IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
IEH AUTO PARTS HOLDING LLC, *et al.*[1]	Case No. 23-90054 (CML)
Debtors.	Jointly Administered

OBJECTION OF THE CHUBB COMPANIES TO FIRST AMENDED COMBINED DISCLOSURE STATEMENT AND JOINT PLAN OF LIQUIDATION OF IEH AUTO PARTS HOLDING LLC AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

ACE American Insurance Company, Indemnity Insurance Company of North America, ACE Fire Underwriters Insurance Company, Westchester Surplus Lines Insurance Company, Illinois Union Insurance Company, ACE Property and Casualty Insurance Company, Federal Insurance Company, Northwestern Pacific Indemnity Company, and each of their U.S.-based affiliates and successors (collectively, the "Chubb Companies"), by and through their undersigned counsel, hereby file this objection (the "Objection") to the *First Amended Combined Disclosure Statement and Joint Plan of Liquidation of IEH Auto Parts Holding LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 465] (the "Plan"),[2] and in support of the Objection the Chubb Companies respectfully state as follows:

[1] The Debtors entities in these chapter 11 cases, along with the last four digits of each Debtor entity's federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, Inc. (4539); and IEH BA LLC (1428). The Debtors' service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Plan.

PRELIMINARY STATEMENT

The Bankruptcy Code and applicable law are clear: bankruptcy courts cannot unilaterally rewrite the terms and conditions of contracts, including insurance contracts. Despite this well-established legal principle, this is precisely what the Debtors are asking the Court to do through the proposed Plan.

Among other things, despite the fact that the Debtors apparently intend to retain the benefits of their insurance coverage, the Plan purports to both modify and sever from such benefits the obligations owed to insurers under the Debtors' insurance policies. Furthermore, the Plan improperly seeks to deprive insurers of their rights to use their collateral, which, if permitted, will benefit only the Debtors' non-debtor affiliates at the expense of the Debtors' estates and other creditors. Moreover, the Plan is internally inconsistent and appears to attempt to improperly expand the Court's jurisdiction while leaving the Chubb Companies unable to determine what restrictions, if any, the Plan seeks to impose on their rights to handle and administer insured claims in accordance with the terms and conditions of the applicable insurance policies and applicable state law.

These significant modifications to the insurance policies set forth in the Plan violate black letter law and, therefore, the Chubb Companies object to the Plan as more fully set forth herein.

BACKGROUND

A. The Bankruptcy Case

1. On January 31, 2023 (the "Petition Date"), IEH Auto Parts Holding LLC and certain of its affiliates (collectively, the "Debtors") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (Houston Division) (the "Court").

2. On April 28, 2023, the Debtors filed the original version of the Plan and the Disclosure Statement [Docket No. 442].

3. On May 2, 2023, the Debtors filed the Plan.

4. On May 2, 2023, the Court entered the *Order (I) Conditionally Approving the Disclosure Statement; (II) Approving the Solicitation and Notice Procedures; (III) Approving the Forms of Ballots and Notices in Connection Therewith; (IV) Approving the Combined Hearing Timeline; and (V) Granting Related Relief* [Docket No. 471], which, among things, conditionally approved the Disclosure Statement.

B. The Insurance Programs

5. Prior to the Petition Date, the Chubb Companies issued certain insurance policies (as renewed, amended, modified, endorsed or supplemented from time to time, collectively, the "Policies") to one or more of the Debtors as named insureds or that may otherwise provide coverage to the Debtors.

6. Many of the Policies were issued to the Debtors' non-Debtor parent, Icahn Automotive Group, LLC ("Parent"), which Policies may provide coverage to Parent, the Debtors, and/or to other non-Debtor affiliates of the Debtors (collectively, and together with Parent, the "Non-Debtor Affiliates").

7. Prior to the Petition Date, the Chubb Companies, on the one hand, and one or more of the Debtors and/or certain Non-Debtor Affiliates, including Parent, on the other hand, also entered into certain written agreements in connection with the Policies (as renewed, amended, modified, endorsed or supplemented from time to time, and including any exhibit or addenda thereto, collectively, the "Insurance Agreements").

8. Pursuant to certain Policies and Insurance Agreements (collectively, the "ACE Insurance Program"), ACE American Insurance Company, Indemnity Insurance Company of

North America, ACE Fire Underwriters Insurance Company, Westchester Surplus Lines Insurance Company, Illinois Union Insurance Company, ACE Property and Casualty Insurance Company, and/or certain of their U.S.-based affiliates provide, *inter alia*, workers' compensation, property, general liability, general liability excess, environmental, directors' and officers' liability, automobile liability, marine cargo, commercial package, and certain other insurance for specified policy periods subject to certain limits, deductibles, retentions, exclusions, terms and conditions, as more particularly described therein, and the insureds, including, if applicable, one or more of the Debtors, are required to pay to the Chubb Companies certain amounts including, but not limited to, insurance premiums (including audit premiums), deductibles, funded deductibles, expenses, taxes, assessments and surcharges, as more particularly described in the ACE Insurance Program (collectively, the "ACE Program Obligations").

9. Pursuant to certain other Policies and Insurance Agreements (collectively, the "Federal Insurance Program," and collectively with the ACE Insurance Program, the "Insurance Programs"),[3] Federal Insurance Company, Northwestern Pacific Indemnity Company, and/or certain of their U.S.-based affiliates provide, *inter alia*, directors' and officers' liability, property, and certain other insurance for specified policy periods subject to certain limits, deductibles, retentions, exclusions, terms and conditions, as more particularly described therein, and the insureds, including, if applicable, one or more of the Debtors, are required to pay to the Chubb Companies certain amounts including, but not limited to, insurance premiums (including audit premiums), deductibles, funded deductibles, expenses, taxes, assessments and surcharges, as more

[3] The descriptions of the Insurance Programs set forth herein are not intended to, and shall not be deemed to amend, modify or waive any of the terms or conditions of the Insurance Programs. Reference is made to the Insurance Programs for a complete description of their terms and conditions.

particularly described in the Federal Insurance Program (the "Federal Program Obligations," and collectively with the ACE Program Obligations, the "Obligations").[4]

10. The Obligations are payable over an extended period of time and are subject to future audits and adjustments.

11. Certain of the Obligations are secured by certain collateral, including a letter of credit, a surety bond, and certain cash collateral, and the Obligations may also be secured by other letters of credit, trusts, escrows, other surety bonds, other cash collateral, paid loss deposit funds, or other amounts (collectively, the "Collateral").

C. The Plan

12. The Plan purports to provide for the assumption of at least certain of the Debtors' insurance policies, but without providing for the cure of the Debtors' defaults thereunder or otherwise addressing the Debtors' insurance obligations:

> All rights of the Debtors under any and all Insurance Policies under which the Debtors is an insured shall automatically become vested in the Estate as of the Effective Date without necessity for further approvals or orders. To the extent that any such Insurance Policies are deemed Executory Contracts, then, unless such Insurance Policies have been rejected pursuant to an order of the Bankruptcy Court (including the Confirmation Order), notwithstanding anything to the contrary in this Plan, this Plan shall constitute a motion by the Debtors to assume those policies, permit such policies to "ride through," or ratify such Insurance Policies. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute both approval of such assumption pursuant to section 365 of the Bankruptcy Code and a finding by the Bankruptcy Court that such assumption is in the best interests of the Estate. Unless otherwise determined by the Bankruptcy Court pursuant to a Final Order or agreed upon by the parties prior to the Effective Date, no payments shall be required to cure any defaults existing as of the Confirmation Date with respect to any Insurance Policy assumed by

[4] For the avoidance of doubt, the Obligations shall include any non-monetary obligations that the insureds, including one or more of the Debtors, may have. The Chubb Companies specifically reserve and preserve all rights with respect to such non-monetary obligations.

> the Estate pursuant to this Article V. Each applicable Insurer is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to the Chapter 11 Cases, this Plan or any provision within this Plan, including the treatment or means of liquidation set out within this Plan for any insured Claims or Causes of Action. Nothing in this Plan shall impair the rights of Estate with respect to (or affect the coverage under) any Insurance Policy.

Plan at Art. V.C.

13. The Plan also purports to allow certain holders of insured claims to proceed with such claims and seek recovery from the Debtors' applicable insurance policies:

> The Holder of a Covered Claim (as defined in the applicable insurance policy) may pursue such Covered Claim to final judgment, including any appeals, in any court(s) having competent jurisdiction, or settlement, solely to the extent of available insurance proceeds exceeding any applicable Deductible or SIR, after entry into an agreed order with the Plan Administrator or as may be determined by this Court pursuant to a motion for relief from the Plan injunction. Covered Claims may be estimated for purposes of this section. Any such final judgment or settlement will be satisfied solely to the extent of any available proceeds of any applicable Policy, and the provisions of (a)(ii) hereof. The applicable Debtors may be named in the litigation as a party defendant(s) subject to the provisions herein. Nothing in the Plan, the Plan Supplement, or any Definitive Document releases the applicable Debtor(s) from their liability for Covered Claims, provided however, their liability is limited to the amount of available proceeds of any applicable Insurance Policy and the provisions of (a)(ii) hereof. Except as provided above and notwithstanding anything that is otherwise to the contrary in the Plan Supplement, effective as of the Effective Date, the covered claims (as defined in the applicable insurance policy) will be satisfied for all purposes. The Holders of Covered Claims shall solely be entitled to the treatment provided in this Article. The GUC Pool, GUC Claim Reconciliation Fund, and the GUC Administrator may not be named as a party to any such litigation[.]

Plan at Art. V.C(a)(i).

14. As set forth above, Article V.C of the Plan provides that "Covered Claims may be estimated for purposes of this section." *Id.* With respect to the estimation of claims, the Plan further provides that the Court shall have "exclusive jurisdiction" to estimate claims:

> [T]he bankruptcy court shall have exclusive jurisdiction to determine any requests for relief from the order confirming the Plan and estimation of claims, as provided for herein and as otherwise consistent with the Plan and Bankruptcy Code.

Plan at Art. V.C(a)(iv).

15. Additionally, the Plan also contains a so-called "Gatekeeper Provision," which provides that, before claimants can bring certain claims against the Debtors or any other "Released Party," such claimants must both (1) request a determination from the Court that their claim is a "colorable claim" – which determination the Court will have "sole and exclusive jurisdiction" to make – and not a claim released under the Plan, and (2) obtain from the Court specific authorization to bring such claim:

> No party may commence, continue, amend, or otherwise pursue, join in, or otherwise support any other party commencing, continuing, amending, or pursuing, a claim or cause of action of any kind against any Released Party that arose or arises from or is related to the claim or cause of action without first (i) requesting a determination from the Bankruptcy Court, after notice and a hearing, that such claim or cause of action represents a colorable claim against a Released Party and is not a claim that the Debtors released under the Plan, which request must attach the complaint or petition proposed to be filed by the requesting party and (ii) obtaining from the Bankruptcy Court specific authorization for such party to bring such claim or cause of action against any such Released Party. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any claims or causes of action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a claim or cause of action is colorable and, only to the extent legally permissible, will

> have jurisdiction to adjudicate the underlying colorable claim or cause of action.

Plan at Art. VIII.F.7.

16. The Plan also provides that any self-insured retention or deductible under the Debtors' insurance policies shall be paid and satisfied solely through the allowance of a general unsecured claim:

> [T]o the extent that any Insurance Policy applicable to an Allowed Covered Claim contains a Deductible or SIR, such Deductible or SIR on an Allowed Covered Claim shall be paid, satisfied for all purposes, and settled under the applicable policies by the allowance of a General Unsecured Claim (and for the avoidance of doubt, entitled to pro rata distributions from the GUC Pool) in the amount of the applicable Deductible or SIR that was unexhausted as of the Petition Date. To the extent any Holder of a Covered Claim obtains a judgment greater than the applicable Deducible or SIR, the amount of any such Deductible or SIR that was unexhausted as of the Petition Date shall constitute an offset against any such judgment.

Plan at Art V.C(a)(ii).

17. The Plan further addresses the Debtors' insurance policies that may also provide coverage to non-Debtors. Specifically, the Plan provides that nothing therein shall impair any non-Debtors' rights under such insurance policies, and that any collateral provided in connection with such insurance policies shall continue to collateralize the insurance policies, but only with respect to insured claims asserted against non-Debtors:

> [F]or the avoidance of doubt, with respect to any insurance policies under which the Debtors and non-debtor entities are named insureds, nothing within this Plan shall reject, terminate, or otherwise affect any non-debtor entities' rights under such policies, including rights of coverage, and such policies shall be unimpaired with respected to covered non-debtor entities; provided, further, for the avoidance of doubt; any collateral posted with or for the benefit any insurer by any non-debtor entity related to such policies, including any letters of credit and cash deposits, shall continue to collateralize any such policies solely with respect to covered claims against the applicable non-debtor entities.

Plan at Art. V.C(a)(iii).

18. In addition to the foregoing provisions, the Plan contains other provisions that also contemplate the payment of certain claims by the Debtors' insurers. *See, e.g.*, Plan at Arts. III.F, VI.N.2.

19. Furthermore, the Plan provides for a broad third-party release. *See* Plan at Art. VIII.F.4 (the "Third-Party Release").

20. "Releasing Parties" (as defined in the Plan) include, among other parties, "all Holders of Claims, Interests, and Causes of Action," except that any such holder that "(x) validly opts out of the releases contained in the Plan, (y) Files an objection to the releases contained in the Plan by the Plan Objection Deadline, (z) timely votes to reject the Plan, shall not be a 'Releasing Party.'" Plan at Art. I.A.103.

21. Thus, any holder of a claim is not a Releasing Party if such holder timely objects to the Third-Party Release. There is no requirement that any such filed objection be sustained, or even ruled upon by the Court.

OBJECTION

22. The Chubb Companies object to the Plan[5] on the bases that: (i) the Plan attempts to improperly alter or otherwise modify the terms of the Insurance Programs in several ways; and (ii)

[5] This Objection focuses on the objections to the Plan. As for the Disclosure Statement, the Chubb Companies assert that Section 1125 of the Bankruptcy Code provides that a plan proponent may not solicit acceptance or rejection of a plan unless, before such solicitation, the plan proponent transmits to the parties to be solicited the plan and a disclosure statement containing "adequate information," as defined in section 1125(a) of the Bankruptcy Code, which has been approved by the Bankruptcy Court after notice and a hearing. *See* 11 U.S.C. § 1125(b). A disclosure statement contains "adequate information" if it provides information concerning the proposed plan of a kind and in sufficient detail that would enable a hypothetical reasonable investor typical of the holders of claims or interests of the relevant class to make an informed judgment about the plan. *See* 11 U.S. C. § 1125(a). Courts consistently refuse to approve disclosure statements that lack the information that a "hypothetical reasonable investor" would require to make an informed decision about the proposed plan. *See, e.g.*, *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996) ; *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417-18 (3d Cir. 1988), *cert. denied*, 488 U.S. 967 (1988); *In re Divine Ripe, L.L.C.*, 554 B.R. 395, 401 (Bankr. S.D. Tex. 2016) (citing *In re Cajun Elec. Power Co-op., Inc.,* 150 F.3d 503, 518 (5th Cir.1998)); *see also In re Applegate Prop., Ltd.*, 133

the Plan fails to provide that workers' compensation claims and direct action claims must continue to be administered, handled, defended, settled, and/or paid in the ordinary course of business, as required by applicable state law.

23. The Chubb Companies also hereby object to the Third-Party Release and, therefore, hereby opt out of the Third Party-Release, as provided in Plan.

A. The Plan Improperly Alters The Terms Of The Insurance Programs.

24. The Chubb Companies are unable to determine with any certainty the Debtors' proposed treatment of the Insurance Programs under the Plan. The Plan provides that, if any insurance policies are deemed executory contracts and have not previously been rejected, the Plan "shall constitute a motion by the Debtors to assume those policies, permit such policies to 'ride through,' or ratify such Insurance Policies." *See* Plan at Art. V.C. However, whether an insurance policy is "assumed," "rides through" a bankruptcy case, or is "ratified" are separate and distinct concepts that have entirely different legal meanings and results. Based on the language in the Plan, it is unclear which of these three options would purportedly apply to the Insurance Programs and, therefore, how the Insurance Programs are proposed to be treated under the Plan.

25. Nevertheless, regardless of this lack of clarity in the Plan, it is clear under well-established law that neither the Debtors nor this Court can rewrite the Insurance Programs, but, rather, the Insurance Programs must be enforced as written. *See, e.g.*, *In re WorldCorp, Inc.*, 252 B.R. 890, 897 (Bankr. D. Del. 2000) (a court may not "rewrite [a] contract to include terms that a

B.R. 827, 831 (Bankr. W.D. Tex. 1991) ("A court's legitimate concern under Section 1125 is assuring that hypothetical reasonable investors receive such information as will enable them to evaluate for *themselves* what impact the information might have on their claims and on the outcome of the case, and to decide for themselves what course of action to take."). In this case, the Chubb Companies cannot determine with any certainty how the Debtors propose to treat the Insurance Programs and the Chubb Companies' rights and claims thereunder and, therefore, object to the Disclosure Statement and final approval thereof on this basis.

party wishes [it] had bargained for, but did not, prior to execution of the agreement"); *see also Coca-Cola Bottling Co. of Shreveport v. Coca-Cola Co.*, 769 F. Supp. 671, 707 (D. Del. 1991) *aff'd*, 988 F.2d 414 (3d Cir. 1993) ("Courts do not rewrite contracts to include terms not assented to by the parties."); *Ally Financial Inc., v. Wells Fargo Bank, N.A. (In re Residential Capital, LLC)*, 531 B.R. 25, 45 (Bankr. S.D.N.Y. 2015) (a party cannot convince a court to "rewrite [a] contract to fulfill [its] unspoken expectation") (quoting, in part, *Buena Vista Home Entm't, Inc. v. Wachovia Bank, N.A. (In re Musicland Holding Corp.)*, 374 B.R. 113, 121 (Bankr. S.D.N.Y. 2007)); *In re Best Mfg. Grp. LLC*, 2012 WL 589643, at *6 (Bankr. D. N.J. 2012) ("Where the terms of a contract are clear and unambiguous there is no room for interpretation or construction and the courts must enforce those terms as written."); *In re Enterprise Lighting Inc.*, 1994 Bankr. LEXIS 1307 at *7 (Bankr. E.D. Va. Jan. 21, 1994) (the generally broad equitable powers of a bankruptcy court "have not been interpreted to go so far as to allow the Court to rewrite contracts or create new contractual rights between the Debtor and a third party").

26. Additionally, each of the Insurance Programs must be read, interpreted and enforced in its entirety.[6] *See Huron Consulting Servs., LLC v. Physiotherapy Holdings, Inc. (In re Physiotherapy Holdings, Inc.)*, 538 B.R. 225, 233 (D. Del. 2015) (finding that separately drafted agreements dated at different times but relating to the same subject constitute one cohesive agreement); *Dunkin' Donuts Franchising LLC v. CDDC Acquisition Co. LLC (In re FPSDA I, LLC)*, 470 B.R. 257, 269 (E.D.N.Y. 2012) (holding that "two agreements [were] so interrelated, [that] they form[ed] a single overarching executory contract"); *In re Aneco Elec. Constr.*, 326 B.R. 197, 202 (Bankr. M.D. Fla. 2005) (finding "single, non-severable agreement" where contracts

[6] The Chubb Companies reserve the right to object to the treatment of the Policies and any related insurance agreements as executory if the Debtors seek to reject any such contracts.

were between same parties and obligations of each party are mutually dependent upon the other); *In re Karfakis*, 162 B.R. 719 (Bankr. E.D. Pa. 1993) (stating that "two contracts which are essentially inseparable can be, and should be, viewed as a single, indivisible agreement between the parties").

27. However, contrary to this well-established law, the Plan contains multiple provisions that purport to alter or modify the Insurance Programs and the terms and conditions thereof.

1. Impermissible release of obligations under the Insurance Programs.

28. Through the Plan, it appears that the Debtors seek to continue to receive the benefits of the Insurance Programs. *See, e.g.*, Plan at Arts. III.F, V.C, VI.N.2, IV.W.

29. While the Plan provides that "[a]ll ***rights*** of the Debtors under any and all Insurance Policies … shall automatically become vested in the Estates as of the Effective Date," *see* Plan at Art. V.C (emphasis added), it does not adequately address the continuing ***obligations*** of the Debtors or their successors under each of the Insurance Programs.

30. To the contrary, the Plan contains provisions which provide for the release of liens, the vesting of assets in the Debtors' successors free and clear of liens, releases of certain third-parties, and exculpation and injunctions against certain actions. *See, e.g.*, Plan at Art. VIII.

31. It is well-established that debtors and their successors cannot seek to receive benefits of a contract without being liable for obligations thereunder. *See Tompkins ex. rel. A.T. v. Troy Sch. Dist.*, 199 Fed. Appx. 463, 468 (6th Cir. 2006) (holding that it is a basic principle of contract law that a party to an agreement is constrained to accept the burdens as well as the benefits of the agreement); *St. Paul Fire & Marine Ins. Co. v. Compaq Computer Corp.*, 457 F.3d 766, 773 (8th Cir. 2006) (finding that a party who accepts the benefit of a contract must also assume its burdens); *Bhushan v. Loma Alta Towers Owners Assoc., Inc.*, 148 Fed. Appx. 882, 888 (11th Cir.

2005) (stating "one who has accepted a contract's benefit may not challenge its validity in order to escape its burdens"); *S & O Liquidating P'ship v. C.I.R.*, 291 F.3d 454, 459 (7th Cir. 2002) ("A party who has accepted the benefits of a contract cannot 'have it both ways' by subsequently attempting to avoid its burdens."); *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bldg. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981) ("In short, [plaintiff] cannot have it both ways. [It] cannot rely on the contract when it works to its advantage, and repudiate it when it works to [its] disadvantage." (citations and quotations omitted)); *Ricketts v. First Trust Co. of Lincoln, Neb.*, 73 F.2d 599, 602 (8th Cir. 1934) (finding that "he who seeks equity must do equity, and that one may not accept the benefits and repudiate the burdens of his contract."); *Meierhenry Sargent Ltd. Liab. P'ship v. Williams*, No. 16-4180, 2017 U.S. Dist. LEXIS 65739, at *20 (D.S.D. May 1, 2017) ("Various courts have held that a party may not avail itself of a favorable aspect of the contract and then disavow a non-favorable aspect." (citations omitted)); *Power Sys. & Controls, Inc. v. Schneider Elec. USA, Inc.*, No. 10-137, 2010 U.S. Dist. LEXIS 56671 at *3 (E.D. Va. June 9, 2010) ("[A] party may not avail itself of one aspect of a contract and disavow another aspect of the contract in order to avoid its consequences. . .[.]"); *see also In re Fleming Cos.*, 499 F.3d 300, 308 (3d Cir. 2007) ("'The [debtor] . . . may not blow hot and cold. If he accepts the contract he accepts it *cum onere*. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other.'") (internal citations omitted); *Paradigm Air Carriers, Inc. v. Tex. Rangers Baseball Partners (In re Texas Rangers Baseball Partners)*, 521 B.R. 134, 179-80 (Bankr. N.D. Tex. 2014) ("A debtor may not merely accept the benefits of a contract and reject the burdens to the detriment of the other party.").

32. Therefore, to the extent that the Debtors or their successors seek to retain the benefits of any portion of the Insurance Programs, each of the Insurance Programs must continue

in its entirety, and the rights and benefits under each of the Insurance Programs cannot be split from the respective obligations thereunder. The Debtors or any of their successors must also remain liable in full for all of the Debtors' Obligations arising under the Insurance Programs, regardless of when they arise.

2. Improper treatment of self-insured retentions and deductibles.

33. While, as noted above, the Plan fails to adequately address all of the Debtors' Obligations under the Insurance Programs, the Plan does attempt to address the Debtors' obligations with respect to self-insured retention and deductible amounts. However, in so doing, the Plan improperly conflates self-insured retentions and deductibles and purports to modify the Debtors' obligations and insurers' rights in connection therewith.

34. Article V.C of the Plan provides that, if any insurance policy applicable to an "Allowed Covered Claim"[7] includes a "Deductible" or a "SIR," such "Deductible or SIR … shall be paid, satisfied for all purposes, and settled under the applicable policies by the allowance of a General Unsecured Claim … in the amount of the applicable Deductible or SIR that was unexhausted as of the Petition Date." Plan at Art. V.C(a)(ii). Article V.C of the Plan also provides that if "any Holder of a Covered Claim obtains a judgment greater than the applicable Deducible (*sic*) or SIR, the amount of any such Deductible or SIR that was unexhausted as of the Petition Date shall constitute an offset against any such judgment." *Id.*

35. However, Article V.C of the Plan fails to make any distinction between insured claims that arise either prior to or after the Petition Date. Post-petition insured claims and the Debtors' obligations in connection with such claims constitute and give rise to administrative

[7] The Plan uses but does not define the term "Covered Claim." Instead, the Plan uses this term as it is purportedly "defined in the applicable insurance policy." *See* Plan at Art. V.C(a)(i).

expense claims. Therefore, it is improper for the Plan to provide that a "Deductible" or "SIR" arising in connection with any "Covered Claim" shall only be paid and satisfied only by the allowance of a "General Unsecured Claim."

36. The Plan also fails to make any distinction between a "Deductible" or a "SIR," or to even clearly define was these terms mean. However, there are key differences between these two types of insurance obligations. As courts have routinely recognized:

> [A] self insured retention ("SIR") differs from a deductible in that a SIR is an amount that an insured retains and covers before insurance coverage begins to apply. Once a SIR is satisfied, the insurer is then liable for amounts exceeding the retention less any agreed deductible. Policyholders frequently employ SIRs to forego increased premiums where they face high frequency, low severity, losses. In contrast, a deductible is an amount that an insurer subtracts from a policy amount, reducing the amount of insurance. With a deductible, the insurer has the liability and defense risk from the beginning and then deducts the deductible amount from the insured coverage.

In re September 11th Liability Ins. Coverage Cases, 458 F. Supp. 2d 104, 118 n. 10 (S.D.N.Y. 2006) (internal citations omitted); *see also In re iHeartMedia, Inc.*, No. 18-31274, 2019 Bankr. LEXIS 1617, at *14 (Bankr. S.D. Tex. May 28, 2019) ("An SIR policy predicates an insurer's obligation to pay a claim on a prior payment by the policy holder. … Conversely, with [a] deductible policy …, the insurance company pays the entire claim and then seeks reimbursement from the policy holder."). Thus, generally, a deductible amount is reimbursed by the insured to the insurer whereas a self-insured retention is paid by the insured directly to the third-party claimant.

37. The Plan's failure to address these key differences and its attempt to instead treat deductibles and self-insured retentions as the same or even interchangeable is improper.

38. Furthermore, while the Plan provides that any self-insured retention or deductible under the Debtors' insurance policies shall be paid and satisfied solely through the allowance of a

general unsecured claim, which, as set forth above, is improper, the Plan also fails to clarify ***who*** (or what entity) will purportedly be granted such a claim.

39. The Plan could be read to grant insured claimants an allowed claim in the amount of an applicable deductible. However, in general, it is the insurer, and not the insured claimant, that has a right to seek payment and/or reimbursement of an applicable deductible amount from the insured. Thus, to the extent the Plan seeks to transfer to an insured claimant an insurer's right to seek reimbursement of a deductible amount, this would materially, and impermissibly, re-write the terms of the insurance policy.

40. Similarly, it is not appropriate for the Plan to provide that any deductible amount "shall constitute an offset against any judgment" obtained by any "Holder of a Covered Claim." *See* Plan at Art. V.C(a)(ii). That is, the Debtors' obligation to reimburse its ***insurer*** cannot be used to offset the Debtors' liability to a ***third-party claimant***.

41. The Plan could also be interpreted as granting insurers an allowed claim for covered losses falling within an unpaid self-insured retention. This would also be improper. As noted above, the portion of an insured claim falling within an applicable self-insured retention is paid directly by the insured to the third-party claimant. The insurer is not responsible for paying the self-insured retention amount, and an insured's failure to pay such amount to a claimant may entitle the claimant to a claim against the insured. Therefore, if the Plan purports to grant insurers, as opposed to third-party claimants, an allowed claim for a self-insured retention amount, this would also be a modification of the Debtors' insurance policies.

42. Accordingly, the Plan must also clearly provide that all of the Debtors' Obligations under the Insurance Programs, including their obligations with respect to self-insured retentions

and deductibles, shall be treated and paid in full dollars in accordance with the terms and conditions of the Insurance Programs, which shall not be altered.

3. Impermissible modification of insurers' collateral rights.

43. The Plan also purports to impermissibly restrict the Chubb Companies' rights with respect to their Collateral.

44. The Plan provides that, "with respect to any insurance policies under which the Debtors and non-debtor entities are named insureds, … any collateral posted with or for the benefit any insurer by any non-debtor entity related to such policies, including any letters of credit and cash deposits, shall continue to collateralize any such policies ***solely with respect to covered claims against the applicable non-debtor entities***." Plan at Art. V.C(a)(iii) (emphasis added).

45. In other words, pursuant to the Plan, even if an insurer's collateral secures obligations arising in connection with insured claims against either the Debtors or non-Debtors, such insurer can only draw on and/or apply its collateral in connection with claims against ***only*** the non-Debtors, and ***not*** the Debtors.

46. However, only the terms of the applicable insurance policies and/or related agreements, and not the provisions of the Plan, can determine an insurer's rights to draw on and/or apply its collateral and what obligations such collateral secures.

47. Here, the Insurance Programs may provide coverage to both the Debtors and Non-Debtors Affiliates, and the Collateral may secure obligations owed by either the Debtors or the Non-Debtor Affiliates, regardless of what entity posted the Collateral. Thus, if permitted, Article V.C of the Plan would purport to effectuate a material modification of the terms and conditions of the Insurance Programs and the Chubb Companies' rights with respect to the Collateral thereunder, all of which is a violation of well-established applicable law. *See, e.g.*, *In re Lloyd E. Mitchell, Inc.*, No. 06-13250, 2012 Bankr. LEXIS 5531, at *20 (Bankr. D. Md. Nov. 29, 2012) (noting that

"insurance contracts cannot be re-written" in bankruptcy); *In re MF Glob. Holdings Ltd.*, 469 B.R. 177, 193 (Bankr. S.D.N.Y. 2012) (finding that contractual provisions could not be "excised" from insurance policies "because doing so would rewrite the [insurance] [p]olicies and expand the Debtors' rights under them," and "the Court cannot modify those rights pursuant to the Bankruptcy Code."); *In re Amatex Corp.*, 107 B.R. 856, 865-66 (E.D. Pa. 1989), *aff'd*, 908 F.2d 961 (3d Cir. 1990) ("[T]he rights and obligations of the Debtor and [its insurer] under the [insurance] policy are not altered because of the Debtor's Chapter 11 filing."); *see also Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1663 (2019) ("The estate cannot possess anything more than the debtor itself did outside bankruptcy. … A debtor's property does not shrink by happenstance of bankruptcy, but it does not expand, either. … So if the not-yet debtor was subject to a counterparty's contractual right …, so too is the trustee or debtor once the bankruptcy petition has been filed."); *Wilson v. Career Educ. Corp.*, 729 F.3d 665, 679 (7th Cir. 2013) ("A court may not rewrite a contract to suit one of the parties but must enforce the terms as written."); *In re Coupon Clearing Serv., Inc.*, 113 F.3d 1091, 1099 (9th Cir. 1997) (noting that a debtor's estate has "no greater rights in property than those held by the debtor prior to the bankruptcy"); *Trustmark Ins. Co. v. Transamerica Occidental Life Ins. Co.*, 484 F. Supp. 2d 850, 853 (N.D. Ill. 2007) ("[A] court cannot alter, change or modify the existing terms of a contract or add new terms or conditions to which the parties do not appear to have assented, write into the contract something which the parties have omitted or take away something which the parties have included.") (citation omitted).

48. Moreover, not only is this an impermissible modification of the terms and conditions the Insurance Programs, but this will also only benefit the Non-Debtor Affiliates at the expense of the Debtors' estates and other creditors. That is, if the Debtors' Obligations are effectively no longer secured by the Collateral, the Chubb Companies may have no other recourse

but to seek payment and/or reimbursement directly from the Debtors and their estates. This could potentially reduce the funds otherwise available to other creditors. Meanwhile, the Non-Debtor Affiliates would receive the benefit of a potentially greater portion of their Obligations under the Insurance Programs being secured by the Collateral at absolutely no additional cost to them. This is not the bargain that was struck when the Chubb Companies entered into the Insurance Programs.

49. The Court should not, and ***cannot***, allow this blatant attempt by the Debtors to modify the Chubb Companies' rights under the Insurance Programs with respect to their Collateral in service of only the Non-Debtor Affiliates' interests and at the expense of the Chubb Companies and other creditors.

4. Unclear and inconsistent restrictions on handling and administration of insured claims.

50. Furthermore, the Plan provides that "Covered Claims" may be estimated for purposes of [Article V.C of the Plan]," and that "the bankruptcy court shall have exclusive jurisdiction to determine … estimation of claims…[.]" Plan at Art. V.C(a)(i), (iv). The Plan also provides that certain claims against the Debtors and certain third parties, which may include claims covered by insurance, can only go forward if, among other things, the claimant first obtains from the Court a determination that its claim is "colorable," which determination the Court will purportedly "have sole and exclusive jurisdiction" to make. *See* Plan at Art. VIII.F.7.

51. As an initial matter, it is well-established that the Plan cannot confer the Court with jurisdiction over any dispute or proceeding. *See In re U.S. Brass Corp.*, 301 F.3d 296, 303 (5th Cir. 2002) ("[T]he source of the bankruptcy court's subject matter jurisdiction is neither the Bankruptcy Code nor the express terms of the Plan."); *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 228 (3d Cir. 2004) ("[J]urisdiction cannot be conferred … in a plan of reorganization"); *In re Acis Cap. Mgmt., L.P.*, 604 B.R. 484, 515 (N.D. Tex. 2019), *aff'd sub nom. Matter of Acis Cap.*

Mgmt., L.P., 850 F. App'x 302 (5th Cir. 2021) ("Parties may not, in the course of ordering their private affairs, enlarge *or shrink* Article III or the federal statutes governing subject matter jurisdiction.") (emphasis in original). Thus, to the extent the Plan purports to confer any jurisdiction, including any exclusive jurisdiction, on the Court, this is contrary to applicable law.

52. Moreover, the provisions in the Plan that purportedly confer exclusive jurisdiction on the Court to estimate insured claims and that require claimants to obtain certain determinations from the Court before pursuing their claims appear to be in conflict with the provisions of the Plan purportedly allowing holders of certain insured claims to pursue such claims and seek recovery from the available proceeds of any applicable insurance policies. *See* Plan at Art. V.C(a)(i).

53. Thus, the Plan is internally inconsistent, and the Chubb Companies are unable to determine based on the Plan what, if anything, will be required before they can handle and administer claims potentially covered by the Insurance Programs or what impediments the Plan may seek to impose on the Chubb Companies' rights to handle and administer claims under the Insurance Programs.

54. Accordingly, the Chubb Companies further object to the Plan on this basis.

B. <u>The Plan Must Provide That Workers' Compensation Claims And Direct Action Claims Must Continue In The Ordinary Course.</u>

55. The Plan does not provide for the handling of workers' compensation claims or direct action claims against the Debtors' insurers.

56. Both workers' compensation claims and direct action claims are subject to state-law regulations that dictate the resolution of such claims, which cannot be modified by the terms of the Debtors' Plan. *See, e.g.*, *Ohio v. Mansfield Tire & Rubber Co. (In re Mansfield Tire & Rubber Co.)*, 660 F.2d 1108 (6th Cir. 1981) (finding that the administration of workers' compensation claims was a valid exercise of a state's police powers and exempt from the automatic

stay provisions); *see also* La. R.S. 22:1269 (2012) (Louisiana grants injured persons a right of direct action against a tortfeasor's insurer, which, in several instances, may be brought against the insurer alone, or against both the insured and insurer jointly and *in solido*); Wis. Stat. § 632.24 (2012) (Wisconsin grants injured persons a right of direct action against a tortfeasor's insurer irrespective of whether liability is presently established or is contingent and to become fixed or certain by final judgment against the insured).

57. Accordingly, the Plan cannot prevent workers' compensation claims and direct action claims from going forward.

58. The Insurance Programs include Policies that provide workers' compensation insurance to the Debtors, and certain of the Debtors' Obligations with respect to such Policies are secured by the Collateral. Any workers' compensation claims against the Debtors potentially covered by these Policies must therefore be able to proceed, and the Chubb Companies, in turn, must be able to handle and administer such claims, including applying the Collateral to the Debtors' Obligations with respect thereto in accordance with the terms and conditions of the Insurance Programs.

59. Any Plan provisions that purport to prevent the Chubb Companies from handling workers' compensation claims against the Debtors and/or from applying the Collateral to the Debtors' Obligations for such claims are impermissible, and the Chubb Companies further object to the Plan on this basis.

60. In sum, the Plan must clarify that workers' compensation and direct action claims must continue to be administered, handled, defended, settled, and/or paid in the ordinary course, and, relatedly, that the Chubb Companies may continue to so administer, handle, defend, settle, and/or pay such covered claims, including drawing on and/or applying the Collateral in connection

therewith, in the ordinary course and pursuant to the terms of the Insurance Programs and applicable non-bankruptcy law.

C. The Chubb Companies Object To The Third-Party Release And, Thus, Hereby Opt-Out Of The Third-Party Release.

61. Section 524(e) of the Bankruptcy Code prohibits the release and permanent injunction of claims against non-debtors in most circumstances. *See* 11 U.S.C. § 524(e) ("Except as provided in subsection (a)(3) . . . discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.").

62. The United States Court of Appeals for the Fifth Circuit has specifically held that the Bankruptcy Code prohibits nonconsensual third party releases, except where specifically permitted under the Bankruptcy Code:

> In a variety of contexts, this court has held that Section 524(e) only releases the debtor, not co-liable third parties. *See, e.g., In re Coho Resources, Inc.,* 345 F.3d 338, 342 (5th Cir. 2003); *Hall v. National Gypsum Co.,* 105 F.3d 225, 229 (5th Cir. 1997); *Matter of Edgeworth,* 993 F.2d 51, 53-54 (5th Cir. 1993); *Feld v. Zale Corporation,* 62 F.3d 746 (5th Cir. 1995). These cases seem broadly to foreclose non-consensual non-debtor releases and permanent injunctions.
>
> MRC/Marathon suggest we adopt a more lenient approach to non-debtor releases taken by other courts. . . Besides conflicting with *Feld v. Zale Corp.*, these cases all concerned global settlements of mass claims against the debtors and co-liable parties. . . . In fact, the Bankruptcy Code now permits bankruptcy courts to enjoin third-party asbestos claims under certain circumstances, 11 U.S.C. § 524(g), which suggests non-debtor releases are most appropriate as a method to channel mass claims toward a specific pool of assets. . . . There are no allegations in this record that either MRC/Marathon or their or the Debtor's officers or directors were jointly liable for any of [the debtors'] pre-petition debt. They are not guarantors or sureties, nor are they insurers. Instead, the essential function of the exculpation clause proposed here is to absolve the released parties from any negligent conduct that occurred during the course of the bankruptcy. The fresh start § 524(e) provides to debtors is not intended to serve this purpose.

Bank of New York Trust Co., NA v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.) 584 F.3d 229, 252-53 (5th Cir. 2009).

63. This and similar Fifth Circuit precedent has been interpreted "broadly to foreclose non-consensual non-debtor releases and permanent injunctions." *In re Vitro S.A.B. De C.V.*, 701 F.3d 1031, 1061 (5th Cir. 2012).

64. In this case, the Debtors propose a plan wherein the Debtors, the Icahn Entities, the Committee, and a myriad of other "Released Parties" are discharged from, among other things, any and all Claims and Causes of Action "based on or relating to, or in any manner arising from, in whole or in part, the Debtors … or upon any other related act or omission, transaction, agreement, event, or other occurrence … taking place on or before … the Plan Effective Date." *See* Plan at Art. IX.F.4.

65. The Third-Party Release is granted by each of the "Releasing Parties," which include "all Holders of Claims, Interests, and Causes of Action" that do not either opt-out of the Third-Party Release, object to the Third-Party Release, or vote to reject the Plan. *See* Plan at Art. I.A.103.

66. Under the broad definition of "Releasing Party," the Chubb Companies may qualify as a "Releasing Party" for purposes of the Plan, but for this Objection.

67. The Chubb Companies object to being included as a "Releasing Party" under the Plan.

68. Consistent with the concept of opting out, the Debtors have not required that any objection to the Third-Party Release be sustained, or even addressed by the Court, in order for the opt out to be effective. It is the Chubb Companies' position that, by filing this Objection, the

Chubb Companies have properly opted out of the Third-Party Release and are not Releasing Parties.

RESERVATION OF RIGHTS

69. The Chubb Companies specifically reserve all of their rights with respect to the Insurance Programs and their right to assert additional objections to the Plan and any documents related thereto.

WHEREFORE, the Chubb Companies respectfully request that this Court: (a) either (i) deny confirmation of the Plan, or (ii) condition confirmation of the Plan on inclusion of the clarifications requested herein; and (b) grant such other relief as the Court deems appropriate.

Dated: May 26, 2023

Respectfully submitted,

DUANE MORRIS LLP

/s/ Corey M. Weideman

Corey M. Weideman, Esquire (SBT 24056505)
DUANE MORRIS LLP
1330 Post Oak Boulevard, Suite 800
Houston, TX 77056-3166
Email: cmweideman@duanemorris.com

-and-

Wendy M. Simkulak, Esquire
Catherine Beideman Heitzenrater, Esquire
Elisa M. Hyder, Esquire
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103-4196
Telephone: (215) 979-1000
Email: wmsimkulak@duanemorris.com
Email: cheitzenrater@duanemorris.com
Email: ehyder@duanemorris.com

Counsel for the Chubb Companies

CERTIFICATE OF SERVICE

I, Corey M. Weideman, hereby certify that I am not less than 18 years of age, and that on May 26, 2023 I caused a true and correct copy of the foregoing *Objection of the Chubb Companies to First Amended Combined Disclosure Statement and Joint Plan of Liquidation of IEH Auto Parts Holding LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* to be served electronically via the Court's CM/ECF electronic noticing system on all parties registered to receive electronic service in the above cases and via email on the parties set forth on the attached service list.

/s/ Corey M. Weideman
Corey M. Weideman, Esquire (SBT 24056505)

SERVICE LIST

Debtors' Counsel
Jackson Walker LLP
1401 McKinney Street, Suite 1900
Houston, TX 77010
Attention: Matthew Cavenaugh, Veronica A. Polnick, Vienna F. Anaya, and Emily Flynn Meraia
Email: mcavenaugh@jw.com
Email: vpolnick@jw.com
Email: vanaya@jw.com
Email: emeraia@jw.com

Law Office of Liz Freeman
PO Box 61209
Houston, TX 77208
Attention: Elizabeth C. Freeman
Email: liz@lizfreemanlaw.com