

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

In re:	§	
	§	Chapter 11
AUTO PLUS AUTO SALES, LLC, ¹	§	
	§	Case No. 23-90055 (CML)
Wind-Down Debtors.	§	
	§	(Formerly Jointly Administered
	§	under Lead Case IEH Auto Parts
	§	Holding LLC, Case No. 23-90054)
	§	

JACKSON WALKER LLP’S MOTION FOR ENTRY OF AN ORDER REQUIRING ANY PARTY-IN-INTEREST WHO ASSERTS STANDING OR INDISPENSABLE PARTY STATUS TO FILE A NOTICE STATING A BASIS FOR INDISPENSABLE PARTY STATUS OR STANDING IN CONNECTION WITH JACKSON WALKER LLP FEE MATTERS

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 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.

¹ The Wind-Down Debtor’s service address is: 5330 Carmel Crest Lane, Charlotte, North Carolina 28226. All pleadings related to these chapter 11 cases may be obtained from the website of the Wind Down Debtor’s claims and noticing agent at <https://www.kccllc.net/autoplus>.



TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Jackson Walker LLP (“JW”) files this *Motion for Entry of an Order Requiring Any Party-in-Interest Who Asserts Standing or Indispensable Party Status to File a Notice Stating a Basis for Indispensable Party Status or Standing in Connection with Jackson Walker LLP Fee Matters* (the “Motion”), and in support thereof, states as follows:

BACKGROUND

1. On November 2 and 3, 2023, Kevin M. Epstein, the United States Trustee for Region 7 (the “U.S. Trustee”), filed a *Motion for Relief from Judgment of Order Pursuant to Federal Rule of Civil Procedure 60(b)(6) and Federal Rule of Bankruptcy Procedure 9024 Approving any Jackson Walker Applications for Compensation and Reimbursement of Expenses* (the “Rule 60(b) Motion”) in seventeen cases (the “Affected Cases”).²

2. On December 7, 2023, Chief Judge Rodriguez initiated a miscellaneous proceeding styled *In re Professional Fee Matters Concerning the Jackson Walker Law Firm*, Misc. Proc. No. 23-00645 (the “Miscellaneous Proceeding”).

3. On December 9, 2023, Chief Judge Rodriguez entered an *Order Commencing Miscellaneous Proceeding Regarding Employment Orders and Awarded Fees and Expenses to Jackson Walker in Affected Cases* [Misc. Proc. No. 23-00645, Dkt. No. 2] (the “Miscellaneous Procedural Order”) in the Miscellaneous Proceeding.

4. On December 12, 2023, Judge Isgur—who presides over four of the seventeen Affected Cases—conducted a status conference where JW, the U.S. Trustee, and certain other parties discussed various procedural and substantive issues relating to both the U.S. Trustee motions and related pleadings filed in the Affected Cases that seek similar relief. At that status

² On February 29, 2024, the U.S. Trustee filed an amended Rule 60(b) Motion in each of the Affected Cases.

conference, Judge Isgur inquired as to who may or may not be an indispensable party and who may or may not have standing in the Affected Cases in respect to the relief sought in respect of JW. At the conclusion of that status conference, this Court “asked the parties to identify any indispensable parties that must be joined in the proceeding to enable the Court to grant effective relief,” and required that any “[p]otential parties must respond by [a date and time certain]” with a subsequent hearing to be held. Shortly thereafter, on December 20, 2023, Judge Isgur entered an *Order Requiring Any Party-in-Interest Who Asserts Standing or Indispensable Party Status to File a Notice Stating a Basis for Indispensable Party Status or Standing in Connection with Jackson Walker LLP Fee Matters* (the “Order Requiring Notice”) in each of the four Affected Cases pending before this Court.³

5. On December 21, 2023, Chief Judge Rodriguez also held a status conference in the Miscellaneous Proceeding where he asked both JW and the U.S. Trustee, among other things, to “identify any indispensable parties that must be joined in [the] Miscellaneous Proceeding to enable the Court to grant effective relief.” *See Order Setting Non-Evidentiary Electronic Status Conference* [Misc. Proc. No. 23-00645, Dkt. No. 20]. Judge Rodriguez also expressed his view that the underlying presiding Judge should address these substantive indispensable party and standing issues in each of the Affected Cases. *See Dec. 21 Hr’g Tr.* at 35:10-15 (“Right. And as I stated before, that decision will be made by the independent -- by the presiding judge and whether they should participate or not and pleadings could be filed in that case and that could be made by

³ *In re 4E Brands Northamerica LLC*, Case No. 22-50009 [Dkt. No. 582]; *In re Neiman Marcus Group, LTD, LLC*, Case No. 20-32519 [Dkt. No. 3202]; *In re Strike, LLC*, Case No. 21-90054 [Dkt. No. 1521]; *In re Seadrill Partners, LLC*, Case No. 20-35740 [Dkt. No. 853].

that presiding judge, and of course, everyone would have an opportunity to object and participate in that hearing.”).⁴

6. Thereafter, on January 3, 2024 JW filed an *Emergency Motion for Entry of an Order Requiring any Party-in-Interest Who Asserts Standing or Indispensable Party Status to File a Notice Stating a Basis for Indispensable Party Status or Standing in Connection with Jackson Walker LLP Fee Matters* (the “Standing Motion”) in each of the twelve cases that were already opened and pending before this Court.⁵ On March 21, 2024, this Court held a status conference regarding the Standing Motion, and on March 25, 2024, this Court entered a similar *Order Requiring Notice* in each of the open and pending Affected Cases.⁶

7. On March 29, 2024, the U.S. Trustee filed a *Motion for (1) Relief from Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6) and Federal Rule of Bankruptcy Procedure 9024 Approving Compensation Applications of Jackson Walker LLP, (2) Sanctions, and (3) Related Relief* (the “Additional Rule 60(b)(6) Motion”) in this case. Substantially identical motions were filed in the other cases.⁷

⁴ On February 7, 2023, Chief Judge Rodriguez also entered an Order Requiring Notice in the *Brilliant Energy* case pending before him.

⁵ See *In re Mule Sky LLC, et al.*, Case No. 20-35561; *In re Whiting Petroleum Corporation, et al.*, Case No. 20-32021; *In re Tug Robert J. Bouchard Corporation*, Case No. 20-34758; *In re Sungard AS New Holdings, LLC, et al.*, Case No. 22-90018; *In re Stage Stores, Inc., et al.*, Case No. 20-32564; *In re Seadrill Limited*, Case No. 21-30427; *In re J.C. Penney Direct Marketing Services LLC*, Case No. 20-20184; *In re Chesapeake Energy Corporation, et al.*, Case No. 20-33233; *In re Basic Energy Services, Inc.*, Case No. 21-90002; *In re Katerra, Inc. et al.*, Case No. 21-31861.

⁶ See *In re Mule Sky LLC, et al.*, Case No. 20-35561 [Dkt. No. 1122]; *In re Whiting Petroleum Corporation, et al.*, Case No. 20-32021 [Dkt. No. 1470]; *In re Tug Robert J. Bouchard Corporation*, Case No. 20-34758 [Dkt. No. 396]; *In re Sungard AS New Holdings, LLC, et al.*, Case No. 22-90018 [Dkt. No. 1051]; *In re Stage Stores, Inc., et al.*, Case No. 20-32564 [Dkt. No. 250]; *In re Seadrill Limited*, Case No. 21-30427 [Dkt. No. 1630]; *In re J.C. Penney Direct Marketing Services LLC*, Case No. 20-20184 [Dkt. No. 1386]; *In re Chesapeake Energy Corporation, et al.*, Case No. 20-33233 [Dkt. No. 583]; *In re Basic Energy Services, Inc.*, Case No. 21-90002 [Dkt. No. 1800]; *In re Katerra, Inc. et al.*, Case No. 21-31861 [Dkt. No. 2101].

⁷ See *In re Altera Infrastructure Project Services, LLC (MI)*, Case No. 22-90129 [Dkt. No. 96]; *In re Sanchez Energy Corporation*, Case No. 19-34508 (MI) [Dkt. No. 2930].

8. JW thus files this Motion seeking substantially similar relief in this case as previously ordered by this Court in the Affected Cases.

BASIS FOR RELIEF

9. Section 105(a) of the Bankruptcy Code provides that the court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 105(a) allows the bankruptcy court to “craft flexible remedies that, while not expressly authorized by the [Bankruptcy] Code, effect the result the [Bankruptcy] Code was designed to obtain.”⁸

10. Standing is a threshold issue that must be determined before a decision on the merits can be reached in the this case.⁹ Standing includes both constitutional and prudential components. Further, under section 1109(b) of the Bankruptcy Code, only a “party in interest” has standing to raise, appear, and be heard on issues in a bankruptcy case.¹⁰

11. To have constitutional standing to proceed with an action, a plaintiff must meet three elements:

First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly trace[able] to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”¹¹

⁸ *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 235-36 (3d Cir. 2004) (citing *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003)).

⁹ *See Audler v. CBC Innovis Inc.*, 519 F.3d 239, 247-48 (5th Cir. 2008) (“Because standing is a jurisdictional requirement, we must address it before considering the merits of an appellant’s claim.”); *see also Williams v. Parker*, 843 F.3d 617, 620 (5th Cir. 2016).

¹⁰ *See* 11 U.S.C. § 1109(b).

¹¹ *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations and citations omitted); *see also Cibolo Waste, Inc. v. City of San Antonio*, 718 F.3d 469, 473 (5th Cir. 2013).

Each of the three elements must exist for a party to establish constitutional standing.¹²

12. Establishing constitutional standing is not enough on its own, however, as a plaintiff must also have prudential standing.¹³ Prudential standing “encompasses the general prohibition on a litigant’s raising another person’s legal rights.”¹⁴ In other words, “a plaintiff generally must assert his own legal right and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.”¹⁵

13. Lastly, in bankruptcy cases, pursuant to section 1109(b) of the Bankruptcy Code, a plaintiff has standing only if he or she is a “party in interest.”¹⁶ While “party in interest” is not defined in the Bankruptcy Code, courts have held that it generally means “anyone who has a legally protected interest that could be affected by the bankruptcy case.”¹⁷ “But standing as a creditor requires more than identity; it also requires interest . . . that is particular and direct to that creditor.”¹⁸

14. As emphasized by this Court, Judge Isgur, and Chief Judge Rodriguez, establishing who qualifies as an indispensable party or who otherwise has standing to challenge any JW fees in the Affected Cases (including in this case) are critical, threshold issues that must be determined before the Court can address the underlying merits of the relief requested by the U.S. Trustee. The

¹² *Williams*, 843 F.3d at 621.

¹³ *Cibolo Waste, Inc.*, 718 F.3d at 474.

¹⁴ *Id.*; see also *St. Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 539 (5th Cir. 2009).

¹⁵ *Superior MRI Servs., Inc. v. All. Healthcare Servs., Inc.*, 778 F.3d 502, 504 (5th Cir. 2015) (quoting *United States v. Johnson*, 632 F.3d 912, 919-20 (5th Cir. 2011)).

¹⁶ See 11 U.S.C. § 1109.

¹⁷ *Matter of Xenon Anesthesia of Tex., P.L.L.C.*, 698 F. App’x 793, 794 (5th Cir. 2017); see *In re Megrelis*, No. 13-35704-H3-7, 2014 WL 4558927, at *2 (Bankr. S.D. Tex. Sept. 12, 2014).

¹⁸ *In re Friede Goldman Halter Inc.*, 600 B.R. 526, 531-32 (Bankr. S.D. Miss. 2019) (citing *In re E.S. Bankest, L.C.*, 321 B.R. at 595 (noting that “[t]he Bankruptcy Code is replete with examples where a creditor may not have standing to object,” including to portions of a chapter 11 plan that do not affect the creditor’s direct interests)).

identification of parties asserting standing or indispensable party status is also crucial for ensuring due process and a fair and effective resolution for all parties.

CONCLUSION

For the foregoing reasons, JW respectfully requests that this Court enter an order substantially in the form attached hereto, granting the relief requested and granting JW such other and further relief as may be just and proper.

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Dated: April 12, 2024

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/ Jason L. Boland

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Counsel for Jackson Walker LLP

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2024, 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/ Jason L. Boland

Jason L. Boland

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

In re: AUTO PLUS AUTO SALES, LLC, ¹ Wind-Down Debtors.	§ § § § § § § § §	Chapter 11 Case No. 23-90055 (CML) (Formerly Jointly Administered under Lead Case IEH Auto Parts Holding LLC, Case No. 23-90054)
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**ORDER REQUIRING ANY PARTY-IN-INTEREST WHO ASSERTS STANDING OR
INDISPENSABLE PARTY STATUS TO FILE A NOTICE STATING A BASIS FOR
INDISPENSABLE PARTY STATUS OR STANDING IN CONNECTION WITH
JACKSON WALKER LLP FEE MATTERS**

[Relates to Dkt. No. _____]

This Order relates to claims that Jackson Walker LLP should return to this bankruptcy estate all or part of the compensation that it was previously awarded in this case. A motion has been filed by the United States Trustee seeking that relief. The Court orders:

1. Any party-in-interest claiming to be an indispensable party pursuant to Fed. R. Bankr. P. 7019 or otherwise claiming to have standing to seek that Jackson Walker LLP return compensation to this bankruptcy estate must file a notice (the “Notice”) with the Court asserting the basis for such indispensable party status or standing no later than May 27, 2024, at 5:00 p.m. (prevailing Central Time).

2. Jackson Walker LLP and the United States Trustee may each file a brief no later than June 10, 2024, at 5:00 p.m. (prevailing Central Time) identifying any person or entity that they allege to be an indispensable party.

¹ The Wind-Down Debtor’s service address is: 5330 Carmel Crest Lane, Charlotte, North Carolina 28226. All pleadings related to these chapter 11 cases may be obtained from the website of the Wind Down Debtor’s claims and noticing agent at <https://www.kccllc.net/autoplus>.

3. Because a plan has already been confirmed, the terms of the confirmed plan will control whether a party-in-interest has standing or is indispensable. ***Failure to file a Notice will NOT preclude a party-in-interest from receiving distributions under the confirmed plan. A party-in-interest does not need to take any further action to preserve the rights granted under the confirmed plan.*** Failure to timely file the Notice as required by paragraph 1 may, and probably will, bar any party-in-interest from later asserting standing or indispensable party status in this litigation.

4. The Court will conduct a hearing on _____, 2024, at _____ a.m./p.m. (prevailing Central Time) to determine who has standing or status as an indispensable party in this proceeding with respect to recoveries from Jackson Walker LLP to this bankruptcy estate. Any party who files a Notice should appear and be prepared to argue the merits of the Notice.

5. The Clerk is directed to serve this Order on all parties-in interest. The United States Trustee and Jackson Walker LLP must serve a copy of this Order on any additional person or entity who they reasonably believe might have standing or indispensable party status.