

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-31444

Helical Dynamics, Inc.,

Chapter 11

Debtor.

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**THE COMMITTEE OF UNSECURED CREDITORS'**  
**OBJECTION TO DISCLOSURE STATEMENT OF DEBTOR**

TO: THE DEBTOR AND OTHER PARTIES IN INTEREST AS SPECIFIED IN LOCAL  
RULE 3020-1

1. The Committee of Unsecured Creditors (the "Committee") objects to the Debtor's Disclosure Statement dated September 21, 2004 (the "Disclosure Statement") and the confirmation of the proposed Plan and states as follows:

2. A hearing on the adequacy of the Disclosure Statement is scheduled for October 25, 2004 at 1:00 p.m. in Courtroom No. 228B, U.S. Federal Courthouse, 316 North Robert Street, St. Paul, Minnesota, MN 55101.

3. The petition commencing this Chapter 11 case was filed on March 11, 2004 (the "Petition Date") and is now pending in this Court. The Debtor continues as debtor in possession pursuant to § § 1107(a) and 1108 of the Bankruptcy Code.

4. This objection is filed under Bankruptcy Rule 9014 and Local Rules 3017-1(c) and 3020-1. The Committee requests disapproval of the Disclosure Statement on the grounds that the Disclosure Statement fails to provide adequate information as required under 11 U.S.C. § 1125.

5. On March 30, 2004, the U.S. Trustee appointed Dee Cramer, Inc., McManus, Babcock & Co. Ltd., and Twin City Oxygen as members on the Committee.

6. The Committee objects to the Disclosure Statement as inadequate because it fails to include adequate information of a kind and in sufficient detail that would enable a hypothetical reasonable investor typical of holders of claims of the relevant class to make an informed judgment about the plan. 11 U.S.C. § 1125(a)-(b). The Disclosure Statement contains inadequate information about the following provisions:

a) Article IV, 4. Class D - Secured Claim of Expert Leasing. The Disclosure Statement is inadequate because it does not contain sufficient details concerning the claim of Expert Leasing. The Disclosure Statement should, at a minimum, include the estimated timing and amounts of payments that are expected to be made to Expert Leasing.

b) Article IV, 5 and 6. Class E and F - Taxes Claims by the IRS and the Minnesota Department of Revenue. The Disclosure Statement is inadequate because it does not contain sufficient details concerning the IRS and Minnesota Department of Revenue's tax claims. The Disclosure Statement should, at a minimum, include the total amount of the claim, the amount of the monthly payments, and the duration of the payments.

c) Article IV, 8. Class H - Secured Claim of Toyota Motor Credit Corp. The Disclosure Statement is inadequate because it does not contain sufficient details concerning Toyota Motor Credit Corp.'s claim. The Disclosure Statement should, at a minimum, include the description of the property leased from the claimant, the amount of the lease payments, the duration of the lease payments, and whether Debtor is current on the payments.

d) Article IV, 8. Class J - Secured Claim of GCI Capital Services. The Disclosure Statement is inadequate because it does not contain sufficient details concerning GCI Capital Services' claim. The Disclosure Statement should, at a minimum, include the amount of the claim and a description of the equipment that serves as GCI Capital Services' security interest.

e) Article IV, 11. Class K - Claim of Plymouth Ponds Development. The Disclosure Statement is inadequate because it does not contain sufficient details concerning Plymouth Ponds Development's claim. The Disclosure Statement should, at a minimum, include details of the loan described therein, including the amount of the loan, the interest rate of the principal, the amount of the monthly payments, and the duration of the payments. In addition, Article IV, 11 should be changed to "Unsecured" instead of "Secured."

f) Article IV, 12. Class L - Unsecured Creditors. The Disclosure Statement is inadequate because it does not contain sufficient details concerning the treatment of claims held by unsecured creditors. The Disclosure Statement should include details concerning the timing and procedure for payment of the Sales Distribution and a means by which the Committee can verify the amount of gross sales in the relevant years, such as the Debtor shall provide to the counsel to the Committee members documents that sufficiently establish the amount of gross sales for the preceding year. In addition, the Disclosure Statement is inadequate because it fails to mention that Debtor's shareholders will personally guarantee the 65% Distribution and any Sales Distribution.

g) Exhibit D to the Disclosure Statement is inadequate because it

does not contain sufficient details concerning the Debtor's expenses. The Disclosure Statement should include details concerning the specific monthly payments owed to the classes under the Plan as well as payments to professionals retained in the bankruptcy case.

h) Article VII. The Disclosure Statement is inadequate because it does not contain sufficient details concerning the loan for Moen Leuer Construction. The Disclosure Statement should describe the loan in detail, including the amount of the loan, the interest rate, the repayment terms, and all other material provisions.

i) Article III, A and B - Claims Against Others. The Disclosure Statement is inadequate because it does not contain sufficient details concerning potential preference actions. The Disclosure Statement should provide additional details concerning the potential preference actions, including the amount of the transfers occurring within the preference period and the total number of potential claims. If the Committee determines that commencing the preference actions may be economically beneficial, Article V of the Plan should reserve the Committee's right to commence preference actions.

7. Based on the foregoing inadequacies, the Disclosure Statement does not comply with Chapter 11.

8. In the event that the hearing on this Disclosure Statement is continued or the Debtor submits an Amended Disclosure Statement, the Committee reserves the right to file and serve additional objections to the Disclosure Statement and to raise additional objections at any hearing on the adequacy of the Disclosure Statement.

9. If there is a contested hearing on this Motion as to which testimony is to be taken, the Committee hereby gives notice pursuant to Local Rule 9013-2 that it may call Walter Diachuk, President of the Debtor.

Based on the foregoing, and the Memorandum of Law submitted with this Objection, the Committee respectfully requests that approval of the Debtor's Disclosure Statement be denied unless the proper corrections are made.

MOSS & BARNETT  
A Professional Association

Dated: October 18, 2004

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

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**MEMORANDUM OF LAW IN SUPPORT OF OBJECTION OF THE  
UNSECURED CREDITORS' COMMITTEE TO THE DEBTOR'S  
DISCLOSURE STATEMENT DATED SEPTEMBER 21, 2004**

The Committee of Unsecured Creditors (the "Committee") submits this Memorandum in Support of its Objection to the Disclosure Statement of the Debtor dated September 21, 2004, 2004 (the "Disclosure Statement").

**APPLICABLE LAW**

**A. Adequate Information – In General**

11 U.S.C. § 1125(b) requires the Court to approve a written disclosure statement as providing "adequate information" before the plan proponent may solicit the acceptance or rejection of a chapter 11 plan. 11 U.S.C. §1125(b). The phrase "adequate information" is

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class<sup>1</sup> to make an informed

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<sup>1</sup> An "investor typical of holders of claims or interest of the relevant class" means an investor having: (A) a claim or interest of the relevant class; (B) such a relationship with the debtor as the holders of other claims or interests of such class generally have; and (C) such ability to obtain such information from sources other than the disclosure required by §1125 of the Bankruptcy Code as holders of claims or interests in such class generally have. 11 U.S.C. §1125(a)(2).

judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

11 U.S.C. §1125(a)(1). The “statutory definition of ‘adequate information’ leaves the bankruptcy court wide discretion to determine on a case by case basis whether a disclosure statement contains adequate information, without burdensome, unnecessary, and cumbersome detail.” *In re Dakota Rail, Inc.*, 104 B.R. 138, 143 (Bankr. D. Minn. 1989) (citations omitted).

The primary purpose of a disclosure statement is to give creditors information necessary to decide whether to accept the plan. *Id.* at 142 (citing *In re Monnier Bros.*, 755 F.2d 1336, 42 (8<sup>th</sup> Cir. 1985)); *In re Monroe Well Service, Inc.*, 80 B.R. 324, 330 (Bankr. E.D. Pa. 1987) (same); see also *In re Cardinal Congregate I*, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990) (“Generally, a disclosure statement must contain all pertinent information bearing on the success or failure of the proposals in the plan or reorganization.”). In *Dakota Rail*, the court provided a non-exclusive and non-exhaustive list of nineteen categories of information that typically should be included in a disclosure statement. *In re Dakota Rail*, 104 B.R. at 142-43. Among the categories listed by the court are:

- (i) information regarding claims against the estate;
- (ii) any financial information, valuations or *pro forma* projections that would be relevant to creditors’ determinations of whether to accept or reject the plan;
- (iii) information relevant to the risks being taken by the creditors and interest holders; and
- (iv) the existence, likelihood and possible success of non-bankruptcy litigation.

*Id.* (citing *In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988)); *In re Cardinal Congregate I*, 121 B.R. at 765. This list has been described as a

“yardstick against which the adequacy of disclosure may be measured,” but the precise information required will be governed by the particular facts of each case. *Id.* The Disclosure Statement fails to meet the applicable standard for “adequate information” under 11 U.S.C. §1125 .

**B. Adequate Information Concerning Claims, Treatment of Claims, and Debtor’s Financial and Pro Forma Projections.**

First, the Disclosure Statement fails to provide the unsecured creditors with adequate information concerning details of numerous claims including the claims of Expert Leasing (Class D), Taxes Claims by the IRS and the Minnesota Department of Revenue (Classes E and F); Secured Claim of Toyota Motor Credit Corp. (Class H); GCI Capital Services (Class J); Plymouth Ponds Development (Class K). As further described in the Committee’s Objection, the Disclosure Statement should, at a minimum, include the total amount of the claimant’s claim, the amount of the monthly payments proposed to the claimant, the duration of the payments, and, where applicable, details of the loans extended by the claimant.

Second, the Disclosure Statement does not contain sufficient details concerning the treatment of claims held by unsecured creditors (Class L). The Disclosure Statement should include details concerning the timing and procedure for payment of the Sales Distribution and a means by which the Committee can verify the amount of gross sales in the relevant years, such as the Debtor shall provide to the counsel to the Committee members documents that sufficiently establish the amount of gross sales for the preceding year. In addition, the Disclosure Statement fails to mention that that Debtor’s shareholders will personally guarantee the 65% Distribution and any Sales Distribution.

Third, Exhibit D to the Disclosure Statement is inadequate because it does not contain sufficient details concerning the Debtor's projected expenses. The Disclosure Statement should include details concerning the specific monthly payments owed to the classes under the Plan as well as payments to professionals retained in the bankruptcy case.

Finally, the Disclosure Statement is inadequate because it does not contain sufficient details concerning the loan for Moen Leuer Construction and it does not contain sufficient details concerning potential preference actions. If, after the Committee receives sufficient information to analyze the potential preferences, it determines that commencing the preference actions may be economically beneficial, Article V of the Plan should reserve the Committee's right to commence preference actions.

### **CONCLUSION**

Based on the foregoing, the Committee respectfully requests that the Court sustain its objections to the Disclosure Statement and provide such other relief as the Court deems just and equitable.

MOSS & BARNETT  
A Professional Association

Dated: October 18, 2004

By /e/ Lorie A. Klein  
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BKY 04-31444-GFK

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**CERTIFICATE  
OF SERVICE**

I, Lorie A. Klein, of the law firm of Moss & Barnett, City of Minneapolis, County of Ramsey, State of Minnesota, declare under the penalty of perjury that on October 18, 2004, I served copies of the attached

1. The Committee of Unsecured Creditors' Objection to Disclosure Statement of Debtor;
2. Memorandum of Law in Support of The Committee of Unsecured Creditors' Objection to Disclosure Statement of Debtor dated September 21, 2004; and
3. Certificate of Service.

Steven B. Nosek, Esq. Steven B. Nosek, Attorney at Law Suite 300 701 Fourth Avenue South Minneapolis, MN 55415	U.S. Trustee 1015 U.S. Courthouse 300 South Fourth Street Minneapolis, MN 55415
Bradley J. Halberstadt, Esq. Stewart, Zlimen & Jungers 430 Oak Grove Street Suite 200 Minneapolis, MN 55403	Helical Dynamics, Inc. 3600 Holly Lane North Suite 10 Plymouth, MN 55447

by United States Mail, a copy thereof, addressed to them at their last known address.

Executed on: October 18, 2004

Signed: /e/ Lorie A. Klein