

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

In re: AUTO PLUS AUTO SALES LLC,¹ Wind-Down Debtor.	§ Chapter 11 § § Case No. 23-90055 (CML) § § (Formerly Jointly Administered under Lead Case § IEH Auto Parts Holdings LLC, Case No. 23-90054) § § § § Objection Deadline: March 30, 2025, extended to April 2, 2025 § by agreement
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**RESPONSE OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND TO
OBJECTION TO CLAIM NO. 565 FILED BY WIND-DOWN DEBTOR
(Relates to ECF No. 278 in Case No. 23-90055)**

Fidelity and Deposit Company of Maryland, together with its affiliates (“F&D”), files this *Response to Objection to Claim No. 565 filed by Wind-Down Debtor* (the “**Response**”). In support of this response, F&D states as follows:

1. On February 28, 2025, the Wind-Down Debtor filed its objection to the claim filed by F&D, Claim No. 565, as part of its *Ninth-Omnibus Objection to Certain Proofs of Claim* (ECF No. 278) (“**Objection**”).
2. By agreement, the Wind-Down Debtor extended the deadline to respond to April 2, 2025 and said time has not expired.
3. The Objection states in *Schedules 3* and *7* that the claim should be allowed in the amount of \$41,038.90 as a general unsecured claim.
4. F&D asserts that Claim No. 565 was secured via a letter of credit up to the amount of \$2,636,439.50 on a total contingent claim filed of \$3,000,000.00 [See Claim No. 565].

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>.



5. As stated in the attachments to Claim No. 565, on August 26, 2020, F&D issued surety bond #9353499 (the “**F&D Bond**”) in favor of IAP, Inc. and IAP-West, Inc. in the total penal sum of \$2,000,000.00 on behalf of Debtor IEH Auto Parts, LLC (“**Auto Parts**”). The total penal limit was later amended to be \$3,000,000.00. As a condition to the issuance of any bond, including the F&D Bond, F&D and its affiliates required the execution of a *General Agreement of Indemnity* dated November 20, 2018 (the “**F&D GAI**”). Debtor Auto Parts is also liable to F&D for indemnity under applicable non-bankruptcy law. Non-Debtor parent companies of Auto Parts, Ichan Automotive Group, LLC (“**IAG**”) and American Entertainment Properties, LLC (“**AEP**”), were signatories and listed as an Indemnitors under the F&D GAI. At least one bond claim was filed by IAP, Inc. and IAP-West, Inc, but the claim was satisfied by the non-Debtor indemnitors.

6. In the *Order Confirming the Third Amended Combined Disclosure Statement and Joint Plan of Liquidation of IEH Auto Parts Holdings, LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (ECF No. 749 in Case No 23-90054), the Debtors and F&D agreed to language preserving all rights of F&D in and to the F&D Bonds and Surety Bond Obligations, as defined therein, which included preservation of all collateral rights. See relevant excerpts at *Exhibit 1* hereto. As a result, any future bond claims would be handled as post-confirmation claims under the ratified documents.

7. However, F&D still maintains a valid claim for attorneys’ fees which is fully secured. The Objection correctly states that, at one point in time, F&D alerted the Wind-Down Debtor that accrued attorneys’ fees were \$41,038.90. Those fees have increased and continue to increase due to having to respond to the Objection and potentially attend a hearing on same.

Thus, F&D would agree to an allowed secured claim in the amount of the then accrued attorneys' fees at the time of allowance.

WHEREFORE, F&D respectfully requests that this Court sustain the Response, allow a claim for all accrued attorneys' fees at the time of allowance as a secured claim and for such other and further relief to which it may show itself to be justly entitled.

Dated: April 1, 2025

Respectfully submitted,

/s/ Duane J. Brescia

Duane J. Brescia (TX Bar No. 24025265)

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**ATTORNEYS FOR FIDELITY AND DEPOSIT
COMPANY OF MARYLAND**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing limited objection was sent electronically via this Court's CM/ECF System upon all registered users on this 1st day of April 2025.

/s/ Duane J. Brescia

Duane J. Brescia

EXHIBIT 1

ENTERED

June 16, 2023

Nathan Ochsner, Clerk

**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. 738

**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**

The above-captioned Debtors² having:

- a. on January 31, 2023 (the “Petition Date”), filed these chapter 11 cases (the “Chapter 11 Cases” or, individually, a “Chapter 11 Case”) by filing voluntary petitions in the United States Bankruptcy Court for the Southern District of Texas (the “Court”) for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);
- b. continued to operate their business and manage their properties as debtors in possession in accordance with sections 1107(a) and 1108 of the Bankruptcy Code;
- c. on April 28, 2023, filed the *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. 442];
- d. on May 2, 2023, obtained entry of the *Order (I) Conditionally Approving the Disclosure Statement; (II) Approving the Solicitation and Notice Procedures; (III) Approving the Forms of Ballots and Notices in Connection Therewith; (IV) Approving the Combined Hearing Timeline; and (V) Granting Related Relief* [Docket No. 471] (the “Disclosure Statement Order”) conditionally approving the

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.

² All capitalized terms not otherwise defined in this Confirmation Order have the meanings ascribed to them in the Plan and Disclosure Statement



Bankruptcy Code. Debtors' rejection of the Vehicle Lease and the MSA shall be irrevocable. Upon entry of this Order, Element Fleet shall be entitled to (i) discontinue all services under the MSA, (ii) obtain possession of the vehicles subject to the Vehicle Lease (the "Leased Vehicles") in accordance with the terms and conditions of the Vehicle Lease, including by accepting the surrender of Leased Vehicles from the Debtors and/or by repossession of Leased Vehicles, and (iii) dispose of the Leased Vehicles only and apply the proceeds of disposition of the Leased Vehicles in accordance with the terms and conditions of the Vehicle Lease; and Debtors and any buyers of Debtors' assets or locations at which any of the Leased Vehicles are located shall reasonably cooperate with Element Fleet with respect to the surrender and/or repossession and disposition of the Leased Vehicles. With respect to the Trade Agreement, Debtors and Element Fleet agree that it is not an executory contract that is subject to either assumption or rejection and the Trade Agreement is not being assumed or rejected by confirmation of the Plan. For the avoidance of doubt, (A) Element Fleet shall not be entitled to the relief described in subsections (ii) and (iii) above with respect to any vehicles other than the Leased Vehicles. Debtors and Element Fleet each fully reserve their rights with respect to the effectuation of transfer of any Leased Vehicles in connection with the Debtors' asset sales approved pursuant to the Court's orders appearing at Docket Nos. 585, 586, 604 (the "Asset Sales"). Debtors and Element Fleet each agree to work together post-confirmation in good faith to effectuate the disposition of Leased Vehicles in accordance with the Vehicle Lease and the Asset Sales.

40. F&D Surety Bond Obligations. Notwithstanding any other provisions of the Plan, this Confirmation Order or any other order of the Bankruptcy Court, on the Effective Date, all rights and obligations of any party related to (i) the Debtors' current surety bonds issued by Fidelity and Deposit Company of Maryland ("F&D" and collectively, the "F&D Bonds") and maintained

in the ordinary course of business; (ii) any surety payment and indemnity agreements, setting forth F&D's rights against the Debtors, and the Debtors' obligations, among other things, to pay, indemnify and hold F&D harmless from any loss, cost, or expense that F&D may incur, in each case, on account of the issuance of any F&D Bonds on behalf of the Debtors; (iii) any F&D collateral; (iv) collateral agreements governing collateral, if any, in connection with the Debtors' F&D Bonds; and/or (v) ordinary course premium payments to F&D for the Debtors' F&D Bonds and in connection with enforcement of any obligations under the General Indemnity Agreement ("F&D Surety Bond Obligations") shall be reaffirmed and ratified by the applicable Reorganized Debtors and continue in full force and effect and are not discharged, enjoined, impaired or released by the Plan in any way. On the Effective Date, all liens and security interests, if any, granted pursuant to or in connection with the F&D Surety Bond Obligations shall be valid, binding, perfected, enforceable liens and security interests to the same extent, validity, and priority as existed prior to the Petition Date, and shall not be enjoined or subject to discharge, impairment, release, avoidance, recharacterization, or subordination under any applicable law, the Plan, or this Order. For the avoidance of doubt, nothing in the Plan, this Confirmation Order or other agreements between the Debtors and third parties, including, without limitation, any exculpation, release, injunction, exclusions and discharge provision of the Plan, including, without limitation, any of those provisions contained in Article VIII.F of the Plan, shall bar, alter, limit, impair, release or modify or enjoin any F&D Surety Bond Obligations. F&D is deemed to have opted out of any release, exculpation and injunction provisions of the Plan that apply or could be interpreted to apply to F&D, its rights or claims in any respect, and are otherwise not Releasing Parties under the Plan. The F&D Surety Bond Obligations related thereto shall be treated by the Wind-Down Debtors and F&D in the ordinary course of business as if the Chapter 11 Cases had not been

commenced; and in furtherance thereof, in the event that any of the F&D Surety Bond Obligations cease to be in effect upon the Effective Date for reasons other than their expiration or termination in accordance with the terms of the applicable agreements, the Wind-Down Debtors and F&D shall execute the documents that are necessary to reinstitute such F&D Surety Bond Obligations, including, without limitation, the indemnity obligations thereunder, as such F&D Surety Bond Obligations were in effect immediately prior to the Effective Date; provided, however, that nothing in the foregoing shall be deemed to alter, limit, modify or expand any such F&D Surety Bond Obligations. For the avoidance of any doubt, with a reservation of rights to all parties, and only to the extent applicable under law, any agreements related to the F&D Surety Bonds are assumed by the Debtors and the Wind-Down Debtors pursuant to section 365 of the Bankruptcy Code upon the Effective Date. Nothing in the Plan or this paragraph shall affect in any way F&D's rights against any non-Debtor, or any non-Debtor's rights against F&D, including under the F&D Surety Bonds or with regard to the Surety Bond Obligations. Nothing in the Plan or this paragraph shall affect in any way any F&D's rights against any third parties. Nothing in the Plan, Confirmation Order or any other order of the Bankruptcy Court shall require F&D or any of its affiliates to issue new or replacement surety bonds to the Wind-Down Debtors.

41. Fisher and Parts Authority. Fisher Auto Parts, Inc. ("Fisher") and Clutch Acquisition LLC ("Parts Authority") made deposits into a third party escrow account in connection with their joint bid for certain of the Debtors' assets in the Chapter 11 Cases (the "Deposits"). As of the date of this Order, the Deposits are still in escrow being held by the Debtors' designated escrow agent. The Debtors, Fisher, and Parts Authority reserve all rights with respect to the Deposits and, notwithstanding anything herein or in the Plan to the contrary, no right or claim of the Debtors, Fisher, or Parts Authority relating to or in connection with the Deposits shall be