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

In re:	**Chapter 11**
AUTO PLUS AUTO SALES, LLC, *et al.*,[1]	**Case No. 23-90055**
Wind-Down Debtors.	**Formerly Jointly Administered under Lead Case IEH Auto Parts Holding LLC, Case No. 23-90054**

UNITED STATES TRUSTEE'S BRIEF IN RESPONSE TO THE COURT'S ORDER SEEKING DETERMINATION ON "INDISPENSABLE" PARTIES TO THE U.S. TRUSTEE'S RULE 60(b)(6) MOTION

TO THE HONORABLE CHRISTOPHER M. LOPEZ,
UNITED STATES BANKRUPTCY JUDGE:

Kevin Epstein, United States Trustee for Region 7 ("U.S. Trustee") files this Brief in Response to the Court's Order Seeking Determination on "Indispensable" Parties to the U.S. Trustee's Rule 60(b)(6) Motion to Vacate ("Rule 60(b)(6) Motion") [ECF No. 50] and in support thereof, respectfully represents as follows:

INTRODUCTION

1. The fact that a party has standing to participate in a proceeding does not necessarily mean that the party's participation is required such that the case must be dismissed if the party's participation is not feasible. That is the case here, where the Bankruptcy Code broadly defines who is a "party in interest" that may participate in proceedings, but the narrow provisions of Rule 19 for who is an indispensable party are not met for anyone other than Jackson Walker LLP ("Jackson Walker") and the U.S. Trustee.

[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.

2. There are no Rule 19 required (indispensable) parties to the U.S. Trustee's Rule 60(b)(6) Motion other than Jackson Walker and the U.S. Trustee. Federal Rule of Civil Procedure 19 and its bankruptcy analogue that applies to adversary proceedings, Rule 7019, require joinder of a party if either the Court could not afford complete relief without that party's joinder or the party's absence risks its ability to protect its interests or exposes another party to inconsistent obligations. Here, the relief the U.S. Trustee has sought addresses Jackson Walker's alleged misconduct that implicates Jackson Walker's fee awards. The only parties necessary to adjudicate these issues are the U.S. Trustee and Jackson Walker. And because the absence of other parties neither risks their interests nor exposes Jackson Walker to inconsistent obligations, there are no other required parties.

3. To be clear, the U.S. Trustee welcomes broad stakeholder participation in these serious matters, and he does not seek to limit the ability of any party in interest to join his Rule 60(b)(6) Motion or restrict their ability to vindicate their interests arising from matters related to Jackson Walker's alleged misconduct as debtor's counsel.[2]

RELEVANT FACTUAL BACKGROUND

4. On March 29, 2024, the U.S. Trustee filed the Rule 60(b)(6) Motion in this case to vacate the final order awarding fees to Jackson Walker and sanction Jackson Walker by ordering the return of any paid fees and expenses for its violations of the Bankruptcy Code, Bankruptcy Rules, their fiduciary duties, the Local Rules, and the Disciplinary Rules. The Rule 60(b)(6) Motion is based on the undisclosed relationship between Jackson Walker's former partner,

[2] The Court's order requires that a notice be filed by May 31st, the same day that this brief is due. It is not yet known who, if any party, will file a notice before the ordered deadline.

Elizabeth Freeman, and former Judge David Jones, who was disqualified to serve as mediator in this case based on the intimate household relationship he shared with Ms. Freeman.

5. On May 13, 2024, the Court entered an order (the "Indispensable Party Order") requiring parties that assert indispensable party status or otherwise claim standing to file a notice asserting a basis for such status or standing. ECF No. 130. The Indispensable Party Order also invited briefing from the U.S. Trustee and Jackson Walker to "identify[] any person or entity that they allege to be an indispensable party." *Id.*

6. On May 17, 2024, the Court entered an order transferring the Rule 60(b)(6) Motion to a previously established miscellaneous proceeding for discovery and pre-trial purposes.[3]

LAW AND ARGUMENT

A. There Are No Required ("Indispensable") Parties to the U.S. Trustee's Rule 60(b)(6) Motion.

7. Rule 19 of the Federal Rules of Civil Procedure governs who may be "required" parties in civil actions. The 2007 restyling amendments, which substituted the word "required" for "indispensable," provides that:

> (1) *Required Party*. A person . . . must be joined as a party if
>
> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
>
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
>
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

[3] *In re Professional Fee Matters Concerning the Jackson Walker Law Firm*, Misc. No. 23-645 (Bankr. S.D. Tex.).

8. Fed. R. Civ. P. 19; *see also* Fed. R. Bankr. P. 7019 (incorporating Rule 19 in adversary proceedings). Rule 19 does not apply in contested matters unless the court "direct[s] that one or more of the other rules in Part VII shall apply." Fed. R. Bankr. P. 9014(c). "[T]here is no mandatory joinder rule in contested matters." *In re Mutual Benefits Offshore Fund, Ltd*., 508 B.R. 762, 771 (Bankr. S.D. Fla. 2014); *see also Subway Equip. Leasing Corp. v. Sims (In re Sims*), 994 F.2d 210, 220 (5th Cir. 1993) (Rule 7019 does not apply to contested matters under Rule 1018 unless the court so directs). But if Rule 7019 will be applied, the Court "shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order." Fed. R. Bankr. P. 9014(c).

9. There are two steps to the Rule 19 analysis. *Mutual Benefits*, 508 B.R. at 771. First, the Court must determine if a party is required either because the Court cannot afford complete relief without it or because the party's absence risks its ability to protect its own interests or exposes an existing party to multiple or inconsistent obligations. *Id.* "To be a necessary and indispensable party, that party must have interests that they are unable to protect if the case goes forward without them. Some interest and some adverse effect is insufficient." *Bates v. Laminack*, 938 F. Supp. 2d 649, 661 (S.D. Tex. 2013) (internal citations omitted). But "a party is not indispensable based on allegations which are insufficient and purely speculative." *Mutual Benefits*, 508 B.R. at 771; *accord P.R. Asphalt, LLC v. Banco Popular de P.R. (In re Betteroads Asphalt, LLC)*, 17-04156, 2020 WL 7048697, at *13 (D.P.R. Nov. 30, 2020) (finding that a party claiming to be indispensable was neither indispensable under Rule 19, had the Rule even applied, nor a person aggrieved for appellate standing because the party's "allegations are speculative at

best as the adverse effects they alleged to be subject to are yet to materialize . . .").[4] And the party alleging that it or another party is indispensable bears the burden of proof. *Mutual Benefits*, 508 B.R. at 771. Second, if the Court determines an absent party is a required one but their joinder is not feasible, the Court must then determine if the proper remedy is to proceed anyway, in equity or good conscience, or to dismiss the case, considering the illustrative factors listed in the Rule and any others the Court may deem relevant. Fed. R. Civ. P. 19(b).

10. The U.S. Trustee's Rule 60(b)(6) Motion makes only two requests for relief: (i) vacatur of all orders approving Jackson Walker's fees and expenses and (ii) sanctions against Jackson Walker. Analyzing these narrow requests under Rule 19's two-part test establishes there are no missing required parties.

11. First, the Court can afford complete relief on the U.S. Trustee's two requests by vacating the fee orders and sanctioning Jackson Walker without joining any parties beyond the U.S. Trustee and Jackson Walker.

12. Second, neither request, if granted, would leave a party in interest unable to protect its interests going forward. *See* Fed. R. Civ. P. 19 (a)(1)(B)(i). The U.S. Trustee seeks relief only against Jackson Walker. An order vacating Jackson Walker's fee awards and sanctioning Jackson Walker would negatively affect only Jackon Walker's financial interests. Further, granting the U.S. Trustee's motions will not impair any other party's rights to seek relief. As noted below, all parties in interest have a right to participate if they so choose. And as the Court's order expressly states: "***Failure to file a Notice will NOT preclude a party-in-interest from receiving distributions***

[4] The appellant allegedly received significant fraudulent transfers from the debtor just before an involuntary petition was filed, and because appellant's conduct as a transferee was an issue in the hearing on the involuntary petition, it unsuccessfully alleged it was a required party because it could be subject to future fraudulent transfer litigation. Both the bankruptcy court and the district court on appeal found against the appellant.

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." ECF No. 130 ¶ 3 (emphasis in original).

13. Nor would Jackson Walker or anyone else be at substantial risk of "double, multiple or otherwise inconsistent obligations" if the Court vacates the fee award orders and sanctions Jackson Walker. *See* Fed. R. Civ. P. 19 (a)(1)(B)(i). On these facts, there can only be one recovery and any monetary return will be disbursed according to the terms of the confirmed plan in this case. There will be only *one hearing* and *one order* on Jackson Walker's final application for compensation, notwithstanding how many objections are filed or the basis for them, even if the objections differ.

14. Consistent with this analysis, the U.S. Trustee has not identified a single bankruptcy case where parties seeking vacatur of a fee award had to join other parties in interest as "indispensable parties." *See, e.g.*, *In re Aquatic Pools, Inc.*, No. 15-11406 T11, 2018 WL 3013277, at *1 (Bankr. D.N.M. June 14, 2018) (decision did not mention any "required" parties when reorganized debtor sought to vacate attorney's fee award); *In re U.S.A. Dawgs, Inc.*, No. 18-10453, 2022 WL 6795026, at *1 (Bankr. D. Nev. Oct. 7, 2022) (listing only the U.S. Trustee, the debtor, and the movant as parties to the Rule 60 contested matter).[5]

15. Because there are no other required parties under Rule 19's standards, the Court need not move to the second step—the balancing test on whether to proceed or to dismiss. *In re Mutual Benefits*, 508 B.R. at 771-72. ("'If the answer to this first question is no,' it is unnecessary to reach the second question . . . .") (quoting *U.S. v. Rigel Ships Agencies, Inc.,* 432 F.2d 1282, 1291 (11th Cir. 2005)). Nevertheless, even if the Court were to determine that Rule 19 should

[5] Even cases with reorganized debtors—who might receive a refund of legal fees they paid to Jackson Walker—would not make those reorganized debtors an indispensable party. There would be zero negative affect on their interests if Jackson Walker must pay them money.

apply and that there are absent required parties who cannot be joined, the matter should proceed as presently constituted: "[N]onjoinder even of a required person does not always result in dismissal." *Republic of Phil. v. Pimentel*, 128 S. Ct. 2180, 2188 (2008). As the Supreme Court has explained, required parties are not necessarily required after all:

> The word "indispensable" had an unforgiving connotation that did not fit easily with a system that permits actions to proceed even when some persons who otherwise should be parties to the action cannot be joined. As the Court noted in *Provident Bank*, the use of "indispensable" in Rule 19 created the "verbal anomaly" of an "indispensable person who turns out to be dispensable after all." . . . Though the text has changed, the new Rule 19 has the same design and, to some extent, the same tension. Required persons may turn out not to be required for the action to proceed after all.

Id. at 2188-89) (quoting *Provident Tradesmens Bank & Tr. Co. v. Patterson*, 88 S. Ct. 733, 742 n.12 (1968)).[6]

B. All Parties in Interest Have Standing Under Both Section 1109(b) and the Constitution to Participate in Litigation Related to the Rule 60(b)(6) Motion.

16. Section 1109(b), as discussed more fully below, confers broad standing on parties in interest, including the ability to object to professional compensation. And a party in interest does not lose that statutory standing simply because a final hearing on an application for compensation will be heard post-confirmation for pre-confirmation work—a common occurrence—or because there will be no financial benefit to the party from objecting.

17. To the extent Jackson Walker contends no creditors have standing to participate in the U.S. Trustee's Rule 60(b)(6) Motion, the U.S. Trustee disagrees. Bankruptcy is different than traditional two-sided litigation and implicates a multiplicity of interests. But it would be inconsistent to suggest that there are creditors who might be required parties because of the

[6] As explained *supra* ¶3, the U.S. Trustee welcomes broad participation in the matters related to Jackson Walker's conduct and will coordinate discovery and other procedural matters provide consistency and efficiency.

speculative risk Jackson Walker could be subject to inconsistent obligations in their absence while simultaneously suggesting those same parties do not have standing to seek relief.

18. Section 1109(b) confers broad standing on any party in interest for any issue: "A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter. 11 U.S.C. § 1109(b). That list is illustrative, not exhaustive, because under the Code, the words "'includes' and 'including' are not limiting." 11 U.S.C. § 102(3). Further, section 1109(b) unambiguously provides that a "party in interest . . . may appear and be heard on *any issue* in a [Chapter 11] case." 11 U.S.C. 1109(b) (emphasis added). "As [the Supreme Court] has 'repeatedly explained,'" *Patel v. Garland*, 596 U.S. 328, 338 (2022) (citation omitted), "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quoting *United States v. Gonzales*, 520 U.S. 1, 5 (1997)).

19. In the case of *In re Farley, Inc*., 156 B.R. 203, 207 (Bankr. N.D. Ill. 1993), a law firm argued that the PBGC, guarantor of the debtor's pension plans, did not have standing to object to its fee application. The court correctly relied on section 1109(b), as well as the Seventh Circuit's interpretation of it, to rule that bankruptcy standing is broad and clearly conferred the ability to object to the fees by the PBGC:

> [A]ll [§ 1109(b)] means is that anyone who has a legally protected interest that could be affected by a bankruptcy proceeding is entitled to assert that interest with respect to any issue to which it pertains, thus making explicit what is implicit in an in rem proceeding—that everyone with a claim to the res has a right to be heard before the res is disposed of since that disposition will extinguish all claims.

Id. (quoting *In re James Wilson Assocs.*, 965 F.2d 160, 169 (7th Cir.1992)) (explaining that the debtor's contingent liabilities to the PBGC, should the debtor ultimately terminate its pension

plans, "demonstrates that it [the PBGC] has an interest that could be affected indirectly by the allowance or disallowance of Kaye Scholer's fee application"); *see also Pennsylvania v. Cunningham & Chernicoff, P.C.* (*In re Pannebaker Custom Cabinet Corp.*), 198 B.R. 453, 459 (Bankr. M.D. Pa. 1996) (holding priority creditor and administrative claimant had standing to object to professional's fee application).

20. In addition to the broad standing of parties in interest under section 1109(b) of the Bankruptcy Code, those same parties have constitutional standing to participate in the litigation related to the Rule 60(b)(6) Motion. Article III standing requires three things: (1) the party suffered an injury in fact, (2) the injury is fairly traceable to the defendant's conduct, and (3) the injury is likely to be redressed by a favorable court decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted). As the *Farley* court explained, everyone with a claim to the res has a right to be heard on professional fee applications. 156 B.R. at 207. If the bankruptcy court lacked Article III jurisdiction over the bankruptcy case, that jurisdictional defect would have required reversing the very order that Jackson Walker sought. To suggest that a creditor must establish Article III standing to oppose an order properly entered pursuant to the bankruptcy court's jurisdiction is a *non sequitur*. While a statutory provision could arguably limit such participation in ongoing bankruptcy proceedings, Article III does not. *See Bond v. United States*, 564 U.S. 211, 217 (2011) ("Article III does not restrict [an] opposing party's ability to object to relief"); *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2195 (2020).

21. Further, although other parties have standing to seek vacatur, no rule requires that they be joined as movants on the U.S. Trustee's Rule 60(b)(6) Motion. It would also be unnecessary for them to do so because if the U.S. Trustee successfully vacates the fee award orders

and sanctions are imposed against Jackson Walker, there cannot be a double recovery on the issues raised in the Rule 60(b)(6) Motion.

22. Lastly, it is perfectly appropriate for others to seek to join the Rule 60(b)(6) Motion, but it is also unnecessary because vacatur and sanctions would inure to the benefit of all stakeholders regardless of who seeks it. Accordingly, it is appropriate to move forward with this proceeding without requiring the joinder of any additional parties.

CONCLUSION

The Court may adjudicate the Rule 60(b)(6) Motion without requiring joinder of additional parties. The limited relief sought by the U.S. Trustee in this case addresses Jackson Walker's alleged misconduct and does not preclude other claims against Jackson Walker that may be predicated on the same or similar facts. The U.S. Trustee does not object to parties' participation in these proceedings and submits that it will coordinate discovery and other procedural matters with other interested parties for efficiency and consistency.

Date: May 31, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on May 31, 2024 a copy of the foregoing pleading was served on all parties entitled to receive notice through the Court's CM/ECF System.

/s/ Alicia L. Barcomb
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