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BY E-FILE AND HAND DELIVERY

The Honorable Morgan T. Zurn
Court of Chancery of the State of Delaware
Leonard L. Williams Justice Center
500 North King Street, Suite 11400
Wilmington, Delaware 19801

Re: ***In re AMC Entertainment Holdings, Inc. Stockholder Litigation*, C.A. No. 2023-0215-MTZ**

Dear Vice Chancellor Zurn:

We write on behalf of Defendants AMC Entertainment Holdings, Inc. ("AMC" or the "Company"), Adam M. Aron, Denise Clark, Howard W. Koch, Jr., Kathleen M. Pawlus, Keri Putnam, Anthony J. Saich, Philip Lader, Gary F. Locke, Lee Wittlinger, and Adam J. Sussman (collectively, "Defendants") in response to the request in Your Honor's July 24, 2023 letter that the parties submit letter briefs "on the effect of the Delaware Supreme Court's June 28, 2023 decision in *Coster v.*

UIP Companies, Inc. on the proposed settlement and the plaintiffs' breach of fiduciary duty claim."[1]

In *Coster*, the Delaware Supreme Court held that:

> Experience has shown that *Schnell* and *Blasius* review, as a matter of precedent and practice, have been and can be folded into *Unocal* review to accomplish the same ends – enhanced judicial scrutiny of board action that interferes with a corporate election or a stockholder's voting rights in contests for control. When *Unocal* is applied in this context, it can "subsume[ ] the question of loyalty that pervades all fiduciary duty cases, which is whether the directors have acted for proper reasons" and "thus address[ ] issues of good faith such as were at stake in *Schnell*." *Unocal* can also be applied with the sensitivity *Blasius* review brings to protect the fundamental interests at stake – the free exercise of the stockholder vote as an essential element of corporate democracy.[2]

Last week, in *CCSB Fin. Corp. v. Totta*, the Supreme Court reaffirmed this holding, stating that *Coster* "require[es] 'enhanced judicial scrutiny' for 'board action that interferes with a corporate election or a stockholder's voting rights in contests for control.'"[3]

This interpretation of *Blasius* makes sense doctrinally. As the Court of Chancery has explained, when directors take action that interferes with stockholder voting rights in a corporate election or a contest for corporate control, there is a risk

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[1] Dkt. 587 at 6.
[2] *Coster*, --- A.3d ---, 2023 WL 4239581, at *11 (Del. 2023) (alterations in original).
[3] --- A.3d ---, 2023 WL 4628822, at *9 n.63 (Del. 2023).

that directors may be acting to protect their board seats, as opposed to acting in stockholders' best interests. That risk, however, is not present in the context of other stockholder votes, such as the AMC stockholder vote on the transactions at issue in this action.[4] Indeed, none of the transactions challenged by Plaintiffs in this action implicated who would comprise AMC's Board or any other issue of corporate control. Thus, as Defendants argued in their briefs in support of the proposed settlement, Plaintiffs' claims for breach of fiduciary duty would have failed on the merits because those claims would have been reviewed under the business judgment rule, not enhanced scrutiny.[5]

The Supreme Court's confirmation that Plaintiffs' breach of fiduciary duty claims would have been subject to business judgment review decreases the value of those claims and, thus, decreases the class's "give" in connection with the proposed settlement, making the proposed settlement an even better deal for the class than

[4] *See Mercier v. Inter-Tel (Del.), Inc.*, 929 A.2d 786, 808-09 (Del. Ch. 2007) ("[T]he reasoning of *Blasius* is far less powerful when the matter up for consideration has little or no bearing on whether the directors will continue in office. Here's a news flash: directors are not supposed to be neutral with regard to matters they propose for stockholder action."); *In re MONY Gp., Inc. S'holder Litig.*, 853 A.2d 661, 674 (Del. Ch. 2004), *as revised* (Apr. 14, 2004) ("*Blasius* involved a contest to elect a new board majority and draws its strong doctrinal justification from that context.").

[5] *See* Defendants' Brief in Support of Proposed Settlement at 18-21 (Dkt. 200); Defendants' Reply Brief in Further Support of Proposed Settlement at 7-9 (Dkt. 441).

when it was originally entered into. Although Defendants argued that Plaintiffs' breach of fiduciary duty claims were subject to business judgment review all along, before *Coster*, Plaintiffs argued that those claims would be subject to enhanced scrutiny under *Blasius*.[6] Further, in the Report and Recommendation of Special Master Regarding Objections to Proposed Settlement, Special Master Amato stated her belief (at the time) that "[a]t least at this stage, Plaintiffs seem to have the better argument as to the standard of review the Court would have employed in analyzing Defendants' conduct."[7] Defendants respectfully submit that *Coster* confirms that they would have prevailed on their business judgment argument, thus decreasing the value of the claims that the class is giving up in the proposed settlement, and making the proposed settlement an even better outcome for the class.

Respectfully,

/s/ Kevin M. Gallagher

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[6] *See* Plaintiffs' Opening Brief in Support of Settlement, Award of Attorneys' Fees and Expenses, and Incentive Awards at 6, 33-35 (Dkt. 206); Plaintiffs' Reply in Further Support of Settlement, Award of Attorneys' Fees and Expenses, and Incentive Awards at 1, 4, 11 (Dkt. 450).
[7] Dkt. 518 at 53.

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