, and other individuals not employed by Vesttoo as culpable parties. In the Interim Report, the Debtors represent that the investigation is "reaching its final stages" and that "no current employees have been implicated in the underlying conspiracy." [Docket No. 118 at 7-8]. The Debtors admit to deficiencies in their governance and institutional controls and represent that they are in the process of addressing those deficiencies by "installing institutional financial security controls[.]" [*Id.* at 19-20].

32. To further address the wrongdoing, the Debtors represent that they are cooperating with industry regulators and "contemplating bringing litigation against" (i) "current and former insiders of Vesttoo who have been directly implicated in the massive fraudulent scheme," and (ii) Yu Po Holdings Ltd. ("**Yu Po**"), China Construction Bank ("**CCB**") and Standard Chartered Bank ("**SCB**"), each of which the Debtors report was involved in the fraudulent scheme. [*Id.* at 15-17]. Notably absent from these two groups are members of the Debtors' board, management, and private equity sponsors, who, even if not directly involved in the fraud perpetrated by Bertele and other fraudsters, plainly failed to fulfill their fiduciary duties

[11] The Debtors' letter related to this issue, among other things, is attached hereto as Exhibit C. The Debtors address this point at pages 4 and 5 of the letter. The Committee has filed a motion to file Ex. C under seal and to redact references in Ex. C to certain information that has been designated confidential by the Debtors.

to implement and enforce appropriate controls and detect the fraudulent conduct. Also missing are banks, auditors, brokers, and others whose conduct or inaction facilitated or aided and abetted the fraud or, by not heeding red warning flags, failed to prevent the harm to creditors from occurring.

33. The Committee, meanwhile, is investigating claims that have arisen from the fraud. In connection with its ongoing investigation, the Committee's professionals have reviewed documents provided by the Debtors and met with the Debtors' professionals to understand the scope and findings of the Debtors' investigation. The Committee filed its Motion for Leave to Conduct Discovery Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure on September 14, 2023 (the "**Rule 2004 Motion**"). [Docket No. 132]. The Court issued its order granting the Rule 2004 Motion on October 2, 2023. [Docket No. 196]. The Committee also filed a Motion for Leave to Conduct Discovery Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure Against Aon and White Rock on October 11, 2023 [Docket No. 209] and have filed a certification of counsel for entry of an order granting that motion [Docket No. 264]. The Committee's claims investigation is ongoing.

D. The Debtors' Unrealistic "Business Plan"

34. In addition to the investigation, the Debtors purport to be engaged in the development of a restructuring plan focused on reforming and conducting Vesttoo's business going forward. According to the Debtors:

> The plan is called "Trade Forward", and is being developed based upon a candid assessment of both the Debtors' past failures and current market position as well as reasonable economic projections of future performance to be derived from the following anticipated operations:
>
> - Rebranding and reputation recovery, including changing the Vesttoo name;

- Reconstituting the Vesttoo's Board and implementing robust governance of the Debtors' financial security operation;
- Establishing baselines for assessing the Debtors' value proposition as an insurance linked security business, including, *e.g.*, data handling, risk modeling and financial structuring; market opportunity; efficiency of transaction sourcing and execution; third-party capacity for sharing risk; global regulatory compliance; and attracting capital investment;
- Restoring the Debtors' credibility in the global insurance marketplace;
- Determining a go-forward business strategy based upon the lack of actual collateral support through LOCs;
- Continuing to develop the Debtors' unique, accurate and efficient machine-based learning technologies for modeling, pricing and structuring insurable risk;
- Continually monitoring and validating the Debtors' technology against a broad range of insurance lines of business; and
- Likely obtaining investment from the capital markets.

[Docket No. 118 at 23].

35. This is a collection of opaque aspirations that could apply to almost any start-up enterprise, not a business plan. But these aspirations are not written on a blank slate; rather, they come with the stain of the fraud by Bertele and his accomplices that makes any attempt to rebrand or repurpose the Vesttoo business dead on arrival. There are no details, let alone critical details, as to how the Debtors would take a business model whose "foundation" was a fraud and convert it to a viable business that will yield value to creditors. Rather, the Debtors' Trade Forward outline is an admission that they lack a business enterprise to sell or restructure. The Debtors' intellectual property assets, to the extent they have value, can be sold by a liquidating trustee without the ongoing investment of estate funds or the retention of an expensive investment banker.

36. On October 12, 2023, the Debtors shared with the Committee certain materials, including an SVSG Vesttoo Technology Assessment dated August 23, 2023 (the "**Assessment**").[12] The Debtors provided no explanation for why they withheld the Assessment from the Committee for almost two months. The Assessment purports to show the sale value of (i) the ongoing business as a whole, and (ii) the Debtors' technology assets alone. It estimates the value of the Debtors' business, if sold intact, to be worth in the range of [redacted] to [redacted]. (Ex. D at 27). This assessed value assumes that the Debtors [redacted] with no disclosure of how much this proposed scenario has cost the Debtors' estates to date and would cost going forward to close a sale. Indeed, the Debtors have already burned through [redacted] to operate in August and September and they are projected to spend an additional [redacted], on average, per month going forward. (Newman Dec. ¶ 8).

37. The Assessment separately values the Debtors' personnel and intellectual property, although it acknowledges that this intellectual property has at least [redacted] before being ready for market. (Ex. D at 24). The Assessment raises more questions than it answers. For example:

- The Debtors' personnel [redacted] [*Id.* at 11, 28].
- The Debtors' algorithms are valued at [redacted] [*Id.* at 29]. The Debtors do not have sufficient cash to fund [redacted]. At the current operational spending rate, the Debtors will spend roughly [redacted] to recover half that amount.

[12] A copy of the Assessment is attached hereto as Exhibit D. The Committee has filed a motion to file the Assessment under seal and to redact references in this Motion to certain information contained in the Assessment as well as certain other information that has been designated confidential by the Debtors. The Committee does not endorse or adopt the analysis or valuations contained in the Assessment.

- The Debtors' [redacted] is said to be worth [redacted] To achieve this range, the Assessment assumes the [redacted] [*Id.* at 30]. Again, the Debtors do not have the cash to fund such a [redacted]

38. Critically, the Assessment's [redacted] are derived solely from an [redacted] [*Id.* at 8]. In other words, the Assessment is not an analysis of what the Debtors can expect to obtain from the sale of existing intellectual property assets, but of [redacted] The Assessment provides no further explanation of its valuation methodology and does not include any underlying data or other information, such as market comparables, to support its conclusions. Ultimately, the Assessment is another dubious element underpinning the Debtors' speculative and overly optimistic "business plan."

39. In addition, as noted in paragraph 6 above, the Debtors and the Committee met on October 17, 2023. During the meeting, the Debtors and their professionals made a two-hour presentation to the Committee and its professionals on the Debtors' Trade Forward business plan. (Newman Dec. ¶ 10). The Debtors and their professionals, while acknowledging that [redacted] outlined the Trade Forward approach as having three key components. (Newman Dec. ¶ 12). First, [redacted] (Newman Dec. ¶ 11). Second, [redacted] (Newman Dec. ¶ 11). Third, [redacted] (Newman Dec. ¶ 11). During this presentation, the Debtors admitted that:

- [redacted]
- [redacted]
- [redacted];
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

(Newman Dec. ¶ 12).

40. After carefully considering the Trade Forward approach presented by the Debtors at the October 17 meeting, including the lack of a cash distribution and the attendant risks posed to unsecured creditors, the Committee voted unanimously not to pursue it. The Committee also voted unanimously to move this Court to terminate exclusivity to allow the Committee to promptly propose a liquidating plan. The Committee notified the Debtors of its decision not to pursue the Debtors' approach on October 18, 2023.

41. The Debtors' suggestion that Vesttoo could be rebranded and accepted into the reinsurance market as a rehabilitated company demonstrates a complete disconnect to the insurance industry. The Debtors admitted in the Interim Report that they never generated revenues from a legitimate business operation. They now are viewed in the international news

media as a fraudster that preyed on major insurance companies. To suggest that they can "[r]estore[] the Debtors' credibility in the global insurance marketplace" is absurd. Like Bernie Madoff among investors, the trust Vesttoo once had with cedents evaporated upon the revelation of the fraud that Vesttoo's former CEO, CFE, Senior Director of Capital Markets, and others perpetrated on insurance companies, and that trust will never be recovered. No reputable insurance company can afford the risk of doing business again with Vesttoo, regardless of the company's new brand name.

42. Indeed, even if the Debtors had a business plan, they have no revenue stream. The Debtors have been using the cash available for distributions to creditors as if the creditors had provided DIP or investment financing to them. The cash they have used to pursue an aspirational startup venture has been taken from funds otherwise available to the unsecured creditors without the Committee's consent. The Debtors' continued expenditure of those funds in pursuit of a futile strategy is an irresponsible waste of estate assets.

E. Liquidating Plan

43. If the Court terminates the Exclusive Periods, the Committee is prepared to file a plan of liquidation immediately. The plan will simply provide for a post-confirmation vehicle (a liquidating trust and/or a plan administrator in charge of the liquidating debtors) to wind down any existing operations, liquidate any non-litigation assets, pursue litigation claims, reconcile claims, and distribute proceeds to creditors. If there is any value to the Debtors' intellectual property or other business assets, the post-confirmation trustee can sell the assets without wasting further estate assets in a speculative business venture and, instead, provide the unsecured creditors with a distribution from the sale proceeds. Given the lack of secured or other funded

debt, the plan's classification and treatment provisions will be straightforward. The Court has considered and confirmed many similar plans.

RELIEF REQUESTED

44. The Committee respectfully requests entry of an order immediately terminating the Debtors' exclusive periods to file and solicit acceptances of a plan pursuant to section 1121(d) of the Bankruptcy Code.

BASIS FOR RELIEF

I. Legal Standard

45. The Bankruptcy Code "recognizes the legitimate interests of creditors, whose money is in the enterprise as much as the debtor's, to have a say in the future of the company." *In re Crescent Beach Inn, Inc.*, 22 B.R. 155, 160 (Bankr. D. Me. 1982). In that regard, section 1121(d)(1) of the Bankruptcy Code authorizes the Court to terminate the Debtors' exclusive periods. Specifically, section 1121(d)(1) provides:

> . . . on request of a party in interest . . . and after a notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d).

46. Although the Bankruptcy Code does not define "for cause," section 1121(d)(1)[13] of the Bankruptcy Code grants the Court great latitude to decide whether to terminate exclusivity. *See, e.g., United Savings Assoc. v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 808 F.2d 363, 372 (5th Cir. 1987) (noting that Bankruptcy Code "[s]ection 1121 was designed, and should be faithfully interpreted, to limit the

[13] Section 1121 was enacted as a compromise of provisions in former Chapter X, which gave the debtor no ability to propose a plan, and former Chapter XI, which gave the debtor indefinite and exclusive control over the plan process. *See* H.R. Rep. No. 95-595, 95th Cong. 1st Sess. at 231-32. Thus, Congress established a presumptive 120-day plan filing exclusivity period, and gave the courts the ability to shorten or extend that period on a case-by-case basis. *See* 11 U.S.C. § 1121(b), (c), (d).

delay that makes creditors the hostages of Chapter 11 debtors"), *aff'd*, 484 U.S. 365 (1988); *Geriatrics Nursing Home v. First Fidelity Bank, N.A. (In re Geriatrics Nursing Home)*, 187 B.R. 128, 132 (D.N.J. 1995).

47. Although courts sometimes consider a list of factors when determining whether to terminate exclusivity, they are not determinative. *In re Adelphia Commc'ns.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006).[14] Indeed, "[w]hen the Court is determining whether to terminate a debtor's exclusivity, the primary consideration should be whether or not doing so would facilitate moving the case forward." *In re Dow Corning Corp.*, 208 B.R. 661, 670 (Bankr. E.D. Mich. 1997)."); *see also In re Henry Mayo Newhall Mem'l Hosp*., 282 B.R. 444, 453 (BAP 9th Cir. 2002) ("We also agree with the *Dow Corning* court that a transcendent consideration is whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution."); *Adelphia*, 352 B.R. at 590 (finding that practicality and the ability to move a case forward to a degree not otherwise possible can override a mechanical application of factors).

48. Another important consideration closely related to whether exclusivity facilitates moving the case forward is the ability of the debtor to spearhead a consensual plan, including whether creditors have lost faith in the debtor's ability to develop and obtain approval of a consensual plan. *See, e.g., In the Matter of All Seasons Indus.*, 121 B.R. 1002, 1006 (N.D. Ind. 1990) ("While the [C]ourt makes no finding as to whether or not this loss of faith is justified . . . for the purpose of the present motion [regarding exclusivity], it is only necessary to realize that a

[14] Factors the Court may consider include: (a) the size and complexity of the case; (b) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information; (c) the existence of good faith progress toward reorganization; (d) the fact that the debtor is paying its bills as they become due; (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (f) whether the debtor has made progress in negotiations with its creditors; (g) the amount of time which has elapsed in the case; (h) whether the debtor is seeking an extension of exclusivity in order to pressure creditors to submit to the debtor's reorganization demands; and (i) whether an unresolved contingency exists. *Adelphia* 352 B.R. at 587.

loss of confidence exists. This is a factor the [C]ourt should and must consider in its determination."). Thus, courts have found that cause did not exist to extend exclusivity, or did exist to terminate exclusivity, when there has been a breakdown of negotiations. *See, e.g., In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 488 (Bankr. D. Conn. 2007) (holding that debtor failed to establish cause to extend exclusivity because of "breakdown of negotiations between the debtor and the objecting creditors" and debtor failed to show that extension was "likely to significantly improve the progress of the case"); *In re Crescent Beach Inn, Inc.*, 22 B.R. 155, 161 (Bankr. D. Me. 1982) (holding that shortening exclusive periods to permit parties in interest to file a plan was in the "interests of all creditors and the interests of the debtor" and "urg[ing] the parties to put aside their . . . differences and unite in a common effort to successfully reorganize the debtor for the benefit of all creditors").

49. Notably, plan exclusivity's purpose is not to hamper alternative plan proposals. As the United States Court of Appeals for the Third Circuit explained:

> The ability of a creditor to compare the debtor's proposals against other possibilities is a powerful tool by which to judge the reasonableness of the proposals. A broad exclusivity provision, holding that only the debtor's plan may be "on the table," takes this tool from creditors. Other creditors will not have comparisons with which to judge the proposals of the debtor's plan, to the benefit of the debtor proposing a reorganization plan. The history of § 1121 gives no indication that Congress intended to benefit the debtor in this way.

Century Glove, Inc. v. First Am. Bank, 860 F.2d 94, 102 (3d Cir. 1988). Creditors have been allowed to propose their own plan when a debtor's financial condition required speedy intervention. *See In re Sharon Steel Corp.*, 78 B.R. 762, 766 (Bankr. W.D. Pa. 1987) (denying debtors' request to extend exclusivity period and stating: "The leverage accorded to the debtor by the period of exclusivity must give way to the legitimate interests of other parties in interest so that progress toward an effective reorganization of the debtor may be enhanced before it is too late. The proceeding must be opened up to substantial and significant input

by the creditors in the event they can propose a means (possibly by proposal of a plan of reorganization) which will rescue the debtor from its precarious posture.").

II. Cause Exists to Terminate the Debtors' Exclusive Periods.

50. The Committee has no confidence in the Debtors' ability to appropriately move these cases forward. Terminating exclusivity will not merely move the cases forward, it will result in the prompt conclusion of these cases, at a much lower cost, and will result in a better outcome for creditors than any alternative advanced by the Debtors.

51. Despite the circumstances that led to their filing, these chapter 11 cases – at least as they pertain to a chapter 11 plan – are not complex. The Debtors have no business to reorganize, despite their aspirational statements to the contrary. The only way to reach an equitable resolution of these chapter 11 cases is to liquidate the Debtors' remaining assets for the benefit of the only constituency, which is the unsecured creditors. Nonetheless, the Debtors appear committed to pursuing a futile reorganization or going concern transaction based on a vague notion of a business that would be nothing more than a startup. This has been, and if allowed to continue, will be, a monumental waste of resources that does nothing to advance these cases or satisfy creditor claims. Considering the magnitude of the fraud that led the Debtors to bankruptcy and the Debtors' refusal to recognize the futility of (or even provide an explanation for) the path they have pursued, the Committee has lost all faith in the Debtors' ability to file a workable plan. Therefore, ample cause exists for this Court to terminate the Exclusive Periods to give the Committee the opportunity to do what the Debtors are unable or unwilling (or both) to do – propose a confirmable liquidation plan.

A. The Debtors have no business to reorganize.

52. As noted above, the Debtors do not have a viable business model. According to the Interim Report, the Debtors' former CEO, with the assistance of others, forged the collateral supporting the reinsurance transactions that Vesttoo closed. The Debtors' own characterization of the magnitude of the problem is telling. As the Debtors admit in the Interim Report, "the LOCs that were ***the foundation of Vesttoo's business*** were largely ***illusory***." [Docket No. 118 at 13] (emphasis added). If the foundation of a business is illusory, there is no business.

53. The Debtors' description of their "Trade Forward" plan in the Interim Report confirms that there is nothing here. The so-called plan consists of rebranding, reconstituting the board, assessing the Debtors' value propositions, obtaining investment, and "determining a go-forward business strategy based upon the lack of actual collateral support through LOCs." [Docket No. 118 at 23]. In other words, the plan is to use funds belonging to creditors to start from zero based on vague notions that could apply to almost any new business. That is unacceptable to creditors.

54. Further, the multimillion-dollar investment of estate cash proceeds by the Debtors to develop this new business platform begs the question of why the Debtors embarked on this unprecedented approach to managing chapter 11 debtors in the first place. The Debtors' Ad Hoc Special Committee is comprised of directors designated to the board by two large private equity investors. The Committee has serious concerns that these investors are investing estate money – that should have been reserved for use by the creditors to pursue claims – so that the investors can buy the business from the Debtors on the cheap without investing their own money to develop this new business platform. The Committee, comprised of insurance and reinsurance industry participants and experts, foresees no interest by third party industry buyers. Without a

viable market, the asset sale is unlikely to recover the money the Debtors spent post-petition to develop the assets to be sold. There is a distinct possibility – likely inevitability – that the only interested bidders will be the same insiders who used estate proceeds to develop the sale assets. In a market completely lacking trust in Vesttoo as the seller, the sale price, if any, will be low.

B. Liquidation is the best path to a fair and equitable resolution of these chapter 11 proceedings.

55. The Committee, which represents the only creditor constituency in these cases, has no interest in throwing additional good money after bad. Minimizing (and in the near term ending) the cash burn associated with ongoing "operations" and liquidation of the Debtors' assets for the benefit of their general unsecured creditors is the only viable and fair path forward. Implementing these goals through a liquidating plan will be straightforward.

56. The Debtors' only apparent assets are (i) litigation claims against those responsible for the fraud and the failure to detect and stop it and (ii) technology and intellectual property. Designing a liquidating plan to protect, preserve, and monetize these assets is simple and inexpensive. The plan will be a typical liquidating plan with a straightforward claim classification and treatment structure.

C. The Committee has no faith in the Debtors' ability to spearhead a feasible plan.

57. As noted above, a debtor's prospects for reaching a consensual plan, including the loss of confidence from creditors, is a key factor in deciding whether cause exists to terminate exclusivity. Here, the Debtors have admitted to extensive prepetition fraud and mismanagement and deficiencies in their governance and institutional controls. Post-petition, the Debtors have not been forthcoming with essential information (such as budgets, monthly operating reports, schedules, etc.) and have made unauthorized transfers to professionals in the U.S., U.K., and Israel. Debtors' bankruptcy counsel only recently filed their retention motion. However, none

of the Debtors' other professionals, including Kroll and Israeli counsel, have filed retention papers, and the Debtors have informed the Committee that their view of ordinary course professionals includes multiple professionals with monthly caps of $100,000. [Docket No. 263-2, Schedule 1].

58. These facts, alone, would cause any committee to doubt a debtor's ability to negotiate and consummate a plan. But to make things worse, rather than focusing their efforts and resources on maximizing assets, the Debtors have insisted on diverting what little cash they have into the development of a speculative business model for introduction into a hostile market. By insisting on the pursuit of their "Trade Forward" plan despite the Committee's objection, the Debtors have demonstrated that they are unable or unwilling to propose a feasible plan.

59. Under these circumstances, termination of the Exclusive Periods is the most appropriate remedy available to the Committee. Considering the magnitude of the fraud and the apparent conflicts of interest of the Debtors' current management, the only other appropriate remedy at this stage would be to appoint a chapter 7 or 11 trustee. But such an appointment is unnecessary in this case, as exiting the Debtors from bankruptcy through a liquidating plan is not complex. Moreover, the appointment of a trustee would needlessly increase the costs and length of these proceedings. Terminating the Exclusive Periods and allowing the Committee to file a plan of liquidation is the best way to efficiently move the Debtors through the chapter 11 process.

CONCLUSION

The Debtors are committed to a path of high administrative costs that is quickly dissipating the value of their estates. Creditors who were defrauded by the prepetition Debtors in the amount of over one billion dollars should not be penalized further because of the Debtors'

insistence on moving forward with an unworkable and unconfirmable plan to reorganize. Because the Debtors have no viable business that could possibly emerge from these chapter 11 cases, the Debtors' constituencies are best served by a liquidating plan that maximizes the value of the Debtors' estates. Therefore, the Committee requests that the Court terminate the Exclusive Periods to permit the Committee to file a liquidation plan, which will allow these chapter 11 cases to advance quickly to a fair and equitable resolution for all parties in interest.

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WHEREFORE, the Committee respectfully requests that the Court (i) grant the Motion, (ii) immediately terminate the Debtors' Exclusive Periods and allow the Committee to file its proposed plan, and (iii) grant the Committee such other and further relief as is just and proper.

Dated: October 22, 2023

GREENBERG TRAURIG, LLP

/s/ Anthony W. Clark

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Proposed Counsel for The Official Committee of Unsecured Creditors

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Vesttoo Ltd., *et al.*,[1] Debtors.	)	Chapter 11 Case No. 23-11160 (MFW) (Jointly Administered) **Ref. Docket No. _____**

ORDER GRANTING MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS PURSUANT TO SECTION 1121(d)(1) OF THE BANKRUPTCY CODE FOR ENTRY OF AN ORDER TERMINATING EXCLUSIVE PERIODS FOR DEBTORS TO PROPOSE AND SOLICIT ACCEPTANCES OF A PLAN

Upon consideration of the *Motion of the Official Committee of Unsecured Creditors for Pursuant to Section 1121(d)(1) of the Bankruptcy Code for Entry of an Order Terminating Exclusive Periods for Debtors to Propose and Solicit Acceptance of a Plan* ("**Motion**")[2] and having determined that this Court has jurisdiction to enter this Order in accordance with 28 U.S.C. §§ 157 and 1334, that an appropriate notice of the relief provided for herein has been given under the circumstances, and that there is good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.

2. The Debtors' Exclusive Periods are terminated as of the date of this Order.

3. The Committee is hereby authorized to file and solicit a plan.

[1] Due to the large number of debtor entities in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at https://dm.epiq11.com/vesttoo.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

4. This Court shall retain jurisdiction to resolve any disputes arising from or related to this Order or the Motion.

5. This Order shall become effective immediately upon its entry notwithstanding anything in the Federal Rules of Bankruptcy Procedure or otherwise to the contrary.

EXHIBIT B

GT GreenbergTraurig

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* Also admitted to practice in Pennsylvania

October 11, 2023

VIA EMAIL – craig.martin@dlapiper.com

Craig Martin, Esq.
DLA Piper LLP (US)
1201 North Market Street
Suite 2100
Wilmington, DE 19801

Re: *In re*: Vesttoo Ltd., *et al.*, Case No. 23-11160 (MFW)

Dear Craig,

This letter is a follow-up to our discussion regarding certain ordinary course professional ("OCP") issues and our correspondence to you dated October 4, 2023 regarding correspondence received from your client.

We would greatly appreciate your timely response to our correspondence dated October 4, 2023 regarding your client's correspondence to the Official Committee of Unsecured Creditors of Vesttoo, Ltd., *et al.* (the "Committee") (copies of both letters are attached for your reference).

We discussed with the Committee the issue regarding postpetition payment to professionals which was recently brought to our attention. The Committee is alarmed that the Debtors would pay any professionals postpetition without prior approval or Court order. This is just another example of the Debtors' failure to recognize their current situation with respect to their inability to reorganize their business operations, and is an irresponsible expenditure of estate funds. The Committee hereby demands that the Debtors immediately take the appropriate action necessary to effectuate the return of any funds disbursed on a postpetition basis to any professionals as these funds were improperly disbursed in violation of Bankruptcy Code §549.

Further, we have reviewed the Debtors' draft OCP motion and discussed same with the Committee. The Committee objects to all professionals identified in the draft OCP motion as being treated as "ordinary course professionals" for a number of reasons, as follows:

(1) The Debtors operated in a fraudulent fashion and have no current business activities. Therefore, they have no need to incur obligations to pay professionals in the ordinary course of business. To the extent that these professionals are necessary for the administration of the bankruptcy estate, the Committee requests that the Debtors file retention motions as provided for in the Bankruptcy Code. This will provide appropriate court oversight and review of the scope, nature and extent of the services performed by such professionals;

(2) To the extent that Kroll or any other financial advisor is providing work on behalf of the estate, such advisors should be retained on an individual basis (with the appropriate applications filed with the bankruptcy court), and the fees incurred in connection with such retention should not be reflected as an expense item under the monthly fee applications filed by Debtors' counsel; and

(3) DLA Piper's retention of Kroll and DLA's submission of Kroll's fees as an expense under DLA's monthly fee application is a *sub rosa* retention that is not sanctioned by the Bankruptcy Code. Therefore, the Committee requests that DLA Piper's current retention application pending before the Court be amended to exclude Kroll and any other financial advisors or other professionals retained in connection with the bankruptcy case and that, if appropriate, such financial advisors seek their own application for retention with the Court. Please let us know if DLA will be amending their retention application no later than 5:00 p.m. ET on Friday, October 13, 2023. If such amended retention application is not filed with the Court, the Committee is prepared to object to DLA's application as currently drafted.

We look forward to receiving your written response and discussing these issues with you at your convenience.

Very truly yours,

/s/ Anthony W. Clark

Anthony W. Clark

AWC:sb
Attachments
cc: Richard Chesley, DLA Piper LLP (US) (via email w/attachments)
Official Committee of Unsecured Creditors (via email w/attachments)
Alvarez & Marsal (via email w/attachments)
David B. Kurzweil, Esq. (via email w/attachments)
Joseph Davis, Esq. (via email w/attachments)

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October 4, 2023

VIA EMAIL – craig.martin@dlapiper.com

Craig Martin, Esq.
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Suite 2100
Wilmington, DE 19801

Re: Correspondence Dated October 1, 2023 From Ami Barlev

Dear Craig,

This letter is in response to your client's correspondence sent directly to Greenberg Traurig, LLP, as counsel to the Vesttoo Official Committee of Unsecured Creditors (the "Committee") dated October 1, 2023 (copy attached for your reference). Rather than respond to Mr. Barlev directly, we believe it is more appropriate to respond to you in your capacity as his legal counsel. Please consider having your client route correspondence through your firm going forward. References below to the "Company" mean the overall Vesttoo business organization. References below to the Debtors are the Vesttoo debtor entities included in the Chapter 11 proceeding in the Delaware Bankruptcy Court.

As already admitted by the Debtors, the Company's business was grounded in a massive, multi-billion dollar, international fraud. It appears that very few legitimate business transactions have ever occurred since the Company's inception, and the fraud on business partners started as early as 2019. The fraudulent nature of the Company's business has been publicized widely through various court filings and related press reports. Under these extraordinary circumstances, it would be impossible "to restore the critical relationship between Vesttoo and [the] insurance market." Vesttoo has completely lost the trust of the world-wide insurance / reinsurance market and that trust will never be revived. We are confident that multiple witnesses from the insurance and reinsurance markets around the world would support the position that no rational market participant would ever trade with Vesttoo in the future. Furthermore, due to the fraudulent nature

of the business operations, there is no evidence of a supportable stream of income for the Company to reorganize and trade forward. Despite the Company's hopeless insolvency, the Debtors are burning cash at an alarming rate in what appears to be a futile pursuit of "[c]ontinued technological development" of the Vesttoo platform. The Debtors' cash that is being used to develop this new business platform belongs to the unsecured creditors and the expenditure of those funds is an irresponsible waste of corporate assets.

The Committee firmly believes that there is no basis on which the Debtors can continue as a going concern and that the Debtor's 'trade forward' agenda is not actually financially feasible. The Committee will be advancing that position in all future activities in various bankruptcy/insolvency proceedings in Delaware, Bermuda and Israel. The retention of an investment banker to market the business under these extreme conditions would be a further waste of resources as there is no going concern to expose to the market. It is possible that the Company's intellectual property could be monetized in a sale. But such a sale of the Debtors' intellectual property is the only option to maximize value of the Debtors' assets for the benefit of the unsecured creditors other than the preservation and pursuit of litigation claims against those responsible for the fraud and the failure to detect and stop it. Further, while the sale of the Debtors' business assets may bring some recovery to unsecured creditors, the Debtors' most valuable assets are, unquestionably, their litigation claims. The Debtors' cash should be preserved for the primary purpose of pursing litigation claims and not diverted into development of a speculative business model for introduction into a hostile business environment.

Therefore, the Vesttoo Board of Directors, in the exercise of their fiduciary duties to the unsecured creditors, should take all necessary steps to conserve the Company's rapidly depleting cash resources and immediately cease all operations other than as necessary to preserve causes of action against those responsible for the harm caused to the Vesttoo creditors and estates. The Committee and its advisors are prepared to meet with the Company's Board and advisors to discuss a plan to achieve that end.

Very truly yours,

/s/ Anthony W. Clark

Anthony W. Clark

AWC:sb
Attachment
cc: Richard Chesley, DLA Piper LLP (US) (via email w/attachment)
Official Committee of Unsecured Creditors (via email w/attachment)
Alvarez & Marsal (via email w/attachment)
David B. Kurzweil, Esq. (via email w/attachment)
Joseph Davis, Esq. (via email w/attachment)

October 1, 2023

To: Members of Official Committee of Unsecured Creditors of Vesttoo Ltd.

Dear Sir/Madam:

I want to take this opportunity as the new CEO of Vesttoo, Ltd. to write to each of you directly. At the outset, I and the members of our Ad Hoc Special Committee of the Board of Directors (the "Special Committee") fully understand the anger and shock that each of you, and all of creditors have experienced as a result of the fraudulent conduct of a number of the former officers of Vesttoo. And, while we understand the need for the Official Committee of Unsecured Creditors (the "Committee") to complete its investigation and hold accountable those responsible for these transgressions, we also must quickly take those steps necessary to maximize the value of the Vesttoo platform for **the benefit of all stakeholders.**

I have now heard repeatedly that (i) you lack trust of Vesttoo, the Special Committee and the management of the Company and (ii) you believe the legacy Vesttoo business has little, if any value. As to the initial point, while as noted, I understand the lingering questions regarding the honesty of the Vesttoo team, I want to personally commit that we will take all steps needed to restore the critical relationship between Vesttoo and insurance market. As a reminder, we laid off more than 70% of the Company's employees in the wake of the revelations regarding the letters of credit. Those employees who remain have been the subject of a comprehensive investigation process and remain at Vesttoo because they believe in our ability to create significant value for the activity. In order to attempt to bridge a relationship between the Company and its creditors, I am prepared to meet with you in person in New York for a full and transparent discussion. During this time, I am also happy to have a separate meeting with your counsel to address any questions they may have of me regarding what has transpired at the Company, the steps we have taken and what the future may hold.

As to the second issue - the viability of Vesttoo - I am again ready, willing and able to discuss this with you during our meeting in New York. We are highly confident that substantial value can be returned to Vesttoo's creditors by monetizing Vesttoo's unique platform. Over the past two months I have carried out extensive work at the Company in order to begin rebuilding the operations and leading the employees (especially the technological teams) to a new track of workstream. Continued technological development is critical in order to increase the value of the Company and create economic value for the benefit of all stakeholders. Moving quickly to monetize the value that is embedded within Vesttoo is in our mutual best interest. It will not only allow us to eliminate the cash burn of the on-going operations, but it will allow us to leverage our highly skilled employees who remain with the Company and take advantage of the remaining demand for the Vesttoo platform. And of course, we can pursue the value maximization of the legacy business, while continuing to prosecute litigation against those responsible for the issues at Vesttoo. It is only through this dual-pronged approach that we can truly maximize the value of Vesttoo for the benefit of all creditors.

At this point, while our respective counsel continue to work collaboratively on the investigation, I can only ask you to take the opportunity to meet with me to address your concerns and allow me to present to you the case for the future of Vesttoo. **Let's work together to save this Company and create value for everyone.** I look forward to hearing from you at your earliest convenience.

Respectfully

Ami Barlev, CEO

EXHIBIT C

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October 12, 2023
VIA E-MAIL

Anthony W. Clark, Esq.
GreenbergTraurig
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801

Re: *In re Vesttoo Ltd*., Case No. 23-11160 (MFW); pending in the United States Bankruptcy Court for the District of Delaware

Dear Tony:

I have received your correspondence dated October 4, 2023, October 10, 2023, and an email on the same day following up on the October 10, 2023 letter. While there are many flawed assumptions and statements in this correspondence that the Debtors dispute, we here focus on the main theme that flows through that correspondence, namely the Committee's view that other than litigation there are no assets of the estate that can or should be realized other than litigation and the corresponding demands from the Committee to dictate to the Debtors how to operate their business (e.g., demanding termination of employees and claiming ownership of all funds and demanding turnover of them).

This narrative is myopic and infects the Committee's position on the retention of professionals under section 327(d) that, ironically, has resulted in a demand from the Committee that the Debtors incur significant expense without any benefit on the heels of an (incorrect) allegation of corporate waste. This letter explains why the Debtors reject the Committee's demands related to how the Debtors should maximize the value of their assets and responds to the Committee's demand that the Debtors abandon their streamlined process to efficiently retain professionals and instead incur more costs and expense than is either reasonable or necessary.

The Committee's premise is that the Debtors' have no legitimate business since the Debtors' investigated allegations of fraud committed by two individuals -- who were fired -- as a justification for a demand that all but 20 employees should be immediately terminated and all cash should be relinquished to the Committee is unfounded and reflects misguided commercial judgment. This approach would harm asset value that would otherwise be available to creditors.

The Debtors are authorized to operate their businesses as debtors in possession and have the exclusive right to develop a plan. *See* 11 U.S.C. § 1108 and 1121. The committee's insistence on a specific transaction or course of action is not a sufficient ground for a debtor pursing that specific course of action. *See generally The Comm. of Equity Sec. Hldrs. v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)(holding that a creditors' committee's insistence on a transaction is insufficient justification

for the transaction as a matter of fact and law). To that end, while the Debtors remain willing to confer and consult with the Committee's professionals under the permissive provisions in section 1103(c) of the Bankruptcy Code, the Bankruptcy Code provides that the Debtors are required to meet with the Committee to conduct such business as may be proper. *See* 11 U.S.C. § 1103(d). Mr. Barlev wrote to the Committee members to request a meeting to discuss these cases and the Debtors' bases for pursuing transactions and opportunities to maximize value for the estates on a commercial and business level. The Committee rejected this request. We understand the Committee does not want to meet with the Debtors or its management and from your correspondence it does not appear that prior to directing the debtors to fire employees and terminate operations that the Committee did not conduct diligence using technology specialists to evaluate the value of the Debtors' assets. The Debtors remain willing to meet with the Committee, although that meeting would now need to be virtual due to the suspension of flights in and out of Israel. Thus, should your client change its view on having a meeting among business principals, please let us know.

The Debtors' entire business was not a fraud or conducted at a total loss. Rather, the Debtors, using almost three years of human capital created algorithms, data systems, and applications that combined into a complete solution recently valued by a third party to be worth in a range of between [redacted] and [redacted] if the Debtors are sold in-tact. *See* Tech. Assessment at 27. Another sale alternative is [redacted]. *Id*. at 28. The Debtors will not jeopardize valuable assets because the Committee insists on termination of employees; nor would it be responsible to accede to your request in your October 4 letter that the Debtor "immediately cease all operations other than as necessary to preserve causes of action against those responsible for the harm caused to the Vesttoo creditors and estates[]." The Committee's suggested course is not a proper path forward and must be rejected. The Debtors will not fire employees unless and until in the Debtors' business judgment doing so will not jeopardize realizable asset value; and the Committee should acknowledge that and work with us responsibly.

As has been disclosed to you, the Debtors are in discussion with Perella Weinberg Partners ("PWP"), which has opened a data room for the Committee's financial advisor, Alvarez & Marsal, to access. PWP is assisting in evaluating an efficient path forward to maximize the value of the Debtors' assets and we anticipate that the Debtors will file a formal retention application for PWP and, possibly, a private sale motion to sell these assets to a party that submits a letter of intent. In the meantime, we encourage the Committee to consider the materials in the data room and the attached SVSG Technology Assessment that shows the value inherent in the Debtors' business, and to collaborate with the Debtors to maximize that value. Then when the Debtors have formulated the presentation with PWP later this week or early next, we can share it with you and have a meeting to all the Debtors' business team to present it to the Committee.

Another reason the Committee's strategy of firing all but 20 employees is the wrong strategy is because the Debtors created a valuable product for the insurance sector and there are legitimate transactions that the Debtors' entered into that contain inherent value that could be realized if individuals currently in the Debtors' employee are allowed to work to exit these transactions. As we explained in our October 8, 2023, phone call, successfully winding out of certain of those transactions is critical to the Debtors' cash flow, a confidential working draft of which is attached and which shows, among other amounts [redacted] available for the [redacted] transaction that could be realized if a resolution is properly put in place for that transaction. We recommend that your partner, Fred Karlinsky, work with my partner, Stephen Schwab, to understand these transactions and to establish a mechanism where the Debtors can share information with the Committee regarding these opportunities. But, to realize on these most efficiently, the Debtors need to retain the employees that are familiar with the transactions and that have the relationships with the brokers and other counterparties that will need to be engaged to pursue these opportunities.

Turning to the Committee's demands regarding the draft we provided you of *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Retain, Employ, and Compensate Professionals Utilized in the Ordinary Course of Business Pursuant to Retention Procedures and (II) Granting Related Relief* ("OCP Motion") and the pending *Application of the Debtors for Entry of an Order (I) Authorizing the Debtors to Retain and employ DLA Piper as Counsel, Effective as of the Petition Date and (II) Granting Related Relief* [D.I. 202] ("DLA Application").

Regarding the OCP Motion, this is a routine motion in modern Chapter 11 practice to enable a debtor to retain professionals as permitted for a specified purpose with the Court's approval, on any reasonable terms and conditions of employment and compensation that the Court may impose. *See* 11 U.S.C. §§ 327(e) and 328(a). This mechanism enables the Debtors to retain professionals under a streamlined process for ensuring that these professionals do not hold "any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed." The OCP motion complies with the Bankruptcy Code and also proposes a compensation mechanism where any professional that is retained under the OCP Motion will submit monthly bills, copies of which will be provided to the US Trustee trial attorney, and the Committee, and if the invoice is in excess of a monthly cap, then the professional would file a fee application. These provisions will preserve estate assets and are sensible and we encourage your client to revisit its position on the OCP Motion.

In opposing the OCP Motion, the Committee reverts to its theme in this case that there is no business and no need for any professionals in the ordinary course of business, and thus demands that each professional proposed to be retained as an ordinary course professional file a separate application for retention and file separate fee applications. The professionals proposed on the list broadly fall into three categories: (1) those that will be prosecuting litigation for the Debtors to realize judgment recoveries, (2)

those in foreign jurisdictions that will assist in wind down of local operations to reduce expenses to the estates, and (3) small service providers that assist with the Debtors' management with back-office support. Since most of these providers are foreign and unfamiliar with the chapter 11 process, the costs of assisting them with full employment applications and fee applications could be significant and the mechanisms of the OCP Motion accomplish the dual goal of ensuring special purpose professionals do not have an adverse interest to the estate and that in the normal course their expected monthly bills are paid unless they exceed a fixed amount, which will require a more formal fee application.

The notion that because the Debtors have identified former board members that engaged in wrongdoing somehow changes the legal standard for consideration of the OCP Motion is not supported by prior cases in Delaware. *See In re FTX Trading Ltd.*, Case No. 22-11068 (JTD), D.I. 432 (Order Authorizing Procedures to Retain, Compensate and Reimburse Professionals Utilized in the Ordinary Court of Business); *In re Revstone Indus., LLC,* No. 12-13262 (BLS), 2013 WL 1914748 (Bankr. D. Del. May 6, 2013) (same). Again, the OCP Motion is an administrative matter designed to save the estate money and that administrative process is separate and apart from the investigation into and litigation against those engaged in wrongdoing.

Turning to the Committee's demands that the Debtors seek the return of funds that the Debtors paid by mistake to certain of the ordinary course professionals,[1] the Debtors propose that since each of the professionals that received a payment will apply them only for services rendered post-petition and will soon be subject to a pending OCP Motion, the Debtors propose not to incur the administrative expense and costs of pursuing litigation for the return until necessary (e.g., if the Court denies retention of any professional under the OCP Motion and such professional is not later retained). To be sure, however, the Debtors have discussed the issue with the professionals that a return of these funds may be required and

[1] As we have explained in our telephone discussions over these issues; Vesttoo was under the impression that under the *Interim Order (I) Authorizing the Continued Use of the Debtors' Cash Management System, (II) Modifying the Requirements of Section 345, and (III) Granting Related Relief* [D.I. 43] the Debtors were allowed to continue to pay for expenses incurred in their businesses and had a misunderstanding as to whether that included professional fees invoiced post-petition. The Debtors are now aware that professionals may only be paid after court approval or compliance with any future order approving the OCP Motion. In your email, you request written confirmation that no more post-petition payments will be made to professionals of any type (other than as provided under Court orders). The Debtors have authorized me to provide this assurance to the Committee as it is their full intention to not pay any professionals unless authorized by court order going forward and will be disclosing all such payments on their Monthly Operating Reports. These payments were a mistake and not "just another example of the Debtors' failure to recognize their current situation with respect to their inability to reorganize their business operations, and is an irresponsible expenditure of estate funds[]" as you contend in your October 11 letter To compare an honest mistake that was promptly voluntarily disclosed to the Office of the US Trustee and the Committee upon discovery of that mistake with the conduct set out in the First Interim Report is not credible and merits no further response.

have begun to explore the logistics and approvals necessary make that happen if required. But seeking to prosecute a section 549 action while the OCP Motion or other employment applications are pending would be a waste of estate resources. As such, it is the Debtors' business judgment to wait and see the outcome of those applications before aggressively pursuing return of funds so they can be wired back out after Court approval of the employment applications and disclosure of feees and expenses, subject to review under the procedures proposed in the OCP Motion..

On the DLA Application, we are willing to amend our proposed form of order to reflect your request that Kroll UK not be included as a disbursement and have asked Kroll UK to apply for retention and file interim monthly and quarterly fee applications. As we have explained, the process we proposed would result in DLA's fee submission including Kroll UK's fees to avoid the fees and expenses associated with a separate fee application for Kroll UK. Kroll Bermuda is also preparing a separate retention application for its financial advisory work as that is a separate line of work. Even though we do not agree with the Committee on this issue, and we think it unnecessary, it is one that the Debtors will proceed as requested by the Committee. The attached form of revised order is attached, and we can submit this under a COC. Kroll Bermuda and Kroll UK will file separate fee applications next week.

Turning to items you demanded on behalf of the Committee from the Debtors unrelated to the OCP Motion or the DLA Piper Application, please note the following: the cash operating budget from the beginning of the case will not be completed by the date demanded. We do attach the working draft that Kroll Bermuda has been working on with the Debtors and sharing with A&M. This is a work in process as we need, among other things, a budget from all professionals, including the Committee's. We will continue to work on these issues and expect that Kroll Bermuda and A&M will also continue to pursue this workstream. This working cash flow also addresses the question about "restricted" cash. As I mentioned to you, this notion of this cash being "restricted" was a misunderstanding on the Committee's part based on our prestation of available funds in a conservative way as we work through the various transactions. These amounts are now included in the cash flow as unrestricted and since they relate to the transactions, we suggest Messrs. Karlinsky and Schwab should discuss, we will address those issues through that work stream.

In closing, might I suggest that it may also be worth mentioning to your Committee (and for you to consider in representing them) that the individual human beings that work for the Debtors are now living in an active war zone and that artificial demands and false deadlines are especially stressful (e.g., demanding a full case budget within 2 days of an email). Commencement of war in the Debtors' home country only creates more stress on the Debtors and the employees as they deal with death, friends and relatives that are missing, and air raid sirens, causing them to seek shelter several times during the workday. Notwithstanding these issues; the Debtors employees worked tirelessly through the conflict that started on October 7, 2023, to maximize the value of the Debtors' assets and they will continue to do so.

We urge you and your Committee to support this initiative rather than demanding that many of these employees be terminated immediately or that they meet Committee-imposed arbitrary deadlines. The Debtors continue to believe that if the Committee would extend the collaborative approach taken on the litigation issues to the maximization of the valuable business assets, that real value can be realized. If the Committee is not interested in maximizing the value of the Debtors' business assets, then the Debtors will continue to do so without your support. And, contrary to the suggestion in your October 4 letter, the Debtor' proposed course of action will not result in corporate waste, but is keyed to well-informed business judgment consistent with the Debtors' fiduciary duties designed to ensure that valuable assets are maximized for the creditors' benefit, and that the costs associated with running that business are, as quickly as possible, transferred to a third-party buyer. We look forward to the Committee changing its view on these issues for the good of all concerned. We believe the Court expects nothing less and that cooler heads can and must prevail.

Sincerely,

R. Craig Martin
craig.martin@us.dlapiper.com

cc: Richard A. Chesley, Esq.
David B. Kurzweil, Esq.
Joseph Davis, Esq.

Exhibit D

SVSG Vesttoo Technology Assessment dated August 23, 2023

Being Filed Under Seal per the Committee's Motion to (I) Authorize It to Redact and File Under Seal Certain Information Contained in the Motion of the Official Committee of Unsecured Creditors Pursuant to Section 1121(d)(1) of the Bankruptcy Code for Entry of an Order Terminating Exclusive Periods for Debtors to Propose and Solicit Acceptance of a Plan, as Well as in Documents Supporting that Motion, and (II) Require the Debtors to Demonstrate Why Such Information Requires Protection

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
VESTTOO LTD., *et al.*,[1]	Case No. 23-11160 (MFW)
Debtors.	(Jointly Administered)

DECLARATION OF RICHARD NEWMAN

I, Richard Newman, hereby declare pursuant to 28 U.S.C. § 1746, under penalty of perjury, to the best of my knowledge and belief, that:

Introduction

1. I am a Managing Director with Alvarez & Marsal North America, LLC ("**A&M**"). A&M is a global professional services firm that offers a wide variety of services to private and public clients, including financial turnaround and restructuring advisory services. My responsibilities at A&M primarily involve business plan review, best interests test, liquidity management, budget planning, cash flow forecasting, and bankruptcy sales. I co-lead A&M's Unsecured Creditors' Committee practice. During my approximately 18 years as a restructuring and turnaround management professional, I have advised clients in numerous chapter 11 cases, including those of: Avaya Inc.; Boomerang Tube, LLC; Communications Corporation of America, Inc.; Chesapeake Corporation; Endeavour Operating Corp.; Dresser, Inc.; Freedom Communications, Inc.; Getty Petroleum Marking Inc.; Keywell LLC; Kimball Hill, Inc.; Eastman Kodak Corporation; Mallinckrodt PLC; NewPage Corporation; NPC International, Inc.; Orchids Paper Products Company; Reader's Digest Association Inc.; SunEdison Inc.; TK Holdings Inc.;

[1] Due to the large number of debtor entities in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://dm.epiq11.com/vesttoo.

Tronox Inc.; Union Carbide Corporation; and Visteon Corp. A copy of my biography, which includes additional details regarding my professional experience, is attached hereto as **Exhibit 1**.

2. I am over the age of 18 and am authorized to submit this declaration (the "**Declaration**") on behalf of the Official Committee of Unsecured Creditors (the "**Committee**") in support of the *Motion of the Official Committee of Unsecured Creditors Pursuant to Section 1121(d)(1) of the Bankruptcy Code for Entry of an Order Terminating Exclusive Periods for Debtors to Propose and Solicit Acceptances of a Plan* (the "**Motion**").[2] I am not being specifically compensated for this testimony other than through the proposed compensation of A&M as a professional retained on behalf of the Committee. Unless otherwise indicated,[3] the statements set forth in this Declaration are based on (a) my personal knowledge of the Debtors' current operations and financial performance, (b) information learned from my review of relevant documents, and (c) information I have received from the Debtors' professionals. I understand that the Committee is continuing to conduct discovery and diligence, and I may consult additional materials as those efforts continue and amend or supplement this declaration accordingly. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

A&M's Review of the Debtors' Financial Data and Other Information

3. Based on A&M's review of the cash flows provided by the Debtors and discussions with the Debtors' professionals, the Debtors are likely to run out of cash by year-end. This conclusion is based on the impacts of the fraud, that the Debtors have received no meaningful post-petition revenue, and that the Debtors continue to maintain a high rate of cash burn. Each of these factors is described below.

[2] Capitalized terms not otherwise defined in this Declaration shall have the meaning set forth in the Motion.
[3] Certain of the disclosures herein relate to matters within the personal knowledge of other professionals at A&M and are based on information provided by them to me.

4. Based on my review of various pleadings filed by the Debtors, including the first Interim Report filed on September 7, 2023 [Docket No. 118] (the "**Interim Report**"), as well as conversations with the Debtors' professionals, I understand that the Debtors' business model relied heavily upon collateral security that took the form of standby or other letters of credit ("**LOCs**"), and that it was recently discovered that all or nearly all of the LOCs supporting the transactions closed by the Debtors were fraudulent.

5. Because the Debtors' business model depended on forged or otherwise fraudulent LOCs, the Debtors have had no revenue-producing business operations since filing their voluntary petitions for relief under chapter 11 of the Bankruptcy Code on August 14 and 15, 2023 (the "**Petition Date**").

6. The Debtors did not provide an initial cash flow forecast until October 12, 2023 ("**October 12 Forecast**"). The October 12 Forecast included actual results for August and September 2023. The Debtors provided an updated cash flow forecast on October 16, 2023 ("**October 16 Forecast**").

7. Based on A&M's review of the Debtors' October 12 and 16 Forecasts and communications with Kroll Associates UK Limited ("**Kroll**"), which has been retained to investigate allegations that the LOCs were fraudulent, I understand that the Debtors have generated no meaningful revenue since the Petition Date. Kroll further informed A&M that the Debtors are not expected to generate any revenue over the next 13 weeks, as reflected in their cash flow forecasts.

8. Despite their lack of revenue, the Debtors have maintained a high rate of cash burn since the Petition Date. According to the Debtors' October 16 Forecast, at the commencement of these chapter 11 cases, the Debtors had approximately [redacted] in unrestricted cash and

another approximately [redacted] in "restricted cash." The October 16 Forecast shows that the Debtors' total cash burn for August and September 2023 was approximately [redacted], excluding any restructuring professional fees. It further shows they spent [redacted] in September alone and are projected to spend an additional [redacted], on average, per month going forward.

9. Despite the Debtors' lack of revenue, I understand that during the course of these chapter 11 cases, the Debtors have retained a significant number of employees. Despite inquiries, the Debtors and their professionals have failed to provide adequate information to justify these expenses.

a. During phone call with Kroll on October 2, 2023, A&M requested a detailed list of employees including (i) descriptions of their roles and responsibilities; (ii) salary and benefit costs; and (iii) underlying details regarding the Debtors' planned staffing reductions.

b. On October 5, 2023, A&M received a list of 61 employees by department, but the list did not include any roles or responsibilities, fully baked costs, or information regarding planned staff reductions.

c. A&M followed up with Kroll via email the same day.

d. Kroll did not respond to these requests until October 16, 2023 when it provided the October 16 Forecast, which contains information concerning the Debtors' employees. A&M anticipates having follow-up questions for Kroll concerning the Debtors' employees and any planned staff reductions.

10. On October 17, 2023, the Committee and its professionals had a two-hour meeting with the Debtors and their professionals, which I attended. In attendance from the Debtors were Ami Barlev, the Interim Chief Executive Officer of Vesttoo Ltd. ("**Vesttoo**"), and other high-level Vesttoo employees, including Rita Baal-Taxa, whom I understand is a lawyer with experience in the insurance industry; Brian Kirwan, a former underwriter focused on technology solutions in the insurance industry; and Koby Englender, a former investment banker who is a member of Vesttoo's capital markets team. Also in attendance for the Debtors were representatives from the Debtors' professionals at DLA Piper, Perella Weinberg Partners, and GK Advisory. In attendance

for the Committee were representatives from each Committee member, counsel for each member, Committee counsel from Greenberg Traurig, and my colleague at A&M, Matthew Brouwer.

11. At that meeting, the Debtors and their professionals presented a Trade Forward approach for selling the assets of the Debtors as either a going concern or spinning off the Debtors' intellectual property and/or their employees developing and attempting to monetize that intellectual property into a new entity. The Debtors and their professionals explained that under the Trade Forward approach, [redacted]

12. During their presentation, the Debtors and their professionals stated or represented:

a. [redacted]

b. [redacted]

c. [redacted]

d. [redacted]

e. [redacted]

f. [redacted]

g. [redacted]

h. [redacted]

i. [redacted]

13. Based on the Debtors' current monthly operational cost expenditures, A&M has calculated that terminating exclusivity now will save the estates at least [redacted] in cash[4].

14. Based on all of the information A&M has reviewed to date, it is my opinion that the Debtors do not have sufficient revenue, business operations, or assets to support reorganization as a going concern business.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: October 20, 2023
Chicago, Illinois

/s/ Richard Newman
Richard Newman

[4] The Committee wishes to reduce the exclusivity period by approximately 36 days, which approximately equals one month cash burn of [redacted].

Exhibit 1

Biography

Rich Newman

Managing Director | UCC Practice Co-Chair

- Co-leads Alvarez & Marsal's Unsecured Creditors' Committee practice. Managing Director with Alvarez & Marsal Creditor Advisory in Chicago where he provides financial advisory services to creditors and focuses on representing official committees of unsecured creditors in bankruptcy proceedings. Specializes in 363 sales, best interests test, liquidity management, business plan review, solvency, formulation of reorganization plans and litigation support

- With more than eighteen years of restructuring experience, Mr. Newman has advised unsecured creditor committees, healthy and distressed companies in leveraged recapitalizations, mergers and acquisitions, and support of interim management roles.

- Unsecured Creditor Committee assignments: Alto Maipo Delaware LLC, Avaya, Boomerang Tube, Boxed, Inc., Buccaneer Energy, Constar, Corsicana Bedding, LLC,, Endeavour, Getty Petroleum, Global Aviation, Hollander Sleep Products, Keywell LLC, Kodak, Mallinckrodt, PLC, LifeCare, NewPage, NORPAC Foods, Inc., NPC International, Inc., Orchids Paper, NORPAC Foods, Inc., Ryckman Creek Resources, LLC, Shiloh Industries, Inc., SunEdison, Synergy Pharmaceuticals, Takata, Tintri, Vice Group Holdings Inc., and Westinghouse

- Debtor financial advisory, bank advisory, or out-of-court deals: Appleton Coated, Chesapeake Corporation, Detroit Public Schools, Dresser, Inc., Kimball Hill Homes, Severstal North America, Inc., Tronox Inc., Union Carbide and Visteon Corp.

- Testimony experience includes (i) Orchids Paper Products Company Case No. 19-10729, (ii) TK Holdings Inc. (f/k/a Takata) Case No. 17-11375 (November 2017), and (iii) Deposition re: SGK Ventures, LLC (f/k/a Keywell, LLC) Case No. 13-37603 (August 2014), among others

- B.S. in economics from George Washington University and a master's degree in business administration from The University of Texas. I have passed all three levels of the CIRA exam and received the Kroll Zolfo Cooper / Randy Waits Award for excellence on the CIRA exam