

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

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. 626, 700

**CERTIFICATION OF COUNSEL REGARDING ORDER GRANTING
DEBTORS' MOTION (I) TO ENFORCE ENFORCEMENT ORDER; (II) TO
SANCTION TOCCATA AUTOMOTIVE GROUP, INC. AND PHIL HARRISON
FOR CONTEMPT FOR VIOLATING THE SAME; AND (III) FOR ENTRY OF
AN ORDER REQUIRING TOCCATA TO PAY ALL OF THE COSTS AND
EXPENSES INCURRED BY THE DEBTORS TO ADDRESS THIS MATTER**

The undersigned counsel to the above-captioned debtors and debtors in possession (the “**Debtors**”)² hereby certify as follows:

1. On October 3, 2024, the Debtors filed the *Debtors’ (I) Motion to Enforce Enforcement Order; (II) to Sanction Toccata Automotive Group, Inc. and Phil Harrison for Contempt for Violating the Same; and (III) for Entry of an Order Requiring Toccata to Pay All of the Costs and Expenses Incurred by the Debtors in Addressing this Matter* (D.I. 626) (the “**Motion**”). Attached as Exhibit A to the Motion was a proposed form of order (the “**Order**”).

2. On October 4, 2024, the court entered an order (D.I. 629) scheduling the Motion for a hearing on October 9, 2024, at 10:00 a.m. (ET) (the “**Hearing**”), and establishing October 7,

¹ 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.

² The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as “**Fisker**” or the “**Company**.”



2024, at 12:00 p.m. (ET), as the objection deadline.

3. On October 7, 2024, Toccata Automotive Group, Inc. (“**Toccata**”) and Phil Harrison (“**Harrison**”) filed *Toccata Automotive Group, Inc. and Phil Harrison’s Opposition to Motion for Contempt for Violating Enforcement Order* (D.I. 651).

4. During the Hearing, the Court received evidence, heard argument, and ruled on the Motion. The Court directed the Debtors to submit a Proposed Order reflecting its ruling. The Debtors submitted the Proposed Order on October 11, 2024.

5. On October 11, 2024, the Court entered the *Order Granting Debtors’ (I) Motion to Enforce Enforcement Order; (II) to Sanction Toccata Automotive Group, Inc. and Phil Harrison for Contempt for Violating the Same; and (III) for Entry of an Order Requiring Toccata to Pay All of the Costs and Expenses Incurred by the Debtors in Addressing this Matter* (D.I. 700) (the “**Order**”).

6. The Order provides, in relevant part, that “[t]he Debtors shall, within ten (10) days from the entry of this Order, by way of certification of counsel, submit a bill for all such costs and expenses, including attorneys’ fees, court costs, and noticing costs, incurred by the Debtors and their estates in connection with this matter, including, without limitation, with respect to preparing, prosecuting, or filing, as the case may be, the Enforcement Motion, the Motion to Shorten, this Motion and its accompanying motion to shorten notice, as well as all related noticing and court costs and serve a copy of such certification of counsel on Toccata and its known principals and representatives, along with wiring instructions.” A summary of the costs and expenses incurred by the Debtors is attached hereto as **Exhibit A**. Wiring instructions were sent to Toccata’s counsel on October 15, 2024, a copy of that correspondence is attached hereto as **Exhibit B**.

WHEREFORE, the Debtors respectfully request that the Court direct Toccata to make payment to the Debtors in the amount of \$263,446.00 in compliance with the Court's order.

Dated: October 23, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Brenna A. Dolphin

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Andrew R. Remming (No. 5120)
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-and-

DAVIS POLK & WARDWELL LLP

Brian M. Resnick (admitted *pro hac vice*)
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Counsel to the Debtors and Debtors in Possession

Exhibit A

Summary of Fees and Costs

Davis Polk & Wardwell LLP

Name	Date	Rate	Hours (Toccatà Only)	Narrative (Excerpt)	Fees
N. D'Angelo	8/2/2024	\$ 1,590.00	1.5	Conference with Toccatà counsel regarding leadership issues (0.5); review materials related to same and coordinate with team regarding dealer and employee issues (1.0).	\$ 2,385.00
R. Steinberg	8/15/2024	\$ 1,590.00	0.6	Emails with Davis Polk litigation team regarding Toccatà issues (0.3); review Toccatà stipulation (0.3).	\$ 954.00
R. Steinberg	8/16/2024	\$ 1,590.00	0.4	Emails with N. D'Angelo regarding Toccatà (0.2); review agreement regarding same (0.2).	\$ 636.00
N. D'Angelo	9/10/2024	\$ 1,590.00	1	Coordinate with Huron team and Fisker regarding dealer issues.	\$ 1,590.00
N. D'Angelo	9/11/2024	\$ 1,590.00	4.6	Draft motion to enforce automatic stay (2.8); emails with J. McClammy and Toccatà's counsel regarding stipulation and violations (1.0); review Toccatà's motion for payment and exhibits to same (0.6).	\$ 7,314.00
E. Bae	9/11/2024	\$ 695.00	0.3	review and calendar Toccatà motion (0.3)	\$ 208.50
N. D'Angelo	9/11/2024	\$ 1,590.00	4.6	Draft motion to enforce automatic stay (2.8); emails with J. McClammy and Toccatà's counsel regarding stipulation and violations (1.0); review Toccatà's motion for payment and exhibits to same (0.6).	\$ 7,314.00
T. Sun	9/11/2024	\$ 965.00	0.7	Legal research regarding dealer disputes.	\$ 675.50
M. Mills	9/11/2024	\$ 1,490.00	0.4	Email with N. D'Angelo and T. Sun regarding lien research (0.2); analyze research question regarding liens (0.2).	\$ 596.00
J. McClammy	9/11/2024	\$ 2,375.00	1.2	Follow up regarding Toccatà issues for return of vehicles, claim challenge	\$ 2,850.00
N. D'Angelo	9/12/2024	\$ 1,590.00	5.6	Draft and revise emergency motion to enforce automatic stay (4.1); coordinate with team and Fisker regarding filing of motion (0.5); coordinate with opposing counsel regarding emergency motion and shortened notice (1.0).	\$ 8,904.00
T. Sun	9/12/2024	\$ 965.00	1.7	Legal research regarding dealer disputes.	\$ 1,640.50
M. Mills	9/12/2024	\$ 1,490.00	3	Email with N. D'Angelo and T. Sun regarding lien research (0.2); analyze lien research question (0.2); research regarding liens (2.6).	\$ 4,470.00
J. McClammy	9/12/2024	\$ 2,375.00	2.1	Review and revise automatic stay motion papers (1.3); emails regarding automatic stay violation and motion (0.8).	\$ 4,987.50
N. D'Angelo	9/13/2024	\$ 1,590.00	2	Conference with J. McClammy regarding Toccatà opposition (0.5), review same (0.5), draft reply regarding same (1.0).	\$ 3,180.00
M. Mills	9/13/2024	\$ 1,490.00	0.1	Email with N. D'Angelo regarding lien research.	\$ 149.00
J. McClammy	9/13/2024	\$ 2,375.00	0.7	Review opposition to motion to shorten time (0.2); emails regarding response (0.4).	\$ 1,662.50
N. D'Angelo	9/14/2024	\$ 1,590.00	2.7	Draft reply to Toccatà's opposition to motion to shorten.	\$ 4,293.00
N. D'Angelo	9/15/2024	\$ 1,590.00	2	Revise draft reply to Toccatà's opposition to motion to shorten.	\$ 3,180.00
R. Steinberg	9/15/2024	\$ 1,590.00	1.8	Call with N. D'Angelo regarding Toccatà opposition to motion to shorten (0.5); review pleadings regarding same (0.8); email to Fisker regarding same (0.5).	\$ 2,862.00
J. McClammy	9/15/2024	\$ 2,375.00	0.8	Review and revise reply in support of motion to shorten time.	\$ 1,900.00
K. Winiarski	9/16/2024	\$ 965.00	0.6	Prepare for status conference regarding Toccatà motions (0.3); attend same (0.3).	\$ 579.00
N. D'Angelo	9/16/2024	\$ 1,590.00	5	Prepare materials for status conference regarding Toccatà, coordinate with team regarding same, attend same; review research related to Toccatà claims objection	\$ 7,950.00
J. McClammy	9/16/2024	\$ 2,375.00	2.2	Prepare for, present on stay violation motion to shorten time (1.5); teleconference C. Simon regarding vehicle return issues (0.4); teleconference J. Mueller regarding Toccatà vehicles (0.3)	\$ 5,225.00
B. Resnick	9/16/2024	\$ 2,375.00	1	Participate in court hearing (.5); call with C. MacGillivray regarding securities litigation (.2); call with Orrick regarding same (.3).	\$ 2,375.00
R. Steinberg	9/16/2024	\$ 1,590.00	0.4	Email to the board and management regarding Toccatà (0.4)	\$ 636.00
N. D'Angelo	9/17/2024	\$ 1,590.00	3.5	Draft objection to Toccatà claims motion, conduct research regarding same; confer with J. McClammy, team regarding potential settlement of same	\$ 5,565.00
B. Resnick	9/17/2024	\$ 2,375.00	0.1	emails regarding Toccatà litigation (.1).	\$ 237.50
J. McClammy	9/17/2024	\$ 2,375.00	1.1	Teleconference DPW, HCG regarding Toccatà next steps (0.5); consideration of possible resolution points with Toccatà (0.6)	\$ 2,612.50
N. D'Angelo	9/18/2024	\$ 1,590.00	1	Coordinate materials for Toccatà hearing on automatic stay, review same	\$ 1,590.00
B. Resnick	9/18/2024	\$ 2,375.00	0.1	Call with C. MacGillivray regarding Toccatà litigation	\$ 237.50
R. Steinberg	9/18/2024	\$ 1,590.00	0.2	Emails regarding Toccatà dispute	\$ 318.00
J. McClammy	9/18/2024	\$ 2,375.00	1.2	Follow up regarding Toccatà stay violations, prepare for hearing	\$ 2,850.00
T. Sun	9/19/2024	\$ 965.00	0.1	Prepare for automatic stay hearing with J. McClammy	\$ 96.50
B. Resnick	9/19/2024	\$ 2,375.00	1.5	Emails and calls with DPW team and clients regarding Toccatà litigation (1.0); court hearing regarding same (0.5);	\$ 3,562.50
J. McClammy	9/19/2024	\$ 2,375.00	2.7	Teleconference with new Toccatà counsel (0.6); prepare for, present at stay violation hearing (1.8); follow up regarding potential resolution (0.3)	\$ 6,412.50
K. Winiarski	9/19/2024	\$ 965.00	0.5	Virtually attend hearing on motion to enforce the automatic stay.	\$ 482.50
J. McClammy	9/20/2024	\$ 2,375.00	1.7	Teleconferences, emails regarding potential Toccatà resolution	\$ 4,037.50
J. McClammy	9/21/2024	\$ 2,375.00	1.7	Work to close Toccatà settlement, emails, calls regarding same	\$ 4,037.50
J. Butler	9/23/2024	\$ 1,590.00	3.6	Draft stipulation of settlement with Toccatà	\$ 5,724.00
J. Butler	9/24/2024	\$ 1,590.00	3.2	Draft and revise stipulation of settlement agreement with Toccatà	\$ 5,088.00
R. Steinberg	9/24/2024	\$ 1,590.00	2.5	Call with Huron and Fisker regarding Indy dealer (0.4); call with J. McClammy regarding same (0.1); review and revise Toccatà Certification of Counsel, stipulation and order (2.0).	\$ 3,975.00
J. McClammy	9/24/2024	\$ 2,375.00	1.4	Review and comment regarding settlement stipulation with Toccatà (0.9); emails and calls regarding Toccatà settlement (0.5).	\$ 3,325.00
J. Butler	9/25/2024	\$ 1,590.00	1.8	Discuss case background with J. McClammy (0.5); coordinate Toccatà settlement stipulation filing with Davis Polk team and interested parties (1.3).	\$ 2,862.00
J. Butler	9/25/2024	\$ 1,590.00	1.3	Coordinate Toccatà settlement stipulation filing with Davis Polk team and interested parties	\$ 2,067.00
T. Sun	9/25/2024	\$ 965.00	0.1	Review payments received by Fisker from dealerships.	\$ 96.50
J. McClammy	9/28/2024	\$ 2,375.00	0.3	Follow up regarding Toccatà non-responsiveness in connection with settlement.	\$ 712.50
J. McClammy	9/29/2024	\$ 2,375.00	0.5	Emails regarding Toccatà non-responsiveness to settlement, outreach	\$ 1,187.50
J. Butler	9/29/2024	\$ 1,590.00	0.3	Respond to case inquiry from J. McClammy	\$ 477.00
J. McClammy	9/24/2024	\$ 2,375.00	0.4	Follow up regarding Toccatà settlement and objection extension.	\$ 950.00
R. Steinberg	9/30/2024	\$ 1,590.00	0.2	Emails with MoFo, W&C, and the UST regarding Toccatà settlement	\$ 318.00
J. Butler	9/30/2024	\$ 1,590.00	0.2	Send follow up correspondence to Toccatà counsel	\$ 318.00
J. McClammy	9/30/2024	\$ 2,375.00	2.8	Teleconferences, emails, work to close on agreement with Toccatà, follow up after deal falls through	\$ 6,650.00
J. McClammy	10/2/2024	\$ 2,375.00	1.2	Prepare for and present at emergency status conference regarding Toccatà stay violations. Attend meeting regarding potential Toccatà contempt conference (0.2); attend meeting regarding Toccatà update with Davis Polk litigation team (0.3); discuss Toccatà response in strategy meeting (0.3); review precedent to inform draft sanctions motion against Toccatà (1.6).	\$ 2,850.00
J. Butler	10/2/2024	\$ 1,590.00	2.4		\$ 3,816.00

J. McClammy	10/2/2024	\$ 2,375.00	0.9	Conference with J. Butler and T. Sun regarding Toccata issues and next steps (0.4); emails and calls regarding Toccata situation (0.5).	\$ 2,137.50
J. McClammy	10/2/2024	\$ 2,375.00	0.6	Call with Davis Polk, Huron, and Fisker regarding efforts to collect vehicles and next steps.	\$ 1,425.00
T. Sun	10/2/2024	\$ 965.00	1	Call with J. McClammy and J. Butler regarding Toccata dispute (0.2); draft email to W. Flolu (0.1); call with W. Flolu, J. McClammy, J. Butler, A. Remming, J. Mueller, and J. Palacios regarding Toccata dispute (0.3); legal research regarding contempt (0.4).	\$ 965.00
J. Butler	10/3/2024	\$ 1,590.00	11.1	Draft and coordinate filing of Toccata sanctions motion	\$ 17,649.00
J. McClammy	10/3/2024	\$ 2,375.00	1.9	Review and revise motion papers for Toccata sanctions (1.3); call with W. Flolu regarding declaration for Toccata motion (0.6).	\$ 4,512.50
T. Sun	10/3/2024	\$ 965.00	1.4	Legal research regarding contempt remedies (0.5); draft contempt motion per J. Butler (0.6).	\$ 1,351.00
J. Butler	10/4/2024	\$ 1,590.00	0.4	Discuss case workstreams with Davis Polk litigation team.	\$ 636.00
J. McClammy	10/4/2024	\$ 2,375.00	0.4	Follow up regarding Toccata issues for return of cars.	\$ 950.00
T. Sun	10/4/2024	\$ 965.00	0.4	Call with J. McClammy and J. Butler regarding Toccata dispute (0.3); correspondence with Morris Nichols team regarding same (0.1).	\$ 386.00
J. Butler	10/7/2024	\$ 1,590.00	6.7	Draft objection to Toccata claims motion	\$ 10,653.00
J. McClammy	10/7/2024	\$ 2,375.00	1.4	Review, follow up regarding Toccata response to sanctions motion.	\$ 3,325.00
T. Sun	10/7/2024	\$ 965.00	2.8	Draft motion to equitably subordinate Toccata (2.4); prepare for P. Harrison depositoin (0.4).	\$ 2,702.00
T. Sun	10/8/2024	\$ 965.00	0.2	Revise objection to Toccata's claims per J. Butler	\$ 193.00
J. McClammy	10/9/2024	\$ 2,375.00	1.8	Prepare for contempt hearing (0.8); present at same (1.0).	\$ 4,275.00
T. Sun	10/9/2024	\$ 965.00	2.8	Attend Fisker Toccata dispute heraing (0.5); draft proposed order of contempt finding (2.3)	\$ 2,702.00
J. Butler	10/10/2024	\$ 1,590.00	1.4	Further revise contempt order draft for court's entry.	\$ 2,226.00
J. Butler	10/15/2024	\$ 1,590.00	1.1	Coordinate payment of Toccata contempt sanctions.	\$ 1,749.00
T. Sun	10/15/2024	\$ 965.00	1.3	Review fees incurred in cnection with Toccata dispute.	\$ 1,254.50
B. Resnick	10/16/2024	\$ 2,375.00	0.3	Emails with Davis Polk team and M. Durdon regarding Toccata litigation.	\$ 712.50
T. Sun	10/16/2024	\$ 965.00	0.4	Review Toccata's motion to stay pending appeal (0.2); call with J. McClammy and J. Butler regarding same (0.2)	\$ 386.00
T. Sun	10/23/2024	\$ 965.00	0.3	Review time entires related to Toccata dispute in connection with contempt fees.	\$ 289.50

Fee Total					\$ 211,452.00
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Morris, Nichols, Arsht & Tunnell LLP

Fee Total \$ 51,994.00

Exhibit B

Wiring Instructions Correspondence

From: [Butler, James C.](#)
To: ["andrew.dupre@akerman.com"](mailto:andrew.dupre@akerman.com)
Cc: [McClammy, James I.](#)
Subject: RE: Any Update?
Date: Tuesday, October 15, 2024 4:37:36 PM
Attachments: [Fisker Ch 11 - Toccata Contempt Order.pdf](#)

Andrew,

As you likely saw last week, Judge Horan entered the revised contempt order proposed by the Debtors. Toccata and Mr. Harrison are required by the terms of the order (attached) to pay to the Debtors \$475,087.00 within three business day of the Order's entry last Friday. Accordingly, please find below the Debtors' payment information:

For ACH Delivery:

Primary Bank Routing Number: [REDACTED]
Account Number: [REDACTED]
Account Name: FISKER GROUP INC.
Fisker Group, Inc.

For Wire Transfers:

Bank Routing Number: [REDACTED]
SWIFT Code: [REDACTED]
General Bank Reference Address: JPMorganChase New York, NY 10017
Account Number: [REDACTED]
Account Name: FISKER GROUP INC.
Fisker Group, Inc.

Please let us know if you have any further questions.

Best,
James

James C. Butler

Davis Polk & Wardwell LLP
+1 212 450 4812 office
+1 646 413 8111 mobile
james.butler@davispolk.com

-----Original Message-----

From: McClammy, James I. <james.mcclammy@davispolk.com>
Sent: Thursday, October 10, 2024 5:21 PM
To: 'andrew.dupre@akerman.com' <andrew.dupre@akerman.com>; Butler, James C. <james.butler@davispolk.com>
Subject: RE: Any Update?

Andrew,

The draft contempt order only memorializes what Judge Horan stated in his ruling yesterday. As a result, that is not something we are willing to negotiate.

The language regarding the vehicles was left over from a time when we still thought there was a possibility of the vehicles being returned. We have removed that.

With respect to the \$16,500 for each of the five damaged cars, Judge Horan's ruling yesterday was quite clear that this is the appropriate rate for those cars. Fisker is not going to negotiate against the Court.

The total sum is certain apart from Fisker's fees and costs, which we are still in the process of calculating.

As for the inclusion of Mr. Harrison, we believe that the Court, in granting our motion, did so as to both Toccata and Mr. Harrison for the actions he took in violation of the stay and the Court's orders. We plan to submit this tomorrow morning in advance of the continued confirmation hearing.

Best,
J.I.M.

James I. McClammy

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+1 212 450 4584 office
+1 347 260 3092 mobile
james.mcclammy@davispolk.com

-----Original Message-----

From: andrew.dupre@akerman.com <andrew.dupre@akerman.com>
Sent: Thursday, October 10, 2024 1:32 PM
To: Butler, James C. <james.butler@davispolk.com>
Cc: McClammy, James I. <james.mcclammy@davispolk.com>
Subject: RE: Any Update?

Good afternoon guys. Toccata objects to the order to the extent that (a) it asks for physical cars that Toccata cannot return (it should just be money at this point - cars are water over dam), (b) it asks for full price money for non-return of the 5 cars that actually were returned (a repair or discount price from American Lease would be fine if there actually is such a discount), and (c) and it is not a sum certain, and (d) it names Harrison personally.

I suggest we could probably stipulate to a right sized order if it was a sum certain and only against Toccata. If you forward me over the number I will shop it to my side. -Andy

-----Original Message-----

From: Butler, James C. <james.butler@davispolk.com>
Sent: Thursday, October 10, 2024 12:03 PM
To: Dupre, Andrew (Ptnr-WLM) <andrew.dupre@akerman.com>
Cc: McClammy, James I. <james.mcclammy@davispolk.com>
Subject: RE: Any Update?

[External to Akerman]

Andrew,

Further to Jim's emails below, attached is the draft order we plan to file later this afternoon memorializing Judge Horan's ruling at yesterday's hearing.

Best,
James

James C. Butler

Davis Polk & Wardwell LLP

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+1 646 413 8111 mobile
james.butler@davispolk.com

-----Original Message-----

From: McClammy, James I. <james.mcclammy@davispolk.com>
Sent: Thursday, October 10, 2024 7:01 AM
To: 'andrew.dupre@akerman.com' <andrew.dupre@akerman.com>
Cc: Butler, James C. <james.butler@davispolk.com>
Subject: RE: Any Update?

And do you have a proposed settlement amount that I can start to socialize with folks?

James I. McClammy

Davis Polk & Wardwell LLP
+1 212 450 4584 office
+1 347 260 3092 mobile
james.mcclammy@davispolk.com

-----Original Message-----

From: andrew.dupre@akerman.com <andrew.dupre@akerman.com>
Sent: Thursday, October 10, 2024 6:53 AM
To: McClammy, James I. <james.mcclammy@davispolk.com>
Cc: Butler, James C. <james.butler@davispolk.com>
Subject: RE: Any Update?

Client is supposed to be wiring me funds this morning. I don't want to give you a false start but I believe I will have six figure funds in trust today.

www.akerman.com

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-----Original Message-----

From: McClammy, James I. <james.mcclammy@davispolk.com>
Sent: Thursday, October 10, 2024 6:24 AM
To: Dupre, Andrew (Ptnr-WLM) <andrew.dupre@akerman.com>
Cc: Butler, James C. <james.butler@davispolk.com>
Subject: RE: Any Update?

[External to Akerman]

Andy --

Window is closing on trying to get something done before we submit the order to the Court. We need to hear something this morning.

J.I.M.

James I. McClammy

Davis Polk & Wardwell LLP
+1 212 450 4584 office
+1 347 260 3092 mobile
james.mcclammy@davispolk.com

-----Original Message-----

From: McClammy, James I. <james.mcclammy@davispolk.com>
Sent: Wednesday, October 9, 2024 8:51 PM
To: andrew.dupre@akerman.com
Subject: Any Update?

Let me know.

J.I.M.