

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FISKER INC., *et al.*,

Debtors.

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

**AMERICAN LEASE LLC’S MOTION FOR LEAVE TO FILE AND SERVE LATE
OBJECTION TO APPROVAL OF PROPOSED COMBINED PLAN AND DISCLOSURE
STATEMENT AND (II) REQUEST FOR ADJOURNMENT OF HEARING
SCHEDULED THEREON**

American Lease LLC (“American Lease”), the Buyer under that certain Fleet Sales Agreement dated as of June 30, 2024 (as it may have been amended, supplemented, or otherwise modified, the “Purchase Agreement”) [*see* Dkt. No. 110-1] and approved by entry of this Court’s order dated July 17, 2024 (as amended, the “Sale Order”) [Dkt. No. 243], by and through its undersigned counsel, hereby submits this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), granting American Lease leave to file and serve after the established October 4, 2024 objection deadline concerning the Amended Plan (defined below) its (i) *Emergency Objection to Approval of Proposed Combined Plan and Disclosure Statement* and (ii) *Request For Adjournment Of Hearing Scheduled Thereon* (the “Objection”) concerning the *Debtors’ First Amended Combined Disclosure Statement and Chapter 11 Plan of Liquidation* [D.I. 588] (the “Amended Plan”). In support of this Motion, American Lease respectfully states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).



2. The statutory predicates for the relief requested herein is section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

3. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), American Lease hereby consents to the entry of a final order or judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

BACKGROUND

4. On June 17 and 19, 2024 the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., (the “Bankruptcy Code,” or “Code”), in the United States Bankruptcy Court for the District of Delaware (this “Court”), thereby commencing the above-captioned chapter 11 cases (the “Chapter 11 Cases”).

5. On July 2, 2024, pursuant to section 1102(a)(1) of the Bankruptcy Code, the U.S. Trustee appointed an official committee of unsecured creditors in the Chapter 11 Cases (the “Committee”) [D.I. 106].

6. On September 24, 2024, Debtors filed the Amended Plan and a hearing to consider confirmation of the Amended Plan is scheduled to begin on October 9, 2024 at 10:00 a.m. (the “October 9 Hearing”).

RELIEF REQUESTED AND BASIS THEREFOR

7. By this Motion, and pursuant to Local Rule 9006-1(d), American Lease seeks authority to file and serve the Objection [D.I. 655] in opposition to confirmation of the Amended Plan.

8. Pursuant to the terms and conditions of the Purchase Agreement and related Sale Order, Buyer received the rights to purchase up to the entire Fisker Inventory of vehicles, including the substantial number of vehicles located in overseas locations (the “Sale”), for a total potential purchase price of up to a maximum \$46.25 million.¹ It was envisioned by the parties the Fisker Inventory of vehicles would be purchased and delivered to Buyer over time, as and when readied and made available by Debtors in a reasonable and timely manner

9. On October 4, 2024 at approximately 8:00 pm EST (the same day as the objection deadline concerning the Amended Plan), American Lease was informed that operational control of the Fisker vehicles subject to the Sale cannot, as a technical matter, be “ported” from the Fisker server to which the vehicles are currently linked to a distinct server owned and/or controlled by Buyer (hereafter, “Porting of the Purchased Vehicles”). This fundamental failure and inability of Debtors to effect the Porting of the Purchased Vehicles frustrates a primary purpose underlying the Purchase Agreement and denies Buyer a significant portion of the benefits thereunder, including the ability to operate the purchased vehicles as contemplated.

10. Buyer submits that, failing an ability to effect a prompt Porting of the Purchased Vehicles or other resolution with the Debtor, it will have postpetition administrative expense and priority damage claims totaling in the millions, thereby rendering Debtors’ future performance under the terms of a confirmed chapter 11 plan impossible or otherwise not feasible. Confirmation should therefore be denied if the October 9 Hearing moves forward as scheduled.

11. Furthermore, the circumstances presented may necessitate that Buyer seek to take some expedited and targeted discovery of Debtor representatives in advance of participating in a

¹ To date, since entry of the Sale Order, Buyer has received delivery from Debtors of approximately 1,100 vehicles and paid the Debtors’ estates a total of approximately \$42.5 million. The remaining Fisker Inventory subject to the Sale (but not yet delivered to Buyer) is believed to total approximately 2,200 vehicles. None of the vehicles purchased by Buyer have been placed into operation yet.

contested confirmation hearing. Buyer has asked the Debtors to voluntarily adjourn the October 9 Hearing for a short and reasonable period of time but such requests have been refused.

12. American Lease submits that the Objection will provide the Court and all parties in interest with a more complete picture of the facts and circumstances relevant to confirmation of the Amended Plan. Furthermore, no party will be prejudiced by the relief requested in the Motion. Accordingly, American Lease respectfully requests that the Court grant an extension of the time in which to file the Reply under Local Rule 9006-1(d).

NOTICE

13. Notice of this Motion shall be provided to: (i) the Debtors; (ii) the UST; (iii) counsel to the Committee; (iv) counsel to Heights Capital Management, Inc., as the Investment Advisor for CVI Investments, Inc.; and (v) any party that requests service pursuant to Bankruptcy Rule 2002. American Lease submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, American Lease respectfully requests entry of the Proposed Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: October 7, 2024

ASHBY & GEDDES, P.A.

/s/ Gregory A. Taylor _____
Gregory A. Taylor (No. 4008)
Michael D. DeBaecke (No. 3186)
500 Delaware Avenue, 8th Floor
Wilmington, DE 19801
Phone: (302) 654-1888
GTaylor@ashbygeddes.com
MDeBaecke@ashbygeddes.com

-and-

RIEMER & BRAUNSTEIN LLP

Donald E. Rothman, Esq. (*admitted pro hac vice*)
100 Cambridge Street, 22nd Floor
Boston, Massachusetts 02114-2527
Phone: (617) 880-3556
DRothman@riemerlaw.com

Lon M. Singer, Esq. (*admitted pro hac vice*)
Times Square Tower, Suite 2506
Seven Times Square
New York, New York 10036
Phone: (212) 789-3110
LSinger@riemerlaw.com

Attorneys for American Lease LLC

EXHIBIT A

(Proposed Order)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FISKER INC., *et al.*,

Debtors.

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Ref. Nos. 655 & ____

**ORDER GRANTING AMERICAN LEASE LLC'S MOTION FOR LEAVE TO FILE
AND SERVE LATE OBJECTION TO APPROVAL OF PROPOSED COMBINED PLAN
AND DISCLOSURE STATEMENT AND (II) REQUEST FOR ADJOURNMENT OF
HEARING SCHEDULED THEREON**

Upon the motion (the "Motion")¹ of American Lease LLC ("American Lease") for the entry of an order (this "Order"), pursuant to Local Rule 9006-1(d), authorizing American Lease to file and serve the Objection on October 7, 2024; and good and sufficient cause appearing thereof, all as more fully described in the Motion; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided under the circumstances; and after due deliberation and sufficient cause appearing thereof,

IT IS HEREBY ORDERED THAT

1. The Motion is **GRANTED** as set forth herein.
2. Pursuant to Local Rule 9006-1(d), American Lease is granted leave to file and serve the Objection.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

3. The Court shall retain jurisdiction over any and all matters arising from or related to this Order.