

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)
)
)
) **Re: Docket No. 749**

MOTION OF DRiV AUTOMOTIVE INC. TO COMPEL THE DEBTORS TO MAKE DISTRIBUTIONS TO DRiV AUTOMOTIVE INC. PURSUANT TO THE THIRD 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

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you do oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

DRiV Automotive Inc., together with certain subsidiaries and affiliates (collectively, “DRiV”) seeks entry of an order, substantially in the form attached hereto (the “Order”) (a) compelling the Debtors to make a distribution to DRiV, on account of the proofs of claim that were filed by DRiV Automotive Inc. and Beck Arnley Holdings LLC, pursuant to

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.



the provisions of the *Third 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. 738] (the “Plan”) and as attached as Exhibit A to the *Order Confirming the Third 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. 749] (the “Confirmation Order”)—specifically Article III(A)(1) of the Plan with respect to holders of Administrative Expense Claims²—by delivering to DRiV its “Cash equal to the full unpaid amount of such Allowed Administrative Expense Claim” with respect to the two Administrative Expense Claims for DRiV Automotive Inc. and Beck Arnley Holdings LLC in the original proofs of claim amounts of \$4,963,555.63 and \$76,427.77, respectively, and (b) granting such other relief as is just and proper. DRiV states the following in support of this motion (this “Motion”):³

Introduction and Relief Requested

1. These chapter 11 cases have moved swiftly to a conclusion that maximized value for stakeholders. Within the span of a few months, the Debtors filed for chapter 11, mediated a key settlement with the Committee (as defined herein) that preserved value for trade creditors, conducted a robust sale process, and negotiated, filed, and prosecuted a chapter 11 plan of liquidation. For the trade creditors who provided crucial goods in the days leading up to the chapter 11 filing, this swift case timeline offered the promise of prompt payment of 503(b)(9) and general

² Terms used but not defined herein shall have the meaning given to them in the Plan.

³ Contemporaneously herewith, DRiV will file the *Declaration of Michael Duffy, Global Aftermarket Accounts Receivable Director of DRiV Automotive Inc., In Support of the Motion of DRiV Automotive Inc. to Compel Debtors to Make Distributions to DRiV Automotive Inc. Pursuant to the Third 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 “Duffy Declaration”), which includes additional facts and copies of relevant documents.

unsecured claims. Since confirmation of the Plan in mid-June, however, this forward progress towards distributions to creditors waned. Months passed before the Plan went effective, extending the expected timelines for distributions to creditors on account of both 503(b)(9) Claims and General Unsecured Claims (each as defined in the Plan), as contemplated in the global settlement reached by the Committee and the Debtors and memorialized in the Plan. While time continues to pass, the Wind-Down Debtors do not appear to be any closer to finalizing the reconciliation process and paying out 503(b)(9) Claims. Requests from interested stakeholders for more information or to ascertain an expected timeframe for initial distributions on account of these 503(b)(9) Claims remain unanswered. As of the date of this Motion, the Wind-Down Debtors have failed to make any distribution to DRiV with respect to its 503(b)(9) Claims and seek certainty from the Court that distributions will be made “as soon as practicable” as promised in the Plan, and before December 31, 2023.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157 (b). DRiV confirms its consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 1142 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 6004, and Bankruptcy Local Rule 9013-1.

Relevant Factual Background

5. On January 31, 2023 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code (collectively, the “Cases”). The Court authorized the Debtors to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On February 14, 2023, the United States Trustee appointed an official committee of unsecured creditors (the “Committee”) [Docket No. 99]. Upon the Plan Effective Date, the Committee was discharged from further duties, responsibilities, and obligations related to the chapter 11 cases. DRiV was a member of the Committee during the pendency of the Chapter 11 cases.

7. Following the commencement of these chapter 11 cases, DRiV sent the Debtors a reclamation demand letter demanding reclamation of all goods received by the Debtors identified in the attachments to the letter, the total cost of which was over \$11.8 million. The reclamation demand letter further requested an immediate accounting and inventory from the Debtors of all goods subject to the reclamation demand. Following this initial correspondence, DRiV provided additional data and documentation to facilitate the prompt reconciliation of its prepetition claims, including its 503(b)(9) Claims. The reclamation demand letter is attached to the Duffy Declaration as Exhibit C.

8. On March 13, 2023, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, and (IV) Approving Notice of Bar Dates* [Docket No. 222] (the “Bar Date Order”). The Bar Date Order mandated that

Proofs of Claim, including on account of any 503(b)(9) Claims, must be filed so as to be actually received on or before May 1, 2023.

9. On April 27, 2023, DRiV timely filed a proof of claim [Claim No. 500] (the “DRiV PoC”), asserting a general unsecured claim in the amount of \$44,271,764.53, \$4,963,555.63 of which is asserted pursuant to section 503(b)(9) of the Bankruptcy Code (the “DRiV 503(b)(9) Claim”). A copy of the DRiV PoC is attached to the Duffy Declaration as Exhibit A.

10. On April 27, 2023, DRiV, on behalf of its affiliate Beck Arnley, LLC, timely filed an additional proof of claim [Claim No. 499] (the “Beck Arnley PoC,” and together with the DRiV PoC, the “PoCs”), asserting a general unsecured claim in the amount of \$409,758.39, \$76,427.77 of which is asserted pursuant to section 503(b)(9) of the Bankruptcy Code (the “Beck Arnley 503(b)(9) Claim”, and together with the DRiV 503(b)(9) Claim, the “DRiV Administrative Expense Claims”). A copy of the Beck Arnley PoC is attached to the Duffy Declaration as Exhibit B.

11. Both the DRiV PoC and the Beck Arnley PoC were filed with necessary supporting documentation, including a detailed invoice annexed to both of the proofs of claims.

12. On June 16, 2023, the Court entered the *Order Confirming the Third 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*.

13. On October 6, 2023, the Plan became effective. Following its receipt of notice of the Plan Effective Date, DRiV confirmed with counsel to the Committee that it was not necessary to file any further motion for allowance and payment of an Administrative Expense Claim on account of its 503(b)(9) Claims, as the 503(b)(9) claims were already included in the PoCs. The

Committee's counsel forwarded to DRiV an email from Debtors' counsel dated October 10, 2023, confirming the same.

14. Since the commencement of these chapter 11 cases, DRiV has endeavored to maintain an open dialogue with the Debtors and Wind-Down Debtors, as applicable.

15. As detailed in the Duffy Declaration, DRiV has met and conferred with the representatives from the Debtors and Wind-Down Debtors, as applicable, and their advisors on multiple occasions in good faith regarding the Claim amounts in the interest of having their Claims reconciled expeditiously.

16. The Wind-Down Debtors have still not provided DRiV with any support for disputing the claim amounts in the roughly four months following confirmation of the Plan. DRiV is concerned that the Wind-Down Debtors' internal account systems may not accurately track "drop ships" or other categories of purchases and has provided additional support regarding these shipments in order to expedite the process. But this supplemental information remains unanswered by Wind-Down Debtors and indeed, the Wind-Down Debtors have acknowledged to Committee counsel that their internal accounting system may not track "drop ships."

17. The Debtors or the Wind-Down Debtors, as applicable, have not filed an objection to the 503(b)(9) portion of either of the PoCs submitted timely by DRiV in April 2023. To the extent that the Wind-Down Debtors dispute the amounts asserted in the PoCs, they have not provided DRiV or DRiV's counsel with any further details or documentation as to the basis for a disputed amount. As detailed below, this Court has the authority, and should compel the Wind-Down Debtors to distribute the amounts asserted pursuant to section 503(b)(9) of the Bankruptcy Code as soon as reasonably possible and in no event later than December 31, 2023.

Basis for Relief

18. Pursuant to Section 1142 of the Bankruptcy Code and Bankruptcy Rule 3020, DRiV requests that the Court enforce the Confirmation Order by compelling the Wind-Down Debtors to pay the 503(b)(9) Claims due to DRiV under the Plan and Confirmation Order. Section 1142(a) of the Bankruptcy Code mandates a debtor's compliance with any court order relating to the Plan, commanding, in relevant part, that: "the debtor . . . shall carry out the plan and shall comply with any orders of the court." 11 U.S.C. § 1142(a). The Plan, as approved by the Court, is a binding contract between the Debtors and the Wind-Down Debtors, as applicable, and their creditors, including DRiV, and should be enforced.

19. With regard to its 503(b)(9) Claims, DRiV is entitled to "cash equal to the full unpaid amount of such Allowed Administrative Expense Claim" pursuant to Article III(A)(1) of the Plan. DRiV timely filed both of its PoCs prior to the May 1, 2023 Bar Date, as set forth in the Bar Date Order. The amounts of the Claims, including the 503(b)(9) portion of the Claims listed in the PoCs differ from those of the Debtors' Schedules. These Claims would be considered Disputed Claims under the Plan and must be reconciled before such Claims can be considered "Allowed." *See* Plan Art. VI.M. While the plain language of the Plan prevents creditors from receiving Distributions on account of a Disputed Claim until all disputes have been resolved "by settlement or Final Order," this should not be construed as an invitation for the Plan Agent to drag its feet in reconciling these claims so that they may be allowed.

20. Both claims were "filed on or before the applicable Bar Date" on May 1, 2023, and to date "no objection to the allowance thereof has been filed" and it is not clear if an objection will be filed.⁴

⁴ *See* Art. I(A)(7) of the Plan, defining "Allowed" as (a) any Claim (i) for which a proof of Claim has been timely filed on or before the applicable Bar Date (or for which a proof of Claim is not required to be filed pursuant to

21. The Plan further provides that the above referenced payments to holders of Allowed Administrative Expense Claims

“shall be made at the Debtors’ option (i) in the ordinary course of business or (ii) on the latest to occur of (i) the Effective Date (or as soon as reasonably practicable thereafter), (ii) the date such Claim becomes an Allowed Administrative Expense Claim (or as soon as reasonably practicable thereafter), and (iii) such other date as may be agreed upon by the Plan Agent and the Holder of such Claim.”
See Art. III(A)(1)(a).

22. DRiV represents that while the Wind-Down Debtors maintain some level of flexibility with respect to the timing of their distributions to holders of Allowed Administrative Expense Claims, by not making any distribution to DRiV over a month after the Effective Date, engaging in any meaningful reconciliation efforts, or filing any objections to the 503(b)(9) Claims, the Wind-Down Debtors are exceeding the level discretion afforded to them under the Plan and should be compelled to promptly reconcile these 503(b)(9) Claims so that Distributions under the Plan can be made by the end of the year.

23. Furthermore, the Confirmation Order authorizes the Wind-Down Debtors and the Plan Agent to consummate the Plan and the transaction contemplated thereby, including the distributions of cash, *on the Effective Date*. Confirmation Order at ¶ 18 (emphasis added).

24. Given the Debtors’ and the Wind-Down Debtors’ failure to reconcile these Claims prior to the Effective Date, and no further efforts from the Wind-Down Debtors to pick up the baton, the Court may enforce the terms of the Plan pursuant to section 1142(b) of the Bankruptcy

the Bankruptcy Code or a Final Order) or (ii) that is identified in the Schedules as of the Effective Date as not disputed, not contingent and not unliquidated, and for which no proof of Claim has been timely Filed; provided that, in each case, any such Claim shall be considered Allowed only if and to the extent that no objection to the allowance thereof has been filed or such an objection has been filed and the Claim thereafter has been Allowed by a Final Order; or (b) any Claim expressly deemed allowed by the Plan or allowed by a Final Order of the Bankruptcy Court (including pursuant to any stipulation or settlement agreement approved by the Bankruptcy Court). Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered Allowed Claims.

Code. Specifically, section 1142(b) provides that the Court “may direct the debtor and any other necessary party . . . to perform any other act . . . that is necessary for the consummation of the plan.” 11 U.S.C. § 1142(b). In response, courts have compelled debtors to make required plan payments. *See In re Coral Air, Inc.*, 40 B.R. 979, 983 983-84 (D.V.I. 1984) (ordering payments to creditors from certain accounts and requiring that funds be held to implement the plan); *see also Gray v. Polar Molecular Corp. (In re Polar Molecular Corp.)*, 195 B.R. 548 (Bankr. D. Mass. 1996) (holding court has jurisdiction to compel debtor to make plan payments).

25. In addition, section 105(a) of the Bankruptcy Code permits the Court to “tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders.” 11 U.S.C. § 105(a). Although there are limits to the authority given to the Court under § 105, it specifically allows courts to “enforce or implement” its earlier lawful orders and “to compel parties to comply with orders it has issued.” *In re Perales*, No. 05-70268-13, 2016 WL 4444311, at *5 (Bankr. S.D. Tex. Aug. 23, 2016); *see In re Bradley*, 588 F.3d 254, 266 (5th Cir. 2009) (finding section 105 gives a bankruptcy court civil contempt power). Thus, the Court should direct the Wind-Down Debtors to promptly reconcile the 503(b)(9) Claims and tender all amounts owed to DRiV by the end of the year.

Conclusion

Because DRiV is entitled to prompt distributions on account of their Administrative Claims based on this Court’s Confirmation Order and the Plan, the Court should compel compliance therewith and order distributions be made to DRiV as soon as practicable and in no event, later than December 31, 2023 and grant such other relief as is just and proper.

Houston, Texas
November 10, 2023

/s/ Chad J. Husnick

Nick Brown (Texas Bar No. 24092182)

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Counsel to DRiV Automotive Inc.

Certificate of Service

I certify that on November 10, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Chad J. Husnick

Chad J. Husnick, P.C.

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

In re:)	
)	Chapter 11
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)	Case No. 23-90054 (CML)
Debtors.)	(Jointly Administered)
)	
)	Re: Docket No. ___

**ORDER APPROVING MOTION
OF DRiV AUTOMOTIVE INC. TO COMPEL THE DEBTORS TO
MAKE DISTRIBUTIONS TO DRiV AUTOMOTIVE INC. PURSUANT
TO THE THIRD 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**

Upon the motion (the “Motion”)² of DRiV Automotive Inc. on behalf of itself and certain subsidiaries and affiliates (collectively, “DRiV”) for entry of an order (this “Order”), (a) compelling the Debtors to make distributions in fulfilment of all of the Allowed DRiV Administrative Expense Claims and (b) granting such other relief as is just and proper, all as more fully set forth in the Motion; and upon the Duffy Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that

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² Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

venue of this proceeding and the Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors shall make Distributions on account of all of the Allowed DRiV Administrative Expense Claims as soon as reasonably practicable and in any event no later than December 31, 2023.

2. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

3. Notice of the Motion as provided therein shall be deemed good and sufficient and satisfies the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules.

4. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Houston, Texas

Dated: _____, 2023

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE