Docket #0697 Date Filed: 06/13/2023

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 OLAYA Z. GOODMAN TO (1) CONFIRMATION OF SECOND AMENDED JOINT PLAN OF LIQUIDATION OF IEH AUTO PARTS HOLDING LLC AND ITS DEBTOR AFFILIATES AND (2) FINAL APPROVAL OF SECOND AMENDED DISCLOSURE STATEMENT OF IEH AUTO PARTS HOLDING LLC AND ITS DEBTOR AFFILIATES

TO THE HONORABLE CHRISTOPHER LOPEZ,
UNITED STATES BANKRUPTCY JUDGE:

Olaya Z. Goodman ("Goodman"), a creditor and party in interest in these chapter 11 cases, files this objection (the "Objection") to (1) confirmation of the second amended joint plan of liquidation of IEH Auto Parts Holding LLC and its debtor affiliates (collectively, the "Debtors") and (2) final approval of the Debtors' second amended disclosure statement. *See*

[1] The Debtor 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.

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ECF 688-689[2]. In support of this Objection, Goodman would respectfully show the Court as follows:

I. PRELIMINARY STATEMENT

1. Goodman is a personal injury claimant against IEH Auto Parts, LLC ("IEH"), one of the Debtors. An employee of IEH negligently caused an accident with a vehicle that Goodman was driving, and as a result she is permanently disabled.

2. Goodman's claim is covered by a primary auto liability insurance policy issued with IEH as a named insured. In addition, to the extent that the amount of Goodman's claim exceeds the liability limit of the primary policy, her claim may also be covered by IEH's umbrella/excess liability insurance policy issued by Navigators.

3. IEH's and its driver's liability was established prepetition by a New York state court with summary judgment issued in her favor. The Supreme Court of the State of New York Appellate Division, First Judicial Department entered an Order on December 8, 2022, finding that the defendants were liable given there was no dispute that Debtor's employee hit Ms. Goodman's Access-A-Ride bus in the rear and that Ms. Goodman did not contribute to the accident.

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[2] This Objection is directed at the *Second 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* (the "Combined Document"), filed by the Debtors on June 9, 2023. To the extent that the Combined Document constitutes a chapter 11 plan of reorganization or liquidation as contemplated by sections 1121-1146 of the Bankruptcy Code, the Combined Document is referred to as the "Plan" in this Objection. To the extent that the Combined Document constitutes a chapter 11 disclosure statement as contemplated by section 1125 of the Bankruptcy Code, the Combined Document is referred to as the "Disclosure Statement" in this Objection.

4. The only unresolved issue concerning her claim is the extent of her compensable damages. Prior to the bankruptcy filing, the parties agreed to mediate the question of damages and had agreed upon a mediator.

5. Goodman's position in regard to the Plan is simple. Nothing in the Plan should limit Goodman's right to liquidate her claim in the forum of her choice and to collect on the claim to the extent of available insurance. All that Goodman seeks is clear and unambiguous language in the Plan affirming her right to do so. Even in its third iteration, the Plan is internally inconsistent, non-specific, and confusing in addressing the legal rights of personal injury claimants like Goodman. Additionally, the Plan ignores the statutory jurisdictional limits on bankruptcy courts to liquidate personal injury claims. For these reasons and others, the Plan is unconfirmable.

II. BACKGROUND

A. The Accident

6. Goodman, who resides in the Bronx, New York City, New York, was seriously injured in a motor vehicle accident on February 8, 2018. The accident occurred when a vehicle driven by Nathaniel James Miranda ("Miranda"), an employee of IEH, in the course of his employment, struck Goodman in the rear while she was driving a work vehicle for Access-A-Ride. Goodman is permanently disabled by the accident with debilitating spinal injuries.

B. The Insurance Policies

7. On information and belief, the applicable policy for the primary coverage of Goodman's claim is Policy Number: ISA H2515552A (the "Policy"). The Business Auto Declarations for the Policy show that there is a limit of $3,000,000 coverage for any accident. The policy a "Fronted Reimbursement of Deductible" endorsement. A fronted reimbursement

deductible gives the insurer a prepetition claim as it arises as of the date of the claimant's injury and is not a true deductible. The insurer is obligated under the policy and then has a claim against the Debtor for the fronted reimbursement deductible. As such, allowing for the determination of the Goodman damages claim in the current pending litigation, which the debtor never removed or sought to transfer to the Southern District of Texas, is appropriate. Further, it will aide in prevent inconsistencies between courts given the insurer's proof of claim, in part, would include the amount of the fronted reimbursement claim. But, the fact that the insurer has a claim against the Debtor should not prohibit Goodman from liquidating her damages claim in the State Court which is more experienced in personal injury claims and New York law.

8. In broad terms, the effect of the fronted reimbursable deductible is that the issuer of the Policy (the "Insurer") is obligated to pay all compensable damages on a valid claim under the Policy directly to the claimant. The Insurer has a claim against IEH for the fronted reimbursement deductible, as the insured, for reimbursement of the amount paid to the claimant plus certain costs and expenses associated with investigating and processing the claim.

9. Goodman's damages claim exceeds the coverage limits of the Policy. On information and belief, IEH also has surplus insurance coverage which provides coverage for the Goodman claim.

10. On information and belief, Miranda was an employee of IEH and had the owner's consent to use the vehicle he was driving which rammed into Goodman. On information and belief, he is also insured under the Policy. IEH and Miranda were already found to be liable for the accident. Miranda is a non-Debtor third party and presumably an

insured under the Policy. The Plan and the Disclosure Statement do not adequately address the issue of non-Debtor individuals who are co-insureds under the Policy.

C. The State Court Litigation

11. Goodman commenced a personal injury action in New York state court against IEH and Miranda. On April 12, 2022, the Supreme Court of the State of New York, Bronx County, entered an order of partial summary judgment establishing that the accident was due solely to the Miranda's negligence and that IEH is liable under New York law for payment of the damages resulting from the injuries that Goodman suffered. The summary judgment was affirmed by a New York appellate court. The sole remaining issue is the extent of Goodman's compensable damages.

12. Prior to the filing of these chapter 11 cases, IEH and Goodman had agreed to mediate and selected a mediator.

D. Events in the Chapter 11 Cases

13. On January 31, 2023 (the "Petition Date"), the Debtors commenced these chapter 11 cases.

14. On April 12, 2023, Goodman filed a timely proof of claim (Claim No. 349) asserting damages of $9,750,000.

15. On May 26, 2023, Goodman filed the *Objection of Olaya Z. Goodman to (1) Confirmation of First Amended Joint Plan of Liquidation of IEH Auto Parts Holding LLC and Its Debtor Affiliates and (2) Final Approval of First Amended Disclosure Statement of IEH Auto Parts Holding LLC and Its Debtor Affiliates* (ECF 636) (the "First Objection").

16. On May 27, 2023, Goodman filed an amended proof of claim.

17. Goodman requested that IEH consent to relief from the automatic stay to the

extent necessary to allow Goodman to proceed in New York state court to establish her compensable damages and to collect the same from the insurer(s). In addition, Goodman reached out to the Debtors' counsel with proposed language that would have resolved Goodman's concerns as expressed in the First Objection. IEH declined to consent to lift the stay or to add language in the Plan or the proposed confirmation order that would resolve Goodman's objections to the Plan.

18. Given that the Plan and the Disclosure statement are combined in one document, there will be substantial overlap between objections to confirmation of the Plan and objections to the adequacy of the Disclosure Statement. Some objections will be applicable to both the Plan and the Disclosure Statement. If the Court determines that any objection to the Plan set forth herein is more properly considered an objection to the Disclosure Statement, or vice versa, Goodman respectfully requests that the Court consider such objection in the proper context.

III. JURISDICTION AND VENUE

19. This Court has jurisdiction to hear and determine this Objection under 28 U.S.C. § 1334. Consideration of the Combined Document presents a mixed issue of a core proceeding and non-core proceeding issues core proceeding under 28 U.S.C. § 157(b)(2)(A), (L), and (O), 28 U.S.C. § 157(b)(5), and 28 U.S.C. § 157(c)(1).

20. The liquidation or estimation of contingent or unliquidated personal injury tort claims for the purpose of distribution is a non-core matter. 28 U.S.C. § 157(b)(2)(B). The Court lacks jurisdiction to enter any final order, including a confirmation order, that provides for the liquidation or estimation of Goodman's claim. *In re Roman Catholic Church for the Archdiocese of New Orleans*, No. 21-1238, 2021 U.S. Dist. LEXIS 160497 (E.D. La. Aug. 25,

2021). Title 28 makes it clear that this Court cannot adjudicate personal injury tort or wrongful death claims to final judgment. 28 U.S.C. §§ 157(b)(2)(B) & 157(b)(5). Title 11 does "not affect any right to trial by jury that an individual has under applicable non-bankruptcy law with regard to a personal injury or wrongful death tort claim." 28 U.S.C. § 1411(a).

21. The Debtors' Plan improperly seeks to have the Court limit personal injury tort claims including for distribution purposes and states:

> In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under this Plan (including for purposes of Distributions), and the Debtors, Wind-Down Debtors, or the Plan Agent (as the case may be) may elect to pursue any supplemental proceedings to object to any ultimate Distribution on such Claim.
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> ECF 688-1, p. 36, Article VII (C).

22. As such, a final ruling on the Combined Document should not have any provisions that adjudicate rights which the Bankruptcy Court does not have jurisdiction over related to Goodman's personal injury tort claim.

23. For a bankruptcy court to enforce the plan after confirmation and to enjoin a plaintiff from pursuing a claim, two requirements must be met: (1) the bankruptcy court must have jurisdiction to hear the plaintiff's claim under 28 U.S.C. § 1334; and (2) the bankruptcy court's confirmation order must specifically approve the release of the plaintiff's claim. *In re CJ Holding Co.,* 597 B.R. 597, 604 (S.D. Tex. 2019).

24. Goodman does not consent to entry of a final order of this Court that liquidates her claim for distribution purposes, or which finds or dictates that the Court has jurisdiction over the liquidation of such claims post-confirmation. Goodman objects to any discharge, plan injunction, exculpation, or release language that limits her rights to liquidate her claim and

proceed against the Insurers or Miranda.

25. Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

26. The bases for the relief requested herein are 11 U.S.C. §§ 1125(b), 1128(b), and 1129; Rule 3020(b) of the Federal Rules of Bankruptcy Procedure; Rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas, and the Procedures for Complex Chapter 11 in the Cases Southern District of Texas.

IV. OBJECTION TO CONFIRMATION OF PLAN

A. Standard of Law

27. Section 1129 of the Bankruptcy Code sets forth the requirements for confirming a chapter 11 plan of reorganization. 11 U.S.C. § 1129. The proponent of the plan must show, by a preponderance of the evidence, that each of the applicable requirements is met. *Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters. (In re Briscoe Enters.)*, 994 F.2d 1160, 1165 (5th Cir. 1993); *In re Sandridge Energy, Inc.*, No. 16-32488 (DRJ), 2016 Bankr. LEXIS 4622 at *34 (Bankr. S.D. Tex. Sep. 20, 2016). The burden of persuasion rests with the plan proponent. *Briscoe*, 994 F.2d at 1165; *In re Nuvira Hospitality, Inc.*, No. 15-80432-G3-11, 2016 Bankr. LEXIS 4033 at *8 (Bankr. S.D. Tex. Nov. 21, 2016).

28. As proponents of the Plan, the Debtors bear the burden of showing that they, and the Plan, satisfy the prerequisites to confirmation. For the reasons set forth below, the Debtors cannot carry their burden.

B. Objections to Confirmation

(1) Section 1129(a)(1) – The Plan Does Not Comply with the Applicable Provisions of Title 11 Because It Affects Liability of Non-Debtors in Contravention of Section 524(e).

29. To be confirmable, a chapter 11 plan of reorganization must "compl[y] with the applicable provisions of [title 11]." 11 U.S.C. § 1129(a)(1). With one exception that is not relevant in these cases,[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." *Id*. § 524(e). The Plan purports to limit the ability of creditors to proceed against non-Debtors, including the insurers and non-Debtors who are co-insureds with the Debtors, in violation of section 524(e). For this reason, the Plan is unconfirmable under section 1129(a)(1).

30. In a lengthy and opaque provision, article V.C of the Plan addresses the rights of holders of insured claims as follows:

> (i) The Holder of a Claim covered by an Insurance Policy may pursue such 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 as may be determined by this Court pursuant to a motion for relief from the injunction in Article VIIIF.6.*** Claims covered by Insurance Policies may be estimated by this Court for purposes of determining whether a Claim exceeds applicable Deductible or SIR amounts. 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 (C)(ii) hereof. To the extent the injunction in Article VIIIF.6 is lifted with respect to a Claim, the applicable Debtors may be named in the litigation as a party defendant(s) subject to the provisions herein. Nothing in the Plan or the Plan Supplement releases the applicable Debtor(s) from their

[3] The exception concerns community claims when the debtor is an individual. *See* 11 U.S.C. § 524(a)(3).

> liability for Claims covered by Insurance Policies, provided however, ***their liability is limited to the amount of available proceeds of any applicable Insurance Policy for claims exceeding the applicable Deductible or SIR under the Insurance Policy and the provisions of (C)(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 Claims covered by an Insurance Policy will be satisfied for all purposes. ***The Holders of Claims covered by an Insurance Policy shall solely be entitled to the treatment provided in this Article.*** The GUC Pool, GUC Claim Reconciliation Fund, the GUC Trust, and the GUC Trustee may not be named as a party to any such litigation; and
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> (ii) to the extent that any Insurance Policy applicable to an Allowed Claim covered by an Insurance Policy contains a Deductible or SIR, upon liquidation and Allowance of such Claim by the Bankruptcy Court, such Deductible or SIR on an Allowed Claim covered by an Insurance Policy shall be deemed paid, satisfied, settled, and extinguished for all purposes 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) up to the amount of the applicable Deductible or SIR that was unexhausted as of the Petition Date. To the extent the injunction in Article VIIIF.6 is lifted and any Holder of an Allowed Claim covered by an Insurance Policy 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 and is Allowed as a General Unsecured Claim under the Plan shall constitute an offset against any such judgment.

(Combined Doc. art. VC.(i)-(ii) (emphasis added). The effect of the emphasized language is to reduce the Debtors' ***and the non-Debtor insurers'*** liability for claims by the amount of any "Deductible" or "SIR" in the applicable insurance policies.[4]

31. This unjustifiable limitation on the amount of an insured claimant's recovery

[4] The Plan uses overgeneralized definitions for "Deductible" as "any deductible under an Insurance Policy," and "SIR" as "any self-insured retention under an Insurance Policy." (Combined Doc. art. IA.33, 118.).

makes the Plan unconfirmable for at least two reasons. First, article VC.(i) of the Plan violates section 524(e) of the Bankruptcy Code.

> A discharge in bankruptcy does not extinguish the debt itself, but merely releases the debtor from personal liability for the debt. Section 524(e) specifies that the debt still exists and can be collected from any other entity that might be liable.

Houston v. Edgeworth (In re Edgeworth), 993 F.2d 51, 53 (5th Cir. 1993) (allowing suit against insurer); *see also NCNB Tex. Nat'l Bank v. Johnson*, 11 F.3d 1260, 1266 (5th Cir. 1994) (allowing suit against guarantor). As the Plan does not "compl[y] with the applicable provisions" of title 11, the Plan cannot be confirmed. 11 U.S.C. § 1129(a)(1).

32. Second, as a matter of insurance law, the existence of any deductible or SIR in a liability policy should have ***no effect whatsoever*** on the amount that a claimant can recover, especially against a non-debtor insurer or non-debtor defendant. This is particularly true in the instance of Goodman's claim. As noted above, the Policy features a "Fronted Reimbursement of Deductible" endorsement, the effect of which is to provide first-dollar coverage of a valid claim like Goodman's. The endorsement obligates the Insurer to pay all amounts due under the Policy directly to Goodman. The Insurer may then assert a claim against IEH, as the insured, for reimbursement of the amounts paid on the claim (up to the Fronted Reimbursement of Deductible amount) plus certain costs and expenses. A "Fronted Reimbursement of Deductible" endorsement cannot be used to deny or limit the insurer's liability to the claimant. *See Sturgill v. Beach at Mason Ltd. P'ship*, No. 1:14cv0784 (WOB), 2015 U.S. Dist. LEXIS 142490, *5 (S.D. Ohio Oct. 20, 2015); *Admiral Ins. Co. v. FF Acquisition Corp. (In re FF Acquisition Corp.)*, 422 B.R. 64, 67-68 (Bankr. N.D. Miss. 2009); *Am. Safety Indem. Co. v. Vanderveer Estates Holding, LLC (In re Vanderveer Estates Holding, LLC)*, 328 B.R. 18, 25-

26 (Bankr. E.D.N.Y. 2005).

33. The Insurer has a claim against the Debtor for the Fronted Reimbursement Deductible. However, the Plan attempts to prejudice claimants like Goodman while installing barriers to such Plaintiff's ability to liquidate its claim to benefit the Insurers and also impermissibly limits the claimants claim to the insurance proceeds even if the proceeds are insufficient to cover the Claimant's damages and if the Claimant filed a timely proof of claim.

34. In the Goodman case, the Insurer's reimbursement claim is a prepetition unsecured claim, not an administrative expense. On information and belief, the primary Insurer filed a proof of claim as well. "[W]hether a deductible reimbursement obligation is a general prepetition unsecured claim or is a postpetition administrative expense priority claim hinges on when the worker was injured, not on when the insurance company paid the claim or made the demand for reimbursement of the deductible." *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 311 B.R. 862, 865 (Bankr. D. Ariz. 2004). Because Goodman was injured before the Petition Date, the Insurer's claim against IEH for reimbursement of insurance proceeds paid to Goodman is a prepetition general unsecured claim against IEH's estate. Regardless of how the Insurer's reimbursement claim is characterized, the fact that such a claim exists should have nothing to do with Goodman's right to proceed against and collect from the Insurer or Miranda.

(2) Section 1129(a)(1) – The Plan Does Not Comply with the Applicable Provisions of Title 11 Because It Does Not Provide the Same Treatment for All General Unsecured Claims in Contravention of Section 1123(a)(4).

35. A chapter 11 plan of reorganization must

> provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest. . . .

11 U.S.C. § 1123(a)(4). Here, the Plan's treatment of Goodman's claim is markedly different from the treatment given for uninsured general unsecured claims (*e.g.,* trade claims), which are included with Goodman's claim in Class 2, in at least two respects.

36. First, as discussed above, the Plan states that Goodman can assert a claim "solely to the extent of available insurance proceeds exceeding any applicable Deductible or SIR. . . ." (Combined Doc. art. VC.(i).) Shockingly, in the context of the Policy, this language can be read as disallowing Goodman's claim in its entirety with the Debtor having no legal basis whatsoever for treating personal injury tort claimants in such a prejudicial and disparate way. The Policy, as stated above upon information and belief, features a $3,000,000 policy limit with a "Fronted Reimbursement of Deductible" endorsement. When the insured's duty to reimburse the insurer is coextensive with the policy limit, there can ***never*** be "available insurance" that "exceed[s] the applicable deductible or SIR. . . ." By this interpretation, Goodman, the holder of an undisputedly valid personal injury claim as established by New York state courts, would never be able to assert that claim in any amount against the non-Debtor Insurer. Clearly, this would be an absurd and unconscionable result. No other Class 2 non-personal injury creditor is subjected to this kind of treatment. In Goodman's case, she is permanently disabled and now the Debtor is trying to ram it to her again.

37. The Debtors' Plan should be patently unconfirmable on this basis alone. No Court should allow such disparate treatment of creditors in the same class.

38. Second, Goodman is forced to seek relief from the Plan injunction before she can pursue collection against the Insurer. (Combined Doc. art. VC.(i), (ii); VIIIF.6.) Other holders of Class 2 claims are not subjected to this requirement. "Same treatment," in section 1123(a)(4), means, among other things, that "all class members must be subject to the same process for claim satisfaction." *In re W.R. Grace & Co.*, 475 B.R. 34, 121 (D. Del. 2012), *aff'd*, 729 F.3d 311 (3d Cir. 2013). Goodman's process for claim satisfaction is very different from the process provided for other holders of unsecured claims. Therefore, the Plan cannot be confirmed under sections 1123(a)(4) and 1129(a)(1).

(3) Section 1129(a)(3) – the Plan was Proposed by Means Forbidden by Law Because It Purports to Grant Core Jurisdiction to the Court to Liquidate and Estimate Personal Injury Tort Claims.

39. The core jurisdiction of the bankruptcy courts does not extend to "liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11." 28 U.S.C. § 157(b)(2)(B).

40. The Combined Document lumps all claims against the insurers together and does not have any specific provisions dealing with the nuances that apply to personal injury claims which may not apply to other parties with claims where insurance coverage may be implicated.

41. The Combined Document provides no analysis of the personal injury claims, nor does it provide any notice to any personal injury claimant that there is a dispute regarding the damages amount the claimant asserted.

42. The Unsecured Creditors' Committee is identified as supporting the Combined Document, but in doing so shows it is not acting in the best interests of all unsecured creditors given the Plan disparately treats unsecured creditors like Ms. Goodman who have been permanently disabled by the Debtor.

43. The Plan is unconfirmable because it appears to vest this Court with core jurisdiction to liquidate and estimate personal injury tort claims, in violation of the statute. The Plan provides that "Claims covered by Insurance Policies may be estimated by this Court for purposes of determining whether a Claim exceeds applicable Deductible or SIR amounts." (Combined Doc. art. VC.(i).) As discussed above, the Plan purports to reduce the amount of insured claims by the amount of any applicable deductible or SIR. (Combined Doc. art. VC.(i).) Thus, estimating an insured claim for the purpose of determining whether the claim exceeds the applicable deductible or SIR amounts is tantamount to estimating the claim for the purpose of distribution. For this reason, confirmation of the Plan must be denied.

44. In *In re Dow Corning Corp*., 211 B.R. 545, 566-67 (Bankr. E.D. Mich. 1997), and *In re PG&E Corp*., No. 19-30088 (DM) (Bankr. N.D. Cal. Aug. 21, 2019) (Dkt. No. 3671), the Courts *sua sponte* recommended that the District Court withdraw the reference of an estimation proceeding involving personal injury and wrongful death claims.

45. The Debtor has not provided sufficient information to support estimation of claims given the inherent prejudice to the unsecured creditors and added barriers to liquidating their claims. In cases with substantially more personal injury claims an estimation proceeding was unecessary. *See, e.g., In re Mallinckrodt*, Case No. 20-12522 (JTD) (Bankr. D. Del.); *In re Boy Scouts of America and Delaware BSA, LLC,* Case No. 20-10343 (LSS) (Bankr. D. Del.); *In re Insys Therapeutics, Inc.,* Case No. 19-11292 (KG) (Bankr. D. Del.); and, *In re TK*

Holdings, Inc., Case No. 17-11375 (BLS) (Bankr. D. Del.) (Dkt. No. 2120).

46. In Goodman's case, the Debtors should have a very good understanding of her damages given the discovery and status of the case. The Debtors have sufficient information to objectively consider the merits of her claim. There is no need for an estimation.

47. There is no 1129 purpose for estimation in this case.

(4) The Plan Purports to Release Non-Debtor Parties in Contravention of Fifth Circuit Law.

48. The Plan includes a provision by which creditors and other non-Debtor parties are deemed to have released certain claims against numerous other non-Debtor parties, including employees of the Debtor (Combined Doc. art. VIII.F.4.) The only way to avoid such a release is to affirmatively "opt out," either by marking the intent to opt out on the creditor's ballot, by filing a timely objection to the releases, or by voting to reject the Plan. (Combined Doc. art. I.A.107.(x)-(z).)

49. The Defendants in Ms. Goodman's suit are the Debtor and a former employee, Nathanial James Miranda. The New York courts ruled that both Defendants are liable. There is no basis provided in the Combined Document for releasing an employee already adjudicated to be liable. On information and belief, both Mr. Miranda and the Debtor are insureds under the Debtor's auto policy and umbrella policy[5].

50. Third-party releases are strongly disfavored in the Fifth Circuit and are approved only in rare cases where the release is (i) consensual, (ii) specific in language, (iii) integral to the plan and/or a condition of settlement, and (iv) given for consideration. *In re*

[5] Ms. Goodman's counsel has requested the Debtor provide a copy of the Navigator policy.

Wool Growers Cent. Storage Co., 371 B.R. 768, 775-76 (Bankr. N.D. Tex. 2007) (citing *Republic Supply Co. v. Shoaf*, 815 F.2d 1046, 1050 (5th Cir. 1987)); *see also FOM P.R. S.E. v Dr. Barnes Eyecenter Inc.*, 255 F. App'x 909, 911-12 (5th Cir. 2007); *Hinijosa Eng'g, Inc. v. Lopez (In re Treyson Dev., Inc*.), Nos. 14-70256, 15-7014, 2016 Bankr. LEXIS 1768, at *57-58 (Bankr. S.D. Tex. Apr. 19, 2016) (citing *Hernandez v Larry Miller Roofing, Inc*., 628 F. App'x 281, 288-89 (5th Cir. 2016)).

51. Goodman objects to any such releases and opts-out.

52. Goodman asserts that the Debtors should be made to satisfy their burden of proof that this is one of the rare cases in which a third-party release is appropriate. Goodman believes that it is not, and that the inclusion of these third-party releases renders the Plan unconfirmable. *See* 11 U.S.C. § 524(e) (with exceptions not relevant here, discharge does not affect liability of third parties); *id*. § 1129(a)(1) (plan must comply with applicable provisions of title 11).

53. Goodman's suit is against the Debtor and a non-Debtor employee who, on information and belief, is also an insured under the Policy. Nothing herein should limit Goodman's claims and rights against the non-Debtor or the non-Debtor's status as an insured under the Policy.

54. For further clarity, by this objection to the non-Debtor releases, Goodman removes herself or opts-out from the definition of "Releasing Parties" and makes the non-Debtor releases inapplicable to her even in the event that the Plan is confirmed. (Combined Doc. art. IA.107.(y).)

(5) The Plan Improperly Seeks a Conclusion of Good Faith Without Findings of Fact Supported by Evidence.

55. The Plan includes this provision:

> Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors, and their Representatives will be deemed to have participated in good faith and in compliance with the Bankruptcy Code.

(Combined Doc. art. VIII.G.) It is inappropriate to state in a plan that confirmation of the plan automatically includes a legal conclusion that the Debtors and their representatives have acted in good faith. A conclusion of good faith requires findings of fact supported by evidence. Goodman insists on strict proof of the same.

V. OBJECTION TO FINAL APPROVAL OF DISCLOSURE STATEMENT

56. A conditionally approved disclosure statement is subject to final approval under section 1125(b) of the Bankruptcy Code as containing adequate information. *See 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* (ECN 471). "Section 1125(a)(1) defines 'adequate information' as that term is used in subsection (b) to include 'information of a kind, and in sufficient detail, as far as is reasonably practicable . . . that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan.'" *Mabey v. Southwestern Elec. Power Co. (In re Cajun Elec. Power Coop.)*, 150 F.3d 503, 518 (5th Cir. 1998). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." *Texas Extrusion*

Corp. v. Lockheed Corp. (In re Texas Extrusion Corp.), 844 F.2d 1142, 1157 (5th Cir.), *cert. denied*, 488 U.S. 926 (1988). "Disclosure statements which are misleading, or which contain unexplained inconsistencies, should not be approved." *In re Applegate Prop., Ltd.*, 133 B.R. 827, 829 (Bankr. W.D. Tex. 1991).

57. As alluded to above, some of the Plan objections set forth herein are also objections to the adequacy of the Disclosure Statement. The Disclosure Statement is deficient in at least the following respects:

- The Disclosure Statement lacks adequate information on the legal basis (if any) on which the Plan can affect the liabilities of non-Debtors and still be confirmable;
- the Disclosure Statement lacks adequate information on the legal basis (if any) on which the Plan can fail to provide the same treatment for all general unsecured claims and still be confirmable;
- the Disclosure Statement lacks adequate information on the legal basis (if any) on which the Plan can purports to grant core jurisdiction to the Court to liquidate and estimate personal injury tort claims and still be confirmable;
- the Disclosure Statement lacks adequate information to support that confirmation of the Plan is better for Goodman than a liquidation under Chapter 7; and
- the Disclosure Statement lacks adequate information on the legal basis (if any) on which the Plan can improperly seeks a conclusion of good faith without findings of fact supported by evidence and still be confirmable.

58. The Disclosure Statement lacks basic information regarding: creditor claims; estimated recoveries; claims subject to insurance coverage; any disputes that the Debtor has related to any damages asserted by claimants; sufficient factual information or basis for a need to estimate claims in this case; etc.

59. The Disclosure Statement also fails to include sufficient information for creditors to make an informed evaluation on how the Debtors determined that the Releases are in the best interests of the estates and whether the Releases are appropriate.

60. Goodman reserves the right to amend and/or supplement this Objection as necessary or appropriate.

VI. RESERVATION OF RIGHTS

61. Goodman continues to review the Combined Document and reserves all rights in connection with any amended Disclosure Statement, Plan, or Supplement the Debtors may file in connection with confirmation of the Plan. Goodman submits this Objection without prejudice to, and with a full reservation of, Goodman's rights to supplement or amend this Objection in advance of, or in connection with, the hearing to finally approve the Disclosure Statement and Plan. Nothing herein is intended to be a waiver by Goodman of any right, objection, argument, claim or defense with respect to any matter, including matters involving the Disclosure Statement and the Plan, all of which are hereby expressly reserved.

VII. PROPOSED LANGUAGE

62. The following is proposed language in an effort to try to resolve objections raised by Goodman but without any waiver of such objections:

> Nothing in the Plan or in the Confirmation Order shall preclude, discharge or enjoin Olaya Z. Goodman ("Goodman") from asserting or continuing litigation post-confirmation in any other proceeding, including but not limited to the civil action styled *Olaya Z. Goodman v. IEH Auto Parts LLC and Nathanial James Miranda*, Index No. 25861/2018E, in the Supreme Court of the State of New York, County of Bronx ("State Court Litigation"), related to any and all claims, defenses, rights or causes of action that Goodman has or may have under or related to or against any insurance policy issued to or for the benefit of any of the Debtors (a "Policy") or other insureds, including non-Debtor insureds under any Policy. Goodman may liquidate her claim for distribution purposes in the State

Court Litigation without any need to seek relief from any relief or injunction provided for in the Plan.

If insurance proceeds are insufficient to pay for the damages due to Goodman, in full, after there is a final judgment adjudicating the damages owed to her or a settlement resolving her claim, then the deficiency shall be treated as an allowed unsecured claim in the captioned case and subject to treatment as a Class 2 claim for distribution purposes. Upon payment of the insurance proceeds, Goodman shall amend her proof of claim to reflect only the deficiency amount.

Nothing in the Plan or the Confirmation Order shall be deemed to waive, impair or prejudice any claims, defenses, rights or causes of action that Goodman has or may have under the provisions, terms, conditions, defenses and/or exclusions contained in any Policy against any Debtor in nominal name, insurers, or non-debtors, including, but not limited to, any and all such claims, defenses, rights or causes of action based upon or arising out of any personal injury or tort claim.

VIII. PRAYER FOR RELIEF

WHEREFORE, Goodman prays that the Court deny confirmation of the Plan, deny final approval of the Disclosure Statement, and grant Goodman such other and further relief to which she may be justly entitled.

DATED: June 13, 2023

Respectfully submitted,

/s/ Deirdre Carey Brown

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COUNSEL FOR OLAYA Z. GOODMAN

CERTIFICATE OF CONFERENCE

On Saturday, June 10, 2022, undersigned counsel for Goodman reached out to Debtors' counsel with proposed language to try to resolve an objection to the Second Amended Plan, but did not receive a response. The proposed language contained in this objection is similar but more detailed than was sent to Debtors' counsel.

/s/ Deirdre Carey Brown
Deirdre Carey Brown

CERTIFICATE OF SERVICE

I certify that on June 13, 2023, I caused a copy of the foregoing *Objection of Olaya Z. Goodman to (1) Confirmation of Second Amended Joint Plan of Liquidation of IEH Auto Parts Holding LLC and its Debtor Affiliates and (2) Final Approval of Second Amended Disclosure Statement of IEH Auto Parts Holding LLC and its Debtor Affiliates* to be served by the Electronic Case Filing System to all parties registered for ECF notice in the above-captioned case.

/s/ Deirdre Carey Brown
Deirdre Carey Brown