

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

FISKER INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: D.I. 38, 59, 98, 184, 260, 361

**NOTICE OF FILING OF SETTLEMENT TERM SHEET**

PLEASE TAKE NOTICE that on June 21, 2024, the debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases filed the *Motion of the Debtors for Entry of Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, (IV) Scheduling a Further Hearing on the Motion, (V) Granting Related Relief* [Docket No. 38] (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that on July 16, 2024, CVI Investments, Inc. (“**CVI**”) filed the *Motion of CVI Investments, Inc. to Convert the Debtors’ Chapter 11 Cases to Cases Under Chapter 7 of the Bankruptcy Code* [D.I. No. 238] (the “**Motion to Convert**”), requesting conversion of the Chapter 11 Cases to cases under chapter 7, which was scheduled to be heard by the Court on July 29, 2024.

PLEASE TAKE FURTHER NOTICE that this Court has previously entered five orders approving interim use of cash collateral in these cases [D.I. 59, 98, 184, 260, 361] (the “**Prior Interim Order**”).

<sup>1</sup> The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.



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**PLEASE TAKE FURTHER NOTICE** that the Debtors have engaged in substantial negotiations with CVI, the Official Committee of Unsecured Creditors (the “**Committee**”), and other key parties in interest to reach a global resolution of the Motion to Convert and the Debtors’ ongoing cash needs for the remainder of the case, in order for the Debtors to pursue a chapter 11 plan of liquidation for the benefit of all creditors.

**PLEASE TAKE FURTHER NOTICE** that to that end, the Debtors filed a *Notice of Settlement and Filing of Proposed Sixth Interim Cash Collateral Order* [D.I. 456], which attached as Exhibit 2 a settlement term sheet between the Debtors, CVI, and the Committee (the “**Settlement Term Sheet**”).

**PLEASE TAKE FURTHER NOTICE** that following further negotiations with the parties, the Debtors filed a proposed sixth interim cash collateral order [D.I. 477] on August 23, 2024.

**PLEASE TAKE FURTHER NOTICE** that the Debtors hereby file a revised settlement term sheet (the “**Revised Settlement Term Sheet**”), which is attached hereto as **Exhibit A**.

**PLEASE TAKE FURTHER NOTICE** that for the convenience of the Court and all parties in interest, a redline comparing the Revised Settlement Term Sheet to the initial Settlement Term Sheet is attached hereto as **Exhibit B**.

Dated: August 23, 2024  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Sophie Rogers Churchill

Robert J. Dehney, Sr. (No. 3578)  
Andrew R. Remming (No. 5120)  
Brenna A. Dolphin (No. 5604)  
Sophie Rogers Churchill (No. 6905)  
Echo Yi Qian (No. 7330)  
1201 N. Market Street, 16<sup>th</sup> Floor  
Wilmington, Delaware 19801  
Tel.: (302) 658-9200  
rdehney@morrisnichols.com  
aremming@morrisnichols.com  
bdolphin@morrisnichols.com  
srchurchill@morrisnichols.com  
eqian@morrisnichols.com

-and-

DAVIS POLK & WARDWELL LLP

Brian M. Resnick (admitted *pro hac vice*)  
Darren S. Klein (admitted *pro hac vice*)  
Richard J. Steinberg (admitted *pro hac vice*)  
450 Lexington Avenue  
New York, New York 10017  
Tel.: (212) 450-4000  
brian.resnick@davispolk.com  
darren.klein@davispolk.com  
richard.steinberg@davispolk.com

*Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

Settlement Term Sheet

THIS TERM SHEET IS A SETTLEMENT PROPOSAL IN FURTHERANCE OF SETTLEMENT DISCUSSIONS AND SHALL NOT CONSTITUTE AN ADMISSION OF LIABILITY BY ANY PARTY, BE ADMISSIBLE IN ANY ACTION RELATED TO THE MATTERS ADDRESSED HEREIN OR CONSTITUTE A WAIVER OF ANY RIGHTS OF THE RIGHTS OF ANY PARTY. THIS TERM SHEET AND THE INFORMATION IT CONTAINS ARE ENTITLED TO PROTECTION FROM ANY USE OR DISCLOSURE TO ANY PARTY OR PERSON PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ANY OTHER APPLICABLE RULE, STATUTE, OR DOCTRINE OF SIMILAR IMPORT PROTECTING THE USE OR DISCLOSURE OF CONFIDENTIAL SETTLEMENT DISCUSSIONS.

THIS TERM SHEET DOES NOT CONSTITUTE (NOR SHALL IT BE CONSTRUED AS) AN OFFER OR SOLICITATION OF VOTES FOR OR AGAINST ANY CHAPTER 11 PLAN. THE TERMS SET FORTH IN THIS TERM SHEET ARE FOR DISCUSSION PURPOSES ONLY AND REMAIN SUBJECT IN ALL RESPECTS TO THE NEGOTIATION, EXECUTION, AND DELIVERY OF DEFINITIVE DOCUMENTATION, INCLUDING THE PLAN, DISCLOSURE STATEMENT, CONFIRMATION ORDER, AND CASH COLLATERAL ORDER (EACH AS DEFINED BELOW) BY HEIGHTS, THE COMMITTEE, MAGNA INTERNATIONAL INC. ("MAGNA"), AND THE DEBTORS (COLLECTIVELY, THE "PARTIES") ON TERMS THAT ARE CONSISTENT WITH THE TERMS AND CONDITIONS DESCRIBED HEREIN (INCLUDING THE DOCUMENTATION PRINCIPLES OUTLINED BELOW) AND MUTUALLY ACCEPTABLE IN FORM AND SUBSTANCE TO HEIGHTS, THE COMMITTEE, MAGNA (SOLELY TO THE EXTENT ANY PROVISION SPECIFICALLY RELATES TO MAGNA IN ITS INDIVIDUAL CAPACITY (AND NOT AS A MEMBER OF THE COMMITTEE OR WITH RESPECT TO PROVISIONS APPLICABLE TO GENERAL UNSECURED CREDITORS GENERALLY)), AND THE DEBTORS, AS WELL AS TO AGREEMENT ON A RESTRUCTURING PLAN IN THE AUSTRIAN INSOLVENCY PROCEEDING (AS DEFINED BELOW) DISCUSSED BELOW.<sup>1</sup>

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<sup>1</sup> This Term Sheet does not include a description of all the terms, conditions and other provisions that are to be contained in the Plan, the Confirmation Order, or the Cash Collateral Order, or any other ancillary documents, each of which shall be consistent with the terms and conditions hereof and otherwise in form and substance acceptable to Heights, the Committee, Magna (solely to the extent any provision specifically relates to Magna in its individual capacity (and not as a member of the Committee or with respect to provisions applicable to general unsecured creditors generally), and the Debtors.

Term	Proposal
<b>1. Liquidating Plan; Cash Collateral</b>	<p>The Debtors, Heights, Magna, and the Committee (collectively, the “<u>Parties</u>” and each a “<u>Party</u>”) agree to support a liquidating chapter 11 plan reflecting the terms set forth in this term sheet (the “<u>Plan</u>”). The Plan (with accompanying disclosure statement (the “<u>Disclosure Statement</u>”)) shall be filed by the Debtors as soon as possible, and in any event on or before August 30, 2024. The Debtors shall seek Bankruptcy Court approval of the Disclosure Statement and the Plan at a combined hearing on an expedited time frame. The Debtors shall be required to comply with the budget attached as Exhibit A hereto (the “<u>Settlement Budget</u>”), which includes line items estimating the funds necessary to implement and administer the Plan (including administrative expenses), and to wind down and liquidate the Debtors’ estates. In the event there are administrative expenses that in the aggregate exceed the Settlement Budget, or the aggregate priority claims exceed those estimated by the recovery analysis provided by the Debtors prior to the date hereof, in each case by more than a reasonable variance to be agreed, Heights and the Committee will each have a right to withdraw their vote (in the case of Heights) or support for (in the case of the Committee) the Plan. The Debtors represent that such Settlement Budget has been prepared based on the Debtors’ reasonable, informed and good faith estimates.</p> <p>The Settlement Budget may not be amended, modified or supplemented without the consent of Heights and the Committee.</p> <p>Notwithstanding anything to the contrary, professional fees shall be limited as provided in section 17 herein, which limitations shall also be reflected in the Settlement Budget.</p> <p>An order approving continued interim use of cash collateral (“<u>Cash Collateral Order</u>”) shall be in form and substance (including terms and milestones) consistent with the Settlement Budget and otherwise acceptable to Heights, the Debtors, and the Committee.<sup>2</sup> The Plan and Confirmation Order shall, for the avoidance of doubt, include such relief as Heights would get in a final cash collateral order and otherwise consistent with this term sheet.</p>

<sup>2</sup> The Carve Out in the Cash Collateral Order for fees and expenses of estate Professionals incurred from and after August 23, 2024 shall be capped at the amounts set forth in the Settlement Budget.

Term	Proposal
<b>2. The IP/Austria Assets Trust</b>	<p>The Plan will provide for the creation of a liquidation trust (the “<u>IP/Austria Assets Trust</u>”) with a trustee appointed by Heights (the “<u>IP/Austria Assets Trustee</u>”). On the effective date of the Plan (the “<u>Effective Date</u>”), the following assets (clauses (a), (b) and (c), collectively, the “<u>IP/Austria Assets</u>”) shall vest in the IP/Austria Assets Trust:</p> <ul style="list-style-type: none"> <li>(a) The Debtors’ intellectual property,<sup>3</sup></li> <li>(b) The Debtors’ intercompany claims and interests in their foreign subsidiaries,<sup>4</sup> and</li> <li>(c) Heights’ claim(s) against Fisker GmbH (Austria) (“<u>Fisker Austria</u>”).</li> </ul> <p>In addition, on the Effective Date, the following assets shall also vest in the IP/Austria Assets Trust:</p> <ul style="list-style-type: none"> <li>(d) Heights’ share of proceeds of Non-IP Assets pursuant to section 7, and</li> <li>(e) Heights’ share of proceeds from the Estate Claims pursuant to section 8.</li> </ul> <p>Heights or its designee shall receive the interests in the IP/Austria Assets Trust entitling them to the portion of the IP/Austria Assets and proceeds of the Estate Claims and Non-IP Assets as provided in sections 6, 7 and 8 below.</p> <p>The IP/Austria Assets Trust shall be given access by the Debtors and their professionals to all information the IP/Austria Assets Trustee determines is necessary to sell any IP.<sup>5</sup> The Debtors will take all commercially reasonable efforts to settle all intercompany claims and interests in their foreign subsidiaries.</p>

<sup>3</sup> A list of intellectual property will be promptly prepared and circulated by the Debtors to the other Parties. The rights of all parties to object on the basis that any intellectual property proposed to be transferred to the IP/Austria Assets Trust is not owned by the Debtors are reserved.

To the extent the Debtors own any tangible assets (including any so-called “de minimis” assets) related to the Debtors’ intellectual property (including, for example, hard drives containing intellectual property, schematics, etc.), such assets shall constitute IP/Austria Assets and shall be excluded from the Non-IP Assets. For the avoidance of doubt, notwithstanding any order authorizing the sale of de minimis assets without prior notice, any assets related to the Debtors’ intellectual property may only be sold after notice to and with the prior written consent of Heights and the Committee. Prior to the Effective Date, any sale or any transfer of an executory contract or license (or any assumption or assignment thereof) shall be subject to Bankruptcy Court approval. Notwithstanding the foregoing, the Debtors and all such other Parties acknowledge and agree that no sale, transfer, or other conveyance (“Sale”) of any such

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intellectual property, in whole or in part, shall be effected in favor of the IP/Austria Assets Trust or any other or subsequent entity or person, which amends, impairs, modifies, or limits the rights in and to the intellectual property of the Debtors licensed to American Lease pursuant to and in accordance with the terms of the Vehicle Purchase Agreement approved by an order of the Court [D.I. 243, 294] (as amended, the “Vehicle Purchase Agreement”), the validity and effectiveness of which Vehicle Purchase Agreement, including the licensed rights thereunder, are and shall be expressly acknowledged by the terms of any agreement, documents, instruments, and orders with respect to any such Sale thereof, such that the Sale shall be subject in all respects to such rights of American Lease.

<sup>4</sup> For the avoidance of doubt, Heights’ claims against any of the Debtors’ non-Debtor foreign subsidiaries (other than Fisker Austria) and liens upon any of their respective assets, including any amounts realized in respect of any such claims or interest, are excluded from the IP/Austria Assets Trust and the Liquidation Trust.

<sup>5</sup> The IP/Austria Assets Trustee shall use commercially reasonable efforts to provide prior notice to, and shall make itself or its professionals reasonably available for discussion with, Magna and counsel to the Fisker Owners’ Association regarding any proposed sale of intellectual property.<sup>6</sup> “GUC Creditors” means holders of general unsecured claims against the Debtors other than Heights or its affiliates.

Term	Proposal
<b>3. The Liquidation Trust</b>	<p>The Plan will provide for the creation of a liquidation trust (the “<u>Liquidation Trust</u>” and together with the IP/Austria Assets Trust, the “<u>Trusts</u>”) with a trustee appointed by the Committee (the “<u>Liquidation Trustee</u>” and, together with the IP/Austria Assets Trustee, the “<u>Trustees</u>”).</p> <p>GUC Creditors shall receive their pro rata share of interests in the Liquidation Trust, entitling each of them to a pro rata share of the portion of Estate Claims, Non-IP Assets and proceeds of the IP/Austria Assets allocable to GUC Creditors as provided in sections 6, 7 and 8 below; and</p> <p>On the Effective Date, the following assets shall vest in the Liquidation Trust:</p> <ul style="list-style-type: none"> <li>(a) The Debtors’ litigation claims and causes of action, including claims against the Debtor Parties (as defined below) (the “<u>Estate Claims</u>”),</li> <li>(b) The Debtors’ assets, other than the IP/Austria Assets and Estate Claims, including all cash and cash equivalents (“<u>Cash</u>”) in the Debtors’ bank accounts on the Effective Date (collectively, the “<u>Non-IP Assets</u>”), and</li> <li>(c) The GUC Creditors’<sup>6</sup> share of proceeds from the IP/Austria Assets pursuant to section 6.</li> </ul> <p>The Liquidation Trust shall be given access by the Debtors and their professionals (at the expense of the Liquidation Trust with respect to any expenditure of resources that is more than de minimis) to all information the Liquidation Trustee determines is necessary to prosecute the Estate Claims and benefit from any relevant privileges.</p> <p>In addition to the wind-down amounts contemplated by the Settlement Budget, the Plan shall provide for the funding of the Liquidation Trust on the Effective Date in the aggregate amount of \$300,000 to operate the Liquidation Trust (the “<u>Initial Liquidation Trust Funding Amount</u>”), including litigation expenses. Such amount shall be funded as provided in section 7 below.</p> <p>The Liquidation Trustee shall have the right to obtain “contingency” or other “litigation” funding he or she deems necessary to effectively operate the Liquidation Trust; <u>provided</u>, that such funding shall have recourse only to the proceeds of Estate Claims.</p> <p>The Liquidation Trustee shall oversee the claims reconciliation process.</p>

Term	Proposal
<b>4. Coordination between Trusts</b>	The Trustees shall consult with each other regarding key decisions to be made with the IP/Austria Assets and the Non-IP Assets. The Trustees shall provide information and reasonable assistance to each other in the performance of their respective duties, including reasonable periodic reporting. Prior to entering into any material sale of assets or any agreement to settle Estate Claims, each Trust will provide advance written notice of such sale and/or settlement to the other Trust.
<b>5. Distribution Agent</b>	All distributions from the Liquidation Trust will be made by the Liquidation Trustee or its designated agent (which agent must be reasonably acceptable to Heights) in accordance with the allocations set forth in sections 6, 7 and 8 below. All distributions from the IP/Austria Assets Trust will be made by the IP/Austria Assets Trustee or its designated agent (which agent must be reasonably acceptable to the Committee) in accordance with the allocations set forth in sections 6, 7 and 8 below.
<b>6. IP/Austria Assets</b>	<p>The first \$40,000,000 proceeds of IP/Austria Assets, net of reasonable and documented trust expenses, shall be distributed as follows:</p> <ul style="list-style-type: none"> <li>a) 85% to Heights, and</li> <li>b) 15% to GUC Creditors.</li> </ul> <p>To the extent the net proceeds of IP/Austria Assets exceed \$40,000,000, then such net proceeds in excess of \$40,000,000 shall be distributed as follows:</p> <ul style="list-style-type: none"> <li>a) 50% to Heights, and</li> <li>b) 50% to GUC Creditors.</li> </ul>

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<sup>6</sup> “GUC Creditors” means holders of general unsecured claims against the Debtors other than Heights or its affiliates.

Term	Proposal
<b>7. Non-IP Assets</b>	<p>All Cash as of the Effective Date and proceeds of Non-IP Assets, net of reasonable and documented trust expenses, shall be distributed, 50% to Heights and 50% to GUC Creditors, after payment of the following amounts:</p> <ul style="list-style-type: none"> <li>a) All allowed administrative and priority claims paid in accordance with the Settlement Budget or otherwise required to be paid under the Plan (including professional fees of the Debtors and the Committee in accordance with the Settlement Budget as provided in section 17);</li> <li>b) the reasonable and documented (in summary form) professional fees and expenses incurred by Heights in an amount not to exceed the aggregate amount paid to (or escrowed for)<sup>7</sup> the Committee's professionals; and</li> <li>c) the Initial Liquidation Trust Funding Amount.</li> </ul>
<b>8. Estate Claims</b>	<p>The first \$40,000,000 proceeds of the Estate Claims, net of reasonable and documented trust expenses, shall be distributed as follows:</p> <ul style="list-style-type: none"> <li>a) 85% to GUC Creditors, and</li> <li>b) 15% to Heights.</li> </ul> <p>To the extent the net proceeds of Estate Claims exceed \$40,000,000, then such net proceeds that are in excess of \$40,000,000 shall be distributed as follows:</p> <ul style="list-style-type: none"> <li>a) 50% to GUC Creditors, and</li> <li>b) 50% to Heights.</li> </ul>

<sup>7</sup> In the event any amount escrowed for the Committee is unused or not otherwise applied to satisfy the fees and expenses of the Committee's Professionals, a corresponding amount paid to Heights on account of its professionals' fees and expenses will be deemed to have been distributed to Heights pursuant to this section 7 and the GUC Share of the Non-IP Assets shall be increased by such amount.

Term	Proposal
<b>9. Heights Settlement</b>	<p>The Plan will contain a full release of all claims and causes of action of the Debtors and their respective estates against Heights; <u>provided</u> that this settlement is contingent on delivery to the Committee on or prior to August 30, 2024 of a certification by Uzzi &amp; Lall in form and substance acceptable to the Committee and Heights. Such certification shall be deemed made to the Bankruptcy Court under penalty of perjury. The challenge period set forth in the fifth interim cash collateral order [Dkt. No. 361] (the “Fifth Interim Cash Collateral Order”) shall be extended to 30 days after the earliest of (x) the date on which these chapter 11 cases are converted to chapter 7, (y) the date on which confirmation of the Plan is denied, or (z) the date on which the Debtors or the Committee file any plan that is not acceptable in form and substance to Heights; <u>provided</u> that no actions or efforts will be taken in connection with any potential challenge or investigation, and no fees shall be incurred, by the Committee professionals during the time the challenge period is tolled; and <u>provided further</u> that the challenge period will end immediately as to all parties in interest (if not ended previously), as if no challenge had been timely made, and all stipulations and releases in the Fifth Interim Cash Collateral Order will be irrevocably binding on the Debtors and all other parties in interest, including the Committee, pursuant to and immediately upon the Effective Date.</p> <p>The Plan will allow Heights’ claims in the aggregate principal amount of \$186,050,000 plus accrued and accruing unpaid interest, fees, expenses (including fees and expenses of professionals), and all other liabilities, obligations and amounts under the Prepetition Note Documents (as defined in the Fifth Interim Cash Collateral Order) and the interim cash collateral orders, with such claims to receive the treatment provided to Heights as set forth herein. Pursuant to the Plan, in exchange for all of the distributions contemplated hereunder, Heights will waive all other claims against the Debtors’ estates (but not, for the avoidance of doubt, the non-Debtor subsidiaries<sup>8</sup>), including any deficiency claim or any adequate protection claim solely against the Debtors’ estates.</p>

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<sup>8</sup> Heights’ claims against Fisker Austria will be contributed to the Heights Trust.

Term	Proposal
<b>10. Other Estate Releases</b>	<p>The Plan shall not include any releases of Estate Claims other than with respect to Heights and its affiliates and, each of their respective officers, directors, employees, agents, representatives, shareholders, funds, managers, advisors, attorneys, successors, predecessors, and assigns. For the avoidance of doubt, except as otherwise provided herein, claims against the Debtors' officers, directors, employees, agents, representatives, shareholders, funds, managers, advisors, attorneys, successors, predecessors and assigns (collectively, the "<u>Debtor Parties</u>") will not be released.<sup>9</sup></p> <p>[Notwithstanding anything to the contrary herein, all avoidance actions of the Debtors against prepetition trade vendors (not including professionals) shall be released.]<sup>10</sup></p>
<b>11. Third-Party Releases</b>	<p>The proposed Plan shall contain consensual third-party releases with opt-out release mechanics. The members of the Committee (other than Magna, subject to section 21 hereof) and Heights (subject to section 21 hereof) will each elect not to opt out of such releases.<sup>11</sup></p>

<sup>9</sup> Notwithstanding anything contained herein and for the avoidance of doubt, the Plan will contain (a) standard exculpation provisions for the Debtors and their professionals, the Committee members and their professionals, Heights and its affiliates and professionals, Magna and its affiliates and professionals, the Liquidation Trustee, the Heights Trustee, John Dubel, John DiDonato, and the Debtors' other former and current directors and officers listed on Exhibit B hereto, in each case to the extent permitted by law, and (b) standard releases for the Committee members and their professionals, Heights and its affiliates and professionals, the Liquidation Trustee, the Heights Trustee, Davis Polk, Morris Nichols, Huron, John Dubel, and John DiDonato. For the Debtors' former and current directors and officers listed on Exhibit B hereto, recovery for any estate claims, including by way of settlement or judgment, shall be limited to the available proceeds of any applicable insurance policy. For the avoidance of doubt and notwithstanding anything to the contrary herein, (i) Geeta Gupta-Fisker and Henrik Fisker, and (ii) the family members, related trusts, investment vehicles, affiliates, and successors and assigns of the persons in (i) shall not be released or exculpated under the Plan in any respect.

<sup>10</sup> [NTD: Subject to review and confirmation by the Committee.]

<sup>11</sup> For the avoidance of doubt, no party shall be deemed to release any claims against the Debtors' non-Debtor subsidiaries pursuant to the Plan. As provided above, the Debtors' intercompany claims and interests in their foreign subsidiaries will be contributed to the Heights Trust.

Term	Proposal
<b>12. Substantive Consolidation for Distribution Purposes</b>	Each creditor will be entitled to recovery on account of a single claim against the Debtors regardless of the Debtor entity against which the creditor asserts claims.
<b>13. Global Settlement</b>	The Plan shall be considered a global settlement and governed by Rule 9019.
<b>14. Convenience Class</b>	The Committee will have the option to establish a convenience class under the Plan, which shall be funded with amounts otherwise distributable to GUC Creditors.
<b>15. Fisker Owners</b>	<p>The Liquidation Trustee shall take all actions reasonably practicable to address or facilitate the remediation of open vehicle recalls as of the Effective Date and to otherwise ensure existing Debtor vehicles remain safe and operable, so long as the cost of the foregoing does not require payments by the Liquidation Trust in excess of \$750,000.</p> <p>To the extent open vehicle recalls exist as of the Effective Date, the Parties will negotiate terms in good faith that will allow for the IP/Austria Assets Trustee to make the Debtors' intellectual property transferred to the IP/Austria Assets Trustee hereunder available to the Liquidation Trustee and/or its designee at no cost (for the avoidance of doubt, other than any costs associated with the Liquidation Trustee and/or its designee's use of such intellectual property), to the extent necessary until any open vehicle recalls as of the Effective Date have been reasonably addressed.</p>
<b>16. Administrative Claims</b>	Allowed administrative claims shall be paid-in-full on the later of the Effective Date or when such claims become due in the ordinary course. Subject to the Reimbursement Mechanics (as defined below), any administrative expense claims that become due after the Effective Date shall be paid first by the Liquidation Trust from Cash and other proceeds of Non-IP Assets and, thereafter, from proceeds of Estate Claims, and solely to the extent the Liquidation Trust does not have the funds to pay such claims, then the IP/Austria Assets Trust from proceeds of IP/Austria Assets. Prior to confirmation of the Plan, the Debtors shall provide Heights and the Committee with a list of all known and anticipated administrative claims. In addition, the Plan shall provide for an administrative claims bar date. Heights shall not be required to file a claim to receive the distribution contemplated herein under the Plan.

<p><b>17. Estate Professional Fees</b></p>	<p>Notwithstanding the foregoing, payment of Professional fees and expenses shall be limited to reasonable and documented accrued and unpaid Allowed Professional Fees (as defined in the Fifth Interim Cash Collateral Order) of the Debtors' and Committee's respective Professionals, not to exceed:</p> <p>(a) for the period prior to July 29, 2024, the actual amounts accrued by the applicable estate Professional as previously reported and contained in the more detailed budget provided to Heights and the Committee on August 22, 2024,</p> <p>(b) for the period July 29, 2024 through August 23, 2024, the amounts set forth in the Approved Budget (as defined in the Fifth Interim Cash Collateral Order), including the Proposed Extended Fifth Interim Cash Collateral Budget filed with the Court [D.I. 47] (the "<u>Budget Extension</u>"), with respect to the applicable estate Professional, <i>plus</i></p> <p>(c) for the period from and after August 22, 2024, an amount not to exceed the aggregate amounts set forth in the more detailed budget provided to Heights and the Committee on August 23, 2024 for such period with respect to the Debtors' Professionals and the Committee's Professionals, respectively.<sup>12</sup></p> <p>The Debtors, Heights, and the Committee shall not object to the payment of any estate Professional fees and expenses, <u>provided</u> that such Professional fees and expenses shall not exceed the foregoing limitations, or to the payment of Heights' professional fees as provided in section 7(b) above.</p> <p>No Professional fees and expenses shall be paid (including on an interim or monthly basis) prior to confirmation of the Plan, provided that, immediately upon confirmation of the Plan (but in no event later than the Effective Date without the consent of the applicable Professional), all estate Professional fees and expenses that are in the in the more detailed budget provided to Heights and the Committee on August 23, 2024 shall be paid (to the extent allowed) or escrowed for the benefit of the estate Professionals (to the extent not yet allowed). To the extent of available cash after making the payments (including into escrow) referred to in the prior sentence, the Debtors shall pay Heights' fees and expenses contemplated by section 7(b) above (it being understood that the payment of Heights' fees and expenses shall not be a condition to the Effective Date), provided further, that to the extent Cash and other proceeds of Non-IP Assets are not available as of the Effective Date to pay such fees and expenses of Heights, each Trustee shall promptly pay such fees and expenses from time to time as soon as cash is available to do so (and, for the avoidance of</p>
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Term	Proposal
	<p>doubt, prior to making any distributions to GUC Creditors and subject to the Reimbursement Mechanics<sup>13</sup>). The Initial Liquidation Trust Funding Amount shall only be paid after payment in full of amounts due to estate Professionals and Heights under section 7.</p> <p>The Debtors' Professionals and Committee's Professionals will endeavor to pursue, confirm and consummate the Plan and close the Chapter 11 Cases as expeditiously as possible and each will work in good faith and efficiently to conserve on the Professional fees and expenses required to do so.</p>
<b>18. Indenture Trustee Fees</b>	<p>The Plan will provide for the payment of reasonable and documented fees of U.S. Bank National Association in an aggregate amount not to exceed \$175,000, pursuant to that certain indenture, dated as of August 17, 2021, between Fisker Inc., as issuer, and U.S. Bank National Association, as trustee. Payment of such fees shall not be a condition to the Effective Date and shall be paid out of the first dollars distributable to GUC Creditors in accordance with this term sheet.</p>

<sup>12</sup>For the avoidance of doubt, estate Professionals shall not have a separate or individual ability to block the Plan so long as it provides for the treatment of Professional fees set forth in this section 17. To the extent any estate Professional has incurred fees and expenses in excess of the limitations provided under this term sheet, such Professional shall be deemed to consent under 1129(a)(9) of the Bankruptcy Code to payment of only those amounts not in excess of those contemplated by this term sheet.

<sup>13</sup>In the event that Cash and other proceeds of Non-IP Assets are not sufficient to pay all administrative claims, including estate Professional fees and expenses and fees and expenses of Heights' professionals, and amounts are required to be paid from proceeds of the IP/Austria Assets Trust or the Liquidation Trust (in each case, other than from any Cash or other proceeds of Non-IP Assets) as provided herein, then in such case, fifty percent (50%) of such amounts paid from other assets of the respective Trust shall be required to be reimbursed from the non-paying Trust (other than from Cash or proceeds of Non-IP Assets), from first dollars received from such Trust prior to any other distributions. For the avoidance of doubt, if the Liquidation Trust receives any additional Cash or other proceeds of Non-IP Assets after the Effective Date, such amounts shall be applied first to pay (or reimburse, if applicable) all (100%) of any such amounts paid by either Trust on account of administrative claims, including estate Professional fees and expenses and fees and expenses of Heights' professionals, from such additional Cash or other proceeds of Non-IP Assets, prior to making any other distributions (the foregoing provisions set forth in this footnote 12, the "Reimbursement Mechanics").

Term	Proposal
<b>19. Governance Changes</b>	To reduce expenses and as an accommodation to the company, the members of the Board of Directors (who have not received compensation since July 1, 2024) will voluntarily waive all rights to compensation commencing with Q3 2024, provided that John Dubel, chairman of the Transaction Committee, will continue to be compensated. Any officers (other than Henrik Fisker and Dr. Geeta Gupta-Fisker, who have voluntarily agreed to reduce their compensation to \$1) who at any time are deemed not essential to completion of the fleet sale or confirmation of the Plan shall resign or be terminated.
<b>20. Retention of Jurisdiction</b>	The Bankruptcy Court will retain jurisdiction over any dispute that should arise with respect to the Plan or the operation of the Trusts.

Term	Proposal
<b>21. Austrian Insolvency Proceeding/ 9019 Order</b>	<p>Any agreement on the terms set forth in this Term Sheet is contingent on agreement satisfactory to the Debtors, Heights, Magna and the Committee being reached regarding a restructuring plan (the “<u>Austrian Plan</u>”) in the insolvency proceeding of Fisker GmbH (Austria) currently pending in Austria (the “<u>Austrian Insolvency Proceeding</u>”) and the Austrian Plan becoming effective.<sup>14</sup></p> <p>The Parties shall support and the Debtors shall obtain by September 9, 2024, a final Bankruptcy Court order (the “<u>9019 Order</u>”) acceptable to Magna, the Committee, <u>the Debtors and Heights</u> approving and authorizing the Debtors to facilitate support for and consummation of the Austrian Plan, which shall include any settlements required with Fisker Austria and with Magna. The 9019 Order shall, among other thing, provide for (a) the allowance of Magna’s and its affiliates’ claims as general unsecured claims in the aggregate principal amount of \$475,000,000; (b) the rejection of the Debtors’ contracts with Magna and its affiliates for the design or production of vehicles or components; and (c) full release of all claims and causes of action of the Debtors and their respective estates against Magna and its affiliates and their respective officers, directors, employees, agents, representatives, shareholders, funds, managers, advisors, attorneys, successors, predecessors, and assigns. Notwithstanding the foregoing, all rights of Heights, the Debtors, the Committee, and Magna with respect to the proposed motion to approve the 9019 Order are reserved.</p> <p>Magna and its affiliates will be treated as a GUC Creditor on account of its allowed claim and shall receive a pro rata share of interests in the Liquidation Trust as set forth herein. As part of and subject to agreement being reached regarding the Austrian Insolvency Proceeding, Magna and its affiliates and Heights shall each not elect to opt out of the third-party releases under the Plan as provided in section 11 hereof.</p>

<sup>14</sup> To the extent any member(s) of the Committee have an interest in the Austrian Insolvency Proceeding in addition to their claims against the Debtors, such member(s) will be recused from any deliberations regarding any agreement regarding the Austrian Insolvency Proceeding in accordance with the Committee’s by-laws.

Term	Proposal
<b>22. Documentation Principles</b>	<ol style="list-style-type: none"> <li>1. Counsel to Heights will draft and circulate the Plan, the proposed order confirming the Plan (the “<u>Confirmation Order</u>”) and the Cash Collateral Order.</li> <li>2. Debtors’ local counsel will draft and circulate the Disclosure Statement with respect to the Plan and all solicitation materials.</li> <li>3. Heights, the Debtors, and the Committee will work together to prepare any additional or ancillary documentation that is required.</li> </ol> <p>As provided above, all definitive documents must be consistent with this term sheet and otherwise reasonably acceptable to each of the Debtors, the Committee, and Heights and, solely with respect to any provision in any definitive document that specifically relates to Magna, in its individual capacity only and not as a member of the Committee or with respect to provisions applicable to general unsecured creditors generally, Magna. Furthermore, no amendment to (or agreement of the Parties to deviate from in any definitive document) any provision of this term sheet that specifically relates to Magna, solely in its foregoing capacity, shall be effective without the prior written consent of Magna.</p>

EXHIBIT A

Settlement Budget

[To come]

EXHIBIT B

Roderick K. Randall  
Mark E. Hickson  
Nadine I. Watt  
Wendy J. Greuel  
William R. McDermott  
Mitchell S. Zuklie  
Jose Angel Salinas  
John C. Finnucan IV  
Burkhard Huhnke  
David King  
Corey MacGillivray

**Exhibit B**

Settlement Term Sheet

THIS TERM SHEET IS A SETTLEMENT PROPOSAL IN FURTHERANCE OF SETTLEMENT DISCUSSIONS AND SHALL NOT CONSTITUTE AN ADMISSION OF LIABILITY BY ANY PARTY, BE ADMISSIBLE IN ANY ACTION RELATED TO THE MATTERS ADDRESSED HEREIN OR CONSTITUTE A WAIVER OF ANY RIGHTS OF THE RIGHTS OF ANY PARTY. THIS TERM SHEET AND THE INFORMATION IT CONTAINS ARE ENTITLED TO PROTECTION FROM ANY USE OR DISCLOSURE TO ANY PARTY OR PERSON PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ANY OTHER APPLICABLE RULE, STATUTE, OR DOCTRINE OF SIMILAR IMPORT PROTECTING THE USE OR DISCLOSURE OF CONFIDENTIAL SETTLEMENT DISCUSSIONS.

THIS TERM SHEET DOES NOT CONSTITUTE (NOR SHALL IT BE CONSTRUED AS) AN OFFER OR SOLICITATION OF VOTES FOR OR AGAINST ANY CHAPTER 11 PLAN. THE TERMS SET FORTH IN THIS TERM SHEET ARE FOR DISCUSSION PURPOSES ONLY AND REMAIN SUBJECT IN ALL RESPECTS TO THE NEGOTIATION, EXECUTION, AND DELIVERY OF DEFINITIVE DOCUMENTATION, INCLUDING THE PLAN, DISCLOSURE STATEMENT, CONFIRMATION ORDER, AND CASH COLLATERAL ORDER (EACH AS DEFINED BELOW) BY HEIGHTS, THE COMMITTEE, [MAGNA INTERNATIONAL INC. \("MAGNA"\)](#), AND THE DEBTORS (COLLECTIVELY, THE "[PARTIES](#)") ON TERMS THAT ARE CONSISTENT WITH THE TERMS AND CONDITIONS DESCRIBED HEREIN (INCLUDING THE DOCUMENTATION PRINCIPLES OUTLINED BELOW) AND MUTUALLY ACCEPTABLE IN FORM AND SUBSTANCE TO [HEIGHTS](#), THE ~~PARTIES~~ [COMMITTEE, MAGNA \(SOLELY TO THE EXTENT ANY PROVISION SPECIFICALLY RELATES TO MAGNA IN ITS INDIVIDUAL CAPACITY \(AND NOT AS A MEMBER OF THE COMMITTEE OR WITH RESPECT TO PROVISIONS APPLICABLE TO GENERAL UNSECURED CREDITORS GENERALLY\)\), AND THE DEBTORS](#), AS WELL AS TO AGREEMENT ON A RESTRUCTURING PLAN IN THE AUSTRIAN INSOLVENCY PROCEEDING (AS DEFINED BELOW) DISCUSSED BELOW.<sup>1</sup>

<sup>1</sup> This Term Sheet does not include a description of all the terms, conditions and other provisions that are to be contained in the Plan, the Confirmation Order, or the Cash Collateral Order, or any other ancillary documents, each of which shall be consistent with the terms and conditions hereof and otherwise in form

Term	Proposal
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or the Cash Collateral Order, or any other ancillary documents, each of which shall be consistent with the terms and conditions hereof and otherwise in form and substance acceptable to ~~the Parties~~Heights, the Committee, Magna (solely to the extent any provision specifically relates to Magna in its individual capacity (and not as a member of the Committee or with respect to provisions applicable to general unsecured creditors generally), and the Debtors.

Term	Proposal
<b>1. Liquidating Plan; Cash Collateral</b>	<p>The Debtors, Heights, <a href="#">Magna</a>, and the Committee (collectively, the “Parties” and each a “Party”) agree to support a liquidating chapter 11 plan reflecting the terms set forth in this term sheet (the “Plan”). The Plan (with accompanying disclosure statement (the “<u>Disclosure Statement</u>”)) shall be filed by the Debtors as soon as possible, and in any event on or before August <del>26</del><a href="#">30</a>, 2024. The Debtors shall seek Bankruptcy Court approval of the Disclosure Statement and the Plan at a combined hearing on an expedited time frame. The Debtors shall be required to comply with the budget attached as Exhibit A hereto (the “<u>Settlement Budget</u>”), which includes line items estimating the funds necessary to implement and administer the Plan (including administrative expenses), and to wind down and liquidate the Debtors’ estates. In the event there are administrative expenses that in the aggregate exceed the Settlement Budget, or the aggregate priority claims exceed those estimated by the recovery analysis provided by the Debtors prior to the date hereof, in each case by more than a reasonable variance to be agreed, Heights and the Committee will each have a right to withdraw their vote (in the case of Heights) or support for (in the case of the Committee) the Plan. The Debtors represent that such Settlement Budget has been prepared based on the Debtors’ reasonable, informed and good faith estimates.</p> <p>The Settlement Budget may not be amended, modified or supplemented without the consent of Heights and the Committee.</p> <p>Notwithstanding anything to the contrary, professional fees shall be limited as provided in section 17 herein, which limitations shall also be reflected in the Settlement Budget.</p> <p>An order approving continued interim use of cash collateral (“<u>Cash Collateral Order</u>”) shall be in form and substance (including terms and milestones) consistent with the Settlement Budget and otherwise acceptable to Heights, <a href="#">the Debtors</a>, and the <del>other Parties</del><a href="#">Committee</a>.<sup>2</sup> The Plan and Confirmation Order shall, for the avoidance of doubt, include such relief as Heights would get in a final cash collateral order and otherwise consistent with this term sheet.</p>

<sup>2</sup> The Carve Out in the Cash Collateral Order for fees and expenses of estate Professionals incurred from and after August ~~19~~[23](#), 2024 shall be capped at the amounts set forth in the Settlement Budget.

Term	Proposal
<b>2. The <del>Heights</del>IP/Austria Assets Trust</b>	<p>The Plan will provide for the creation of a liquidation trust (the “<del>Heights</del>IP/Austria Assets Trust”) with a trustee appointed by Heights (the “<del>Heights</del>IP/Austria Assets Trustee”). On the effective date of the Plan (the “Effective Date”), the following assets (clauses (a), (b) and (c), collectively, the “IP/Austria Assets”) shall vest in the <del>Heights</del>IP/Austria Assets Trust:</p> <ul style="list-style-type: none"> <li>(a) The Debtors’ intellectual property,<sup>3</sup></li> <li>(b) The Debtors’ intercompany claims and interests in their foreign subsidiaries,<sup>4</sup> and</li> <li>(c) Heights’ claim(s) against Fisker <del>GmbH</del>GmbH (Austria) (“Fisker Austria”).</li> </ul> <p>In addition, on the Effective Date, the following assets shall also vest in the <del>Heights</del>IP/Austria Assets</p>

<sup>3</sup> A list of intellectual property will be promptly prepared and circulated by the Debtors to the other Parties. The rights of all parties to object on the basis that any intellectual property proposed to be transferred to the ~~Heights~~IP/Austria Assets Trust is not owned by the Debtors are reserved.

To the extent the Debtors own any tangible assets (including any so-called “de minimis” assets) related to the Debtors’ intellectual property (including, for example, hard drives containing intellectual property, schematics, etc.), such assets shall constitute IP/Austria Assets and shall be excluded from the Non-IP Assets. For the avoidance of doubt, notwithstanding any order authorizing the sale of de minimis assets without prior notice, any assets related to the Debtors’ intellectual property may only be sold after notice to and with the prior written consent of Heights and the Committee. Prior to the Effective Date, any sale or any transfer of an executory contract or license (or any assumption or assignment thereof) shall be subject to Bankruptcy Court approval. Notwithstanding the foregoing, the Debtors and all such other Parties acknowledge and agree that no sale, transfer, or other conveyance (“Sale”) of any such intellectual property, in whole or in part, shall be effected in favor of the IP/Austria Assets Trust or any other or subsequent entity or person, which amends, impairs, modifies, or limits the rights in and to the intellectual property of the Debtors licensed to American Lease pursuant to and in accordance with the terms of the Vehicle Purchase Agreement approved by an order of the Court [D.I. 243, 294] (as amended, the “Vehicle Purchase Agreement”), the validity and effectiveness of which Vehicle Purchase Agreement, including the licensed rights thereunder, are and shall be expressly acknowledged by the terms of any agreement, documents, instruments, and orders with respect to any such Sale thereof, such that the Sale shall be subject in all respects to such rights of American Lease.

<sup>4</sup> For the avoidance of doubt, Heights’ claims against any of the Debtors’ non-Debtor foreign subsidiaries (other than Fisker Austria) and liens upon any of their respective assets, including any amounts realized in respect of any such claims or interest, are excluded from the ~~Heights~~IP/Austria Assets Trust and the Liquidation Trust.

Term	Proposal
	<p>Trust:</p> <p>(d) Heights' share of proceeds of Non-IP Assets pursuant to section 7, and</p> <p>(e) Heights' share of proceeds from the Estate Claims pursuant to section 8.</p> <p>Heights or its designee shall receive the interests in the <del>Heights</del><a href="#">IP/Austria Assets</a> Trust entitling them to the portion of the IP/Austria Assets and proceeds of the Estate Claims and Non-IP Assets as provided in sections 6, 7 and 8 below.</p> <p>The <del>Heights</del><a href="#">IP/Austria Assets</a> Trust shall be given access by the Debtors and their professionals to all information the <del>Heights</del><a href="#">IP/Austria Assets</a> Trustee determines is necessary to sell any IP.<sup>5</sup> The Debtors will take all commercially reasonable efforts to settle all intercompany claims and interests in their foreign subsidiaries.</p>

<sup>5</sup> The IP/Austria Assets Trustee shall use commercially reasonable efforts to provide prior notice to, and shall make itself or its professionals reasonably available for discussion with, Magna and counsel to the Fisker Owners' Association regarding any proposed sale of intellectual property.

Term	Proposal
<b>3. The Liquidation Trust</b>	<p>The Plan will provide for the creation of a liquidation trust (the “<u>Liquidation Trust</u>” and together with the <del>Heights</del><u>IP/Austria Assets</u> Trust, the “<u>Trusts</u>”) with a trustee appointed by the Committee (the “<u>Liquidation Trustee</u>” and, together with the <del>Heights</del><u>IP/Austria Assets</u> Trustee, the “<u>Trustees</u>”).</p> <p>GUC Creditors shall receive their pro rata share of interests in the Liquidation Trust, entitling each of them to a pro rata share of the portion of Estate Claims, Non-IP Assets and proceeds of the IP/Austria Assets allocable to GUC Creditors as provided in sections 6, 7 and 8 below; and</p> <p>On the Effective Date, the following assets shall vest in the Liquidation Trust:</p> <ul style="list-style-type: none"> <li>(a) The Debtors’ litigation claims and causes of action, including claims against the Debtor Parties (as defined below) (the “<u>Estate Claims</u>”),</li> <li>(b) The Debtors’ assets, other than the IP/Austria Assets and Estate Claims, including all cash and cash equivalents (“<u>Cash</u>”) in the Debtors’ bank accounts on the Effective Date (collectively, the “<u>Non-IP Assets</u>”), and</li> <li>(c) The GUC Creditors’<sup>56</sup> share of proceeds from the IP/Austria Assets pursuant to section 6.</li> </ul> <p>The Liquidation Trust shall be given access by the Debtors and their professionals (at the expense of the Liquidation Trust with respect to any expenditure of resources that is more than de minimis) to all information the Liquidation Trustee determines is necessary to prosecute the Estate Claims and benefit from any relevant privileges.</p> <p>In addition to the wind-down amounts contemplated by the Settlement Budget, the Plan shall provide for the funding of the Liquidation Trust on the Effective Date in the aggregate amount of \$300,000 to operate the Liquidation Trust (the “<u>Initial Liquidation Trust Funding Amount</u>”), including litigation expenses. Such amount shall be funded as provided in section 7 below.</p> <p>The Liquidation Trustee shall have the right to obtain “contingency” or other “litigation” funding he or she deems necessary to effectively operate the Liquidation Trust; <u>provided</u>, that such funding shall</p>

<sup>56</sup> “GUC Creditors” means holders of general unsecured claims against the Debtors other than Heights or its affiliates.

Term	Proposal
	<p>have recourse only to the proceeds of Estate Claims.</p> <p>The Liquidation Trustee shall oversee the claims reconciliation process.</p>
<b>4. Coordination between Trusts</b>	<p>The Trustees shall consult with each other regarding key decisions to be made with the IP/Austria Assets and the Non-IP Assets. The Trustees shall provide information and reasonable assistance to each other in the performance of their respective duties, including reasonable periodic reporting. Prior to entering into any material sale of assets or any agreement to settle Estate Claims, each Trust will provide advance written notice of such sale and/or settlement to the other Trust.</p>
<b>5. Distribution Agent</b>	<p>All distributions from the Liquidation Trust will be made by the Liquidation Trustee or its designated agent (which agent must be reasonably acceptable to Heights) in accordance with the allocations set forth in sections 6, 7 and 8 below. All distributions from the <del>Heights</del><a href="#">IP/Austria Assets</a> Trust will be made by the <del>Heights</del><a href="#">IP/Austria Assets</a> Trustee or its designated agent (which agent must be reasonably acceptable to the Committee) in accordance with the allocations set forth in sections 6, 7 and 8 below.</p>
<b>6. IP/Austria Assets</b>	<p>The first \$40,000,000 proceeds of IP/Austria Assets, net of reasonable and documented trust expenses, shall be distributed as follows:</p> <ul style="list-style-type: none"> <li>a) 85% to Heights, and</li> <li>b) 15% to GUC Creditors.</li> </ul> <p>To the extent the net proceeds of IP/Austria Assets exceed \$40,000,000, then such net proceeds in excess of \$40,000,000 shall be distributed as follows:</p> <ul style="list-style-type: none"> <li>a) 50% to Heights, and</li> <li>b) 50% to GUC Creditors.</li> </ul>

Term	Proposal
<b>7. Non-IP Assets</b>	<p>All Cash as of the Effective Date and proceeds of Non-IP Assets, net of reasonable and documented trust expenses, shall be distributed, 50% to Heights and 50% to GUC Creditors, after payment of the following amounts:</p> <ul style="list-style-type: none"> <li>a) All allowed administrative and priority claims paid in accordance with the Settlement Budget or otherwise required to be paid under the Plan (including professional fees of the Debtors and the Committee in accordance with the Settlement Budget as provided in section 17);</li> <li>b) the reasonable and documented (in summary form) professional fees and expenses incurred by Heights in an amount not to exceed the aggregate amount paid to (or escrowed for)<sup>67</sup> the Committee's professionals; and</li> <li>c) the Initial Liquidation Trust Funding Amount.</li> </ul>
<b>8. Estate Claims</b>	<p>The first \$40,000,000 proceeds of the Estate Claims, net of reasonable and documented trust expenses, shall be distributed as follows:</p> <ul style="list-style-type: none"> <li>a) 85% to GUC Creditors, and</li> <li>b) 15% to Heights.</li> </ul> <p>To the extent the net proceeds of Estate Claims exceed \$40,000,000, then such net proceeds that are in excess of \$40,000,000 shall be distributed as follows:</p> <ul style="list-style-type: none"> <li>a) 50% to GUC Creditors, and</li> <li>b) 50% to Heights.</li> </ul>

<sup>67</sup> In the event any amount escrowed for the Committee is unused or not otherwise applied to satisfy the fees and expenses of the Committee's Professionals, a corresponding amount paid to Heights on account of its professionals' fees and expenses will be deemed to have been distributed to Heights pursuant to

Term	Proposal
<b>9. Heights Settlement</b>	<p>The Plan will contain a full release of all claims and causes of action of the Debtors and their respective estates against Heights; <u>provided</u> that this settlement is contingent on delivery to the Committee on or prior to August 30, 2024 of a certification by Uzzi &amp; Lall in form and substance acceptable to the <del>parties</del><u>Committee and Heights</u>. Such certification shall be deemed made to the Bankruptcy Court under penalty of perjury. The challenge period set forth in the fifth interim cash collateral order [Dkt. No. 361] (the “<u>Fifth Interim Cash Collateral Order</u>”) shall be extended to 30 days after the earliest of (x) the date on which these chapter 11 cases are converted to chapter 7, (y) the date on which confirmation of the Plan is denied, or (z) the date on which the Debtors or the Committee file any plan that is not acceptable in form and substance to Heights; <u>provided</u> that no actions or efforts will be taken in connection with any potential challenge or investigation, and no fees shall be incurred, by the Committee professionals during the time the challenge period is tolled; and provided <u>further</u> that the challenge period will end immediately as to all parties in interest (if not ended previously), as if no challenge had been timely made, and all stipulations and releases in the Fifth Interim Cash Collateral Order will be irrevocably binding on the Debtors and all other parties in interest, including the Committee, pursuant to and immediately upon the Effective Date.</p> <p>The Plan will allow Heights’ claims in the aggregate principal amount of \$<del>1</del>186,050,000 plus accrued and accruing unpaid interest, fees, expenses (including fees and expenses of professionals), and all other liabilities, obligations and amounts under the Prepetition Note Documents (as defined in the Fifth Interim Cash Collateral Order) and the interim cash collateral orders<del>},</del> with such claims to receive the treatment provided to Heights as set forth herein. Pursuant to the Plan, in exchange for all of the distributions contemplated hereunder, Heights will waive all other claims against the Debtors’ estates (but not, for the avoidance of doubt, the non-Debtor subsidiaries<sup>78</sup>), including any deficiency claim or any adequate protection claim solely against the Debtors’ estates.</p>

a corresponding amount paid to Heights on account of its professionals’ fees and expenses will be deemed to have been distributed to Heights pursuant to this section 7 and the GUC Share of the Non-IP Assets shall be increased by such amount.

<sup>78</sup> Heights’ claims against Fisker Austria will be contributed to the Heights Trust.

Term	Proposal
	<del>The Plan will also constitute a settlement and resolution of the Debtors' claims and interests in the Austrian Insolvency Proceeding and authorize the Debtors' support for approval of the restructuring plan referred to in section 21 below.</del>
<b>10. Other Estate Releases</b>	<p>The Plan shall not include any releases of Estate Claims other than with respect to Heights and its affiliates, and each of their respective officers, directors, employees, agents, representatives, shareholders, funds, managers, advisors, attorneys, successors, predecessors, and assigns. For the avoidance of doubt, except as otherwise provided herein, claims against the Debtors' officers, directors, employees, agents, representatives, shareholders, funds, managers, advisors, attorneys, successors, predecessors and assigns (collectively, the "Debtor Parties") will not be released.<sup>89</sup></p> <p>[Notwithstanding anything to the contrary herein, all avoidance actions of the Debtors against prepetition trade vendors (not including professionals) shall be released.]<sup>910</sup></p>

<sup>89</sup> Notwithstanding anything contained herein and for the avoidance of doubt, the Plan will contain (a) standard exculpation provisions for the Debtors and their professionals, the Committee members and their professionals, Heights and its affiliates and professionals, Magna and its affiliates and professionals, the Liquidation Trustee, the Heights Trustee, John Dubel, John DiDonato, and the Debtors' other former and current directors and officers listed on Exhibit B hereto, in each case to the extent permitted by law, and (b) standard releases for the Committee members and their professionals, Heights and its affiliates and professionals, the Liquidation Trustee, the Heights Trustee, Davis Polk, Morris Nichols, Huron, John Dubel, and John DiDonato. For the Debtors' former and current directors and officers listed on Exhibit B hereto, recovery for any estate claims, including by way of settlement or judgment, shall be limited to the available proceeds of any applicable insurance policy. For the avoidance of doubt and notwithstanding anything to the contrary herein, (i) Geeta Gupta-Fisker and Henrik Fisker, and (ii) the family members, related trusts, investment vehicles, affiliates, and successors and assigns of the persons in (i) shall not be released or exculpated under the Plan in any respect.

<sup>910</sup> [NTD: Subject to review and confirmation by the Committee.]

Term	Proposal
<b>11. Third-Party Releases</b>	The proposed Plan shall contain consensual third-party releases with opt-out release mechanics. The members of the Committee (other than Magna <del>International, Inc. (“Magna”)</del> , subject to section 21 hereof) and Heights (subject to section 21 hereof) will each elect not to opt out of such releases. <sup>4011</sup>
<b>12. Substantive Consolidation for Distribution Purposes</b>	Each creditor will be entitled to recovery on account of a single claim against the Debtors regardless of the Debtor entity against which the creditor asserts claims.
<b>13. Global Settlement</b>	The Plan shall be considered a global settlement and governed by Rule 9019.
<b>14. Convenience Class</b>	The Committee will have the option to establish a convenience class under the Plan, which shall be funded with amounts otherwise distributable to GUC Creditors.
<b>15. Fisker Owners</b>	<p>The Liquidation Trustee shall take all actions reasonably practicable to address or facilitate the remediation of open vehicle recalls as of the Effective Date and to otherwise ensure existing Debtor vehicles remain safe and operable, so long as the cost of the foregoing does not require payments by the Liquidation Trust in excess of \$750,000.</p> <p>To the extent open vehicle recalls exist as of the Effective Date, the <del>parties</del><u>Parties</u> will negotiate terms in good faith that will allow for the <del>Heights</del><u>IP/Austria Assets</u> Trustee to make the Debtors’ intellectual property transferred to the <del>Heights</del><u>IP/Austria Assets</u> Trustee hereunder available to the <del>Liquidating</del><u>Liquidation</u> Trustee and/or its designee at no cost (for the avoidance of doubt, other than any costs associated with the <del>Liquidating</del><u>Liquidation</u> Trustee and/or its designee’s use of such intellectual property), to the extent necessary until any open vehicle recalls as of the Effective Date have been reasonably addressed.</p>

<sup>4011</sup> For the avoidance of doubt, no party shall be deemed to release any claims against the Debtors’ non-Debtor subsidiaries pursuant to the Plan. As provided above, the Debtors’ intercompany claims and interests in their foreign subsidiaries will be contributed to the Heights Trust.

Term	Proposal
<b>16. Administrative Claims</b>	<p>Allowed administrative claims shall be paid-in-full on the later of the Effective Date or when such claims become due in the ordinary course. Subject to the Reimbursement Mechanics (as defined below), any administrative expense claims that become due after the Effective Date shall be paid first by the <del>Liquidating</del><u>Liquidation</u> Trust from Cash and other proceeds of Non-IP Assets and, thereafter, from proceeds of Estate Claims, and solely to the extent the <del>Liquidating</del><u>Liquidation</u> Trust does not have the funds to pay such claims, then the <del>Heights</del><u>IP/Austria Assets</u> Trust from proceeds of IP/Austria Assets. Prior to confirmation of the Plan, the Debtors shall provide Heights and the Committee with a list of all known and anticipated administrative claims. In addition, the Plan shall provide for an administrative claims bar date. Heights shall not be required to file a claim to receive the distribution contemplated herein under the Plan.</p>

Term	Proposal
<b>17. Estate Professional Fees</b>	<p>Notwithstanding the foregoing, payment of Professional fees and expenses shall be limited to reasonable and documented accrued and unpaid Allowed Professional Fees (as defined in the Fifth Interim Cash Collateral Order) of the Debtors' and Committee's respective Professionals, not to exceed:</p> <p>(a) for the period prior to July 29, 2024, the actual amounts accrued by the applicable estate Professional as previously reported and contained in the <del>Settlement Budget</del> <u>more detailed budget provided to Heights and the Committee on August 22, 2024,</u></p> <p>(b) for the period July 29, 2024 through August <del>19</del><u>23</u>, 2024, the amounts set forth in the Approved Budget (as defined in the Fifth Interim Cash Collateral Order), <u>including the Proposed Extended Fifth Interim Cash Collateral Budget filed with the Court [D.I. 47] (the "Budget Extension")</u>, with respect to the applicable estate Professional, <i>plus</i></p> <p>(c) for the period from and after August <del>19</del><u>22</u>, 2024, an amount not to exceed the aggregate amounts set forth in the <del>Settlement Budget</del> <u>more detailed budget provided to Heights and the Committee on August 23, 2024</u> for such period with respect to the Debtors' Professionals and the Committee's Professionals, respectively. <del>11.12</del> <u>12</u></p> <p>The Debtors, Heights, and the Committee shall not object to the payment of any estate Professional fees and expenses, <u>provided</u> that such Professional fees and expenses shall not exceed the foregoing limitations, or to the payment of Heights' professional fees as provided in section 7(b) above.</p> <p>No Professional fees and expenses shall be paid (including on an interim or monthly basis) prior to confirmation of the Plan, provided that, immediately upon confirmation of the Plan (but in no event later than the Effective Date without the consent of the applicable Professional), all estate Professional fees and expenses that are in the <del>Settlement Budget</del> <u>in the more detailed budget provided to Heights and the</u></p>

~~11.12~~ 12 For the avoidance of doubt, estate Professionals shall not have a separate or individual ability to block the Plan so long as it provides for the treatment of Professional fees set forth in this section 17. To the extent any estate Professional has incurred fees and expenses in excess of the limitations provided under this term sheet, such Professional shall be deemed to consent under 1129(a)(9) of the Bankruptcy Code to payment of only those amounts not in excess of those contemplated by this term sheet.

Term	Proposal
	<p><a href="#">Committee on August 23, 2024</a> shall be paid (to the extent allowed) or escrowed for the benefit of the estate Professionals (to the extent not yet allowed). To the extent of available cash after making the payments (including into escrow) referred to in the prior sentence, the Debtors shall pay Heights' fees and expenses contemplated by section 7(b) above (it being understood that the payment of Heights' fees and expenses shall not be a condition to the Effective Date), provided further, that to the extent Cash and other proceeds of Non-IP Assets are not available as of the Effective Date to pay such fees and expenses of Heights, each Trustee shall promptly pay such fees and expenses from time to time as soon as cash is available to do so (and, for the avoidance of doubt, prior to making any distributions to GUC Creditors and subject to the Reimbursement Mechanics<sup>1213</sup>). The Initial Liquidation Trust Funding Amount shall only be paid after payment in full of amounts due to estate Professionals and Heights under section 7.</p> <p>The Debtors' Professionals and Committee's Professionals will endeavor to pursue, confirm and consummate the Plan and close the Chapter 11 Cases as expeditiously as possible and each will work in good faith and efficiently to conserve on the Professional fees and expenses required to do so.</p>

<sup>1213</sup> In the event that Cash and other proceeds of Non-IP Assets are not sufficient to pay all administrative claims, including estate Professional fees and expenses and fees and expenses of Heights' professionals, and amounts are required to be paid from proceeds of the [HeightsIP/Austria Assets](#) Trust or the Liquidation Trust (in each case, other than from any Cash or other proceeds of Non-IP Assets) as provided herein, then in such case, fifty percent (50%) of such amounts paid from other assets of the respective Trust shall be required to be reimbursed from the non-paying Trust (other than from Cash or proceeds of Non-IP Assets), from first dollars received from such Trust prior to any other distributions. For the avoidance of doubt, if the Liquidation Trust receives any additional Cash or other proceeds of Non-IP Assets after the Effective Date, such amounts shall be applied first to pay (or reimburse, if applicable) all (100%) of any such amounts paid by either Trust on account of administrative claims, including estate Professional fees and expenses and fees and expenses of Heights' professionals, from such additional Cash or other proceeds of Non-IP Assets, prior to making any other distributions (the foregoing provisions set forth in this footnote 12, the "[Reimbursement Mechanics](#)").

Term	Proposal
<b>18. Indenture Trustee Fees</b>	The Plan will provide for the payment of reasonable and documented fees of U.S. Bank National Association in an aggregate amount not to exceed \$175,000, pursuant to that certain indenture, dated as of August 17, 2021, between Fisker Inc., as issuer, and U.S. Bank National Association, as trustee. Payment of such fees shall not be a condition to the Effective Date and shall be paid out of the first dollars distributable to GUC Creditors in accordance with this term sheet.
<b>19. Governance Changes</b>	To reduce expenses and as an accommodation to the company, the members of the Board of Directors (who have not received compensation since July 1, 2024) will voluntarily waive all rights to compensation commencing with Q3 2024, provided that John Dubel, chairman of the Transaction Committee, will continue to be compensated. Any officers (other than Henrik Fisker and Dr. Geeta Gupta-Fisker, who have voluntarily agreed to reduce their compensation to \$1) who at any time are deemed not essential to completion of the fleet sale or confirmation of the Plan shall resign or be terminated.
<b>20. Retention of Jurisdiction</b>	The Bankruptcy Court will retain jurisdiction over any dispute that should arise with respect to the Plan or the operation of the Trusts.

Term	Proposal
<b>21. Austrian Insolvency Proceeding/ 9019 Order</b>	<p>Any agreement on the terms set forth in this Term Sheet is contingent on agreement satisfactory to the Debtors, Heights, <a href="#">Magna</a> and the Committee being reached regarding a restructuring plan (<a href="#">the "Austrian Plan"</a>) in the insolvency proceeding of Fisker GmbH (Austria) currently pending in Austria (the "Austrian Insolvency Proceeding")<sup>13</sup> <a href="#">and the Austrian Plan becoming effective.</a><sup>14</sup></p> <p><a href="#">The Parties shall support and the Debtors shall obtain by September 9, 2024, a final Bankruptcy Court order (the "9019 Order") acceptable to Magna, the Committee, the Debtors and Heights approving and authorizing the Debtors to facilitate support for and consummation of the Austrian Plan, which shall include any settlements required with Fisker Austria and with Magna. The 9019 Order shall, among other thing, provide for (a) the allowance of Magna's and its affiliates' claims as general unsecured claims in the aggregate principal amount of \$475,000,000; (b) the rejection of the Debtors' contracts with Magna and its affiliates for the design or production of vehicles or components; and (c) full release of all claims and causes of action of the Debtors and their respective estates against Magna and its affiliates and their respective officers, directors, employees, agents, representatives, shareholders, funds, managers, advisors, attorneys, successors, predecessors, and assigns. Notwithstanding the foregoing, all rights of Heights, the Debtors, the Committee, and Magna with respect to the proposed motion to approve the 9019 Order are reserved.</a></p> <p><a href="#">Magna and its affiliates will be treated as a GUC Creditor on account of its allowed claim and shall receive a pro rata share of interests in the Liquidation Trust as set forth herein.</a> As part of and subject to agreement being reached regarding the Austrian Insolvency Proceeding, Magna and <a href="#">its affiliates and</a> Heights shall each not elect to opt out of the third-party releases under the Plan as provided in section 11 hereof.</p>

<sup>13</sup> ~~To the extent any member(s) of the Committee have an interest in the Austrian Insolvency Proceeding in addition to their claims against the Debtors, such member(s) will be recused from any deliberations regarding any agreement regarding the Austrian Insolvency Proceeding in accordance with the Committee's by-laws.~~

<sup>14</sup> [To the extent any member\(s\) of the Committee have an interest in the Austrian Insolvency Proceeding in addition to their claims against the Debtors, such member\(s\) will be recused from any deliberations regarding any agreement regarding the Austrian Insolvency Proceeding in accordance with the Committee's by-laws.](#)

Term	Proposal
<b>22. Documentation Principles</b>	<ol style="list-style-type: none"> <li>1. Counsel to Heights will draft and circulate the Plan, the proposed order confirming the Plan (the “Confirmation Order”) and the Cash Collateral Order.</li> <li>2. Debtors’ local counsel will draft and circulate the Disclosure Statement with respect to the Plan and all solicitation materials.</li> <li>3. <del>The Parties</del> <u>Heights, the Debtors, and the Committee</u> will work together to prepare any additional or ancillary documentation that is required.</li> </ol> <p>As provided above, all definitive documents must be consistent with this term sheet and otherwise reasonably acceptable to each of the <del>Parties</del> <u>Debtors, the Committee, and Heights and, solely with respect to any provision in any definitive document that specifically relates to Magna, in its individual capacity only and not as a member of the Committee or with respect to provisions applicable to general unsecured creditors generally, Magna. Furthermore, no amendment to (or agreement of the Parties to deviate from in any definitive document) any provision of this term sheet that specifically relates to Magna, solely in its foregoing capacity, shall be effective without the prior written consent of Magna.</u></p>

EXHIBIT A

Settlement Budget

[\[To come\]](#)

EXHIBIT B

Roderick K. Randall  
Mark E. Hickson  
Nadine I. Watt  
Wendy J. Greuel  
William R. McDermott  
Mitchell S. Zuklie  
Jose Angel Salinas  
John C. Finnucan IV  
Burkhard Huhnke  
David King  
Corey MacGillivray