

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW THEIR LIABILITY,
PROPERTY, CASUALTY, SURETY BOND, AND OTHER INSURANCE PROGRAMS,
AND HONOR ALL OBLIGATIONS IN RESPECT THEREOF AND (II) FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”),² each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this *Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) Debtors To Continue and Renew Their Liability, Property, Casualty, Surety Bond, and Other Insurance Programs, and Honor All Obligations in Respect Thereof and (II) Financial Institutions To Honor and Process Related Checks and Transfers* (this “**Motion**”). This Motion is supported by the *Declaration of John C. DiDonato as Chief Restructuring Officer to the Debtors in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings* (the “**DiDonato Declaration**”) filed contemporaneously herewith and incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

² The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as “**Fisker**.”



Relief Requested

1. By this Motion, and pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (collectively, the “**Proposed Orders**”), (a) authorizing, but not directing, the Debtors to maintain, continue, review, purchase, renew or extend, and obtain, in their sole discretion, their various liability, property, casualty, and other insurance and reinsurance programs in the ordinary course of their business (collectively, the “**Insurance Programs**”) through numerous private insurance carriers and sureties (collectively, the “**Carriers**”) on an uninterrupted basis and in accordance with the same practices and procedures as were in effect before the Petition Date (as defined below), (b) authorizing, but not directing, the Debtors to maintain, continue, review, purchase, renew or extend, obtain, and post, in their sole discretion, surety bonds in the ordinary course of their business (each, a “**Surety Bond**” and, collectively, the “**Surety Bond Programs**”), and (c) authorizing the applicable financial institutions to receive, process, honor, and pay all checks or wire transfers used by the Debtors to fund the foregoing. This would include, among other things, authorization to pay all Insurance Obligations, Surety Bond Obligations, and Broker Fees (each as defined below), whether due and payable before, on, or after the Petition Date; *provided*, that the maximum amounts that the Debtors shall pay in the aggregate on account of all Insurance Obligations and Surety Bond Obligations owed for periods prior to the Petition Date shall be \$483,838, all of which will become due and owing during the first 30 days of the Chapter 11 Cases.

Jurisdiction, Venue, and Authority

2. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing*

Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter a final order or judgment in connection herewith consistent with Article III of the United States Constitution.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

A. General Background

5. On June 17 and 19, 2024 (collectively, the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Cases.

6. Contemporaneously herewith, the Debtors have filed a motion requesting the joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1.

7. Fisker is an American automotive company that designs, develops, markets, and sells electric vehicles. Passionately driven by a vision of a clean future for all, Fisker created the world’s most sustainable and emotional electric vehicles. Headquartered in California, Fisker

operates in several countries (including the United States, Austria, Germany, China, and India) and conducts sales operations in North America and throughout Europe.

8. Additional information about the Debtors' business and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the DiDonato Declaration.

B. The Debtors' Insurance Programs

9. In the ordinary course of their business, the Debtors, like other similar enterprises, maintain various Insurance Programs (some of which may be required by the Debtors' corporate documents and/or applicable law) through the Carriers. A non-exhaustive summary of the Debtors' Insurance Programs is annexed to the Proposed Orders as Schedule 1. Although the Debtors believe that Schedule 1 is a substantially complete list of their Insurance Programs, due to the breadth of Fisker's business, the Debtors may have inadvertently omitted one or more Insurance Programs. Accordingly, the Debtors request that the relief sought herein applies to all Insurance Programs regardless of whether such Insurance Program is specifically identified on Schedule 1.

10. The Insurance Programs include coverage for, among other things, personal injury, property damage, operation of vehicles, marine, product recall, business interruption, breach of duty by officers or directors, fiduciary liability, employment liability, commercial crime, equipment damage, environmental liability, pollution, casualty, and various other property-related and general liabilities. As part of the Insurance Programs, the Debtors also maintain a workers' compensation policy covering claims that exceed the Debtors' self-insured coverage thresholds.³

³ A detailed discussion of the Debtors' workers' compensation policies is set forth in the *Motion of Debtors for Entry of Interim and Final Orders Authorizing (I) Debtors To (A) Pay Prepetition Employee Obligations and (B) Maintain Employee Benefits Programs and Pay Related Administrative Obligations, (II) Current and Former* (...continued)

All of the Insurance Programs are essential to the ongoing operation of the Debtors' business and the preservation of the value of the Debtors' estates.

11. Many of the Insurance Programs renew on April 5, 2030, with the remaining Insurance Programs renewing on various dates throughout the next two years. The premiums for most of the Insurance Programs (collectively, the "**Insurance Premiums**") are determined annually and are due either in their entirety at policy inception or in periodic installments throughout the policy term. The Debtors make such payments to various parties, including directly to the Carriers and indirectly to the Carriers through the Broker, in the ordinary course of business. The Debtors' aggregate Insurance Premiums under the Insurance Programs total approximately \$14,384,214.

12. Pursuant to the Insurance Programs, the Debtors may be required to pay various deductibles or retention amounts (collectively, the "**Insurance Deductibles**" and, together with the Insurance Premiums and all other obligations relating to the Insurance Programs, the "**Insurance Obligations**"), depending upon the type of claim and insurance policy involved. Under certain policies, the Carriers for casualty losses may pay claimants and then invoice the Debtors or draw funds directly from the Debtors' bank accounts for reimbursement of claims paid within any Insurance Deductible. In such situations, the Carriers may have prepetition claims against the Debtors. As of the Petition Date, the Debtors do not believe that there are any material prepetition obligations owed to Carriers relating to Insurance Deductibles, but, out of an abundance of caution, the Debtors seek authority to satisfy, in their discretion, any unpaid prepetition Insurance Deductibles.

Employees To Proceed with Outstanding Workers' Compensation Claims, and (III) Financial Institutions To Honor and Process Related Checks and Transfers filed contemporaneously herewith.

13. The Debtors estimate that no more than \$482,963 in Insurance Premiums will become due and owing after the Petition Date on account of prepetition obligations, all of which will become due and owing during the first 30 days of the Chapter 11 Cases. To ensure uninterrupted coverage under the Insurance Programs, the Debtors seek authority to (a) pay prepetition amounts outstanding in connection with the Insurance Obligations, (b) continue paying Insurance Obligations as they come due in the ordinary course of the Debtors business, and (c) otherwise honor their Insurance Obligations in the ordinary course of business.

C. The Debtors' Surety Bond Program

14. In the ordinary course of business, the Debtors are required to obtain and post to various third parties or governmental agencies different types of surety bonds to satisfy the requirements of certain third parties or federal, state, or local regulations (each, a "**Surety Bond**" and, collectively, the "**Surety Bond Programs**") from surety providers (each, a "**Surety**" and, collectively, the "**Sureties**"). The Surety Bonds secure obligations of payment and performance owed to various third parties (each an "**Obligee**" and, collectively, the "**Obligees**"), including municipalities, state, and federal governmental units and public agencies (together with the Insurance Programs, the "**Insurance and Surety Bond Programs**"). The Debtors are required to provide the Surety Bonds to the Obligees in accordance with applicable federal, state, and municipal laws and regulations. The Surety Bonds include, among others, (a) state vehicle dealer license bonds, (b) state manufacturer license bonds, (c) Department of Motor Vehicles ("**DMV**") commercial requestor account bonds, and (d) state distributor license bonds. Consequently, failing to provide, maintain, or timely replace the Surety Bonds may prevent the Debtors from undertaking functions essential to their operations.

15. As of the Petition Date, the Debtors maintain approximately \$3,875,000 in aggregate of surety bond coverage. A schedule of the Surety Bonds currently maintained by the

Debtors is annexed to the Proposed Orders as Schedule 2. Although the Debtors believe that Schedule 2 is a substantially complete list of their Surety Bonds, due to the breadth of Fisker's business, the Debtors may have inadvertently omitted one or more Surety Bonds. Accordingly, the Debtors request that the relief sought herein applies to all Surety Bonds and Surety Bond Programs regardless of whether such Surety Bond is specifically identified on Schedule 2.

16. The issuance of a surety bond shifts the risk of the Debtors' nonperformance or nonpayment from the Debtors to a Surety. Unlike an insurance policy, if a Surety incurs a loss on a surety bond, the Surety is entitled to recover the full amount of that loss from the principal, whose performance or obligations the Surety has guaranteed to the Obligee. To that end, the Debtors are party to indemnity agreements with the Sureties (each, a "**Surety Indemnity Agreement**" and, collectively, the "**Surety Indemnity Agreements**") as component of the Surety Bond Program. Pursuant to the Surety Indemnity Agreements, the Debtors have agreed to indemnify the Sureties from any loss, cost, or expense that the Sureties may incur on account of the issuance of any Surety Bonds on behalf of the Debtors. Additionally, the Surety Indemnity Agreements allow the Sureties to request collateral security from the Debtors from time to time.

17. In consideration for the Sureties' issuance of the Surety Bonds, the Debtors pay premiums and post collateral to secure their obligations to the Sureties. The premiums for the Surety Bonds generally are determined on an annual basis and paid by the Debtors when the bonds are issued (and annually upon renewal) (the "**Surety Premiums**" and, together with the obligations under the Surety Bond Programs and Surety Indemnity Agreements, the "**Surety Bond Obligations**" and, together with the Insurance Obligations, the "**Insurance and Surety Bond Obligations**"). The annual Surety Premiums for the Debtors' Surety Bonds range from 0.25% to 2.5% of each surety bond coverage amount. As of the Petition Date, the Debtors have provided

the Sureties with collateral in the form of approximately \$3,500,000 of letters of credit related to the Customs Bond identified on Schedule 2 to the Proposed Orders. The Debtors have agreed to maintain such collateral in the ordinary course of business pursuant to the Surety Indemnity Agreements.

18. The Debtors estimate that, as of the Petition Date, approximately \$875 in Surety Premiums have accrued and remain outstanding, all of which will become payable during the first 30 days of the Chapter 11 Cases. To ensure uninterrupted coverage under the Surety Bond Program, the Debtors seek authority to (a) pay prepetition amounts outstanding in connection with the Surety Bond Obligations, (b) continue paying Surety Bond Obligations as they come due in the ordinary course of the Debtors business, and (c) otherwise honor their Surety Bond Obligations in the ordinary course of business.

D. The Broker Fees

19. The Debtors employ Marsh USA LLC (the “**Insurance Broker**”) to assist them with the procurement and management of the Insurance Programs. The Debtors estimate that they pay the Insurance Broker annual fees (collectively, the “**Insurance Broker Fees**”) that range from 10% to 15% of each Insurance Premium. Employment of the Insurance Broker allows the Debtors to obtain and manage the Insurance Programs in a reasonable and prudent manner and to realize considerable savings in the procurement of such policies. Accordingly, the Debtors believe that it is in the best interest of their estates and stakeholders to continue their business relationships with the Insurance Broker. As of the Petition Date, there are no Insurance Broker Fees outstanding. Nevertheless, to ensure uninterrupted coverage under the Insurance Programs, the Debtors seek authority to honor prepetition amounts owed in connection with the Insurance Broker Fees and to

pay any Insurance Broker Fees that may arise on a post-petition basis in the ordinary course of business.

20. The Debtors also employ White Lion Insurance & Bonding (the “**Surety Broker**” and, together with the Insurance Broker, the “**Brokers**”) to assist them in obtaining a majority of the Surety Bonds and evaluating bond offerings. The Surety Broker negotiates with the Sureties on behalf of the Debtors to procure surety bonds and enable the Debtors to obtain new or replacement surety bonds on advantageous terms and at competitive rates. The Debtors compensate the Surety Broker by paying negotiated annual fees as a percentage of the face amount of the bonds procured (the “**Surety Broker Fees**” and, together with the Insurance Broker Fees, the “**Broker Fees**”). The Surety Broker Fees are remitted to the Surety Broker as a portion of the Surety Premiums. Because the Surety Broker takes its fee as part of the Surety Premiums, the Debtors do not believe that there are any additional prepetition obligations due and owing on account of the Surety Broker Fees. Nevertheless, to ensure uninterrupted coverage under the Surety Bond Program, the Debtors seek authority to honor prepetition amounts owed in connection with the Surety Broker Fees and to pay any Surety Broker Fees that may arise on a post-petition basis in the ordinary course of business.

Basis for Relief

A. Continuing the Insurance and Surety Bond Programs, and the Payment of All Insurance and Surety Bond Obligations and the Broker Fees, Are Necessary To Preserve the Value of the Debtors’ Estates

21. The nature of the Debtors’ business makes it essential for the Debtors to maintain their Insurance and Surety Bond Programs on an ongoing and uninterrupted basis. The non-payment of any premiums, deductibles, or related fees under the Insurance and Surety Bond Programs could result in one or more of the Carriers or Sureties terminating or declining to renew their insurance policies or surety bonds, or refusing to enter into new insurance policies or surety

bonds with the Debtors in the future. If any of the Insurance and Surety Bond Programs lapse without renewal or extension, the Debtors could be in violation of state and/or federal law and be exposed to substantial liability for personal and/or property damages, to the detriment of all parties in interest.

22. Moreover, pursuant to contractual, legal, or regulatory obligations with numerous third-party property owners, customers, suppliers, distributors, contractors, lenders, and governmental authorities, the Debtors are obligated to remain current with respect to certain of the Insurance and Surety Bond Programs. Furthermore, the Debtors must maintain certain Insurance Programs to comply with the operating guidelines of the office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”). Thus, in order for the Debtors to maintain their operations in compliance with various contractual, legal and regulatory obligations, the Debtors must be able to continue the Insurance Programs without disruption.

B. The Continuation of the Insurance and Surety Bond Programs, and the Payment of the Insurance and Surety Bond Obligations and the Broker Fees, Are Justified and Should Be Authorized

23. The Debtors believe that maintaining their existing Insurance and Surety Bond Programs would be in the ordinary course of business because (a) such programs are commonplace and routine in the Debtors’ industry and (b) the Debtors have regularly paid premiums or made payments to maintain such programs. As a result, the Debtors believe that maintaining their Insurance and Surety Bond Programs is warranted under section 363(c) of the Bankruptcy Code, which authorizes a debtor to “enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing.” 11 U.S.C. § 363(c)(1). Although the Debtors do not believe that Court approval is required to maintain their existing Insurance and Surety Bond Programs following the Petition Date, this relief is being sought out of an abundance of caution. The Carriers, the Sureties, and the Brokers may be reluctant to engage

in ordinary course transactions with the Debtors absent an order eliminating any uncertainty as to whether the Debtors have the requisite authority to engage in such transactions.

24. Section 363(b)(1) of the Bankruptcy Code empowers a court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell, or lease assets outside the ordinary course of business, however, must be based upon a “sound business purpose” of the debtor. *In re ICL Holding Co., Inc.*, 802 F.3d 547, 551 (3d Cir. 2015); *see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). The business judgment rule entails “a presumption that, in making a business decision, the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company.” *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (citation omitted), *overruled on other grounds by Gantler v. Stephens*, 965 A.2d 695 (Del. 2009). Courts emphasize that the business judgment rule is not an onerous standard. *See In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (explaining that the business judgment rule is “not a difficult standard to satisfy” (citing *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006))). As such, courts exhibit great judicial deference to a debtor’s exercise of business judgment. *See Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”); *Parnes v. Bally Ent. Corp.* 722 A.2d 1243, 1246 (Del. 1999) (“The presumptive validity of a business judgment is rebutted in those rare cases where the decision under attack is ‘so far beyond the bounds of reasonable judgment that it seems essentially inexplicable on any

ground other than bad faith.” (citing *In re J.P. Stevens & Co., Inc.*, 542 A.2d 770, 780–81 (Del. Ch. 1988))).

25. The Debtors submit that the relief requested in this Motion represents a sound exercise of the Debtors’ business judgment and is necessary to avoid immediate and irreparable harm. Furthermore, to the extent that the maintenance, continuance, review, purchase, and/or renewal of the Insurance Policies or Surety Bonds and any and all payments related thereto (including payment of any Broker Fees) are outside the ordinary course of business, they are justified under section 363 of the Bankruptcy Code. Even where coverage is not expressly required by applicable law, the Debtors are nevertheless compelled by sound business practice to maintain essential insurance or surety bond coverage. Any interruption in such coverage would expose the Debtors to a variety of risks, including the possible (a) incurrence of direct liability for the payment of claims that otherwise would have been covered by the Insurance and Surety Bond Programs, (b) incurrence of material costs and other losses that otherwise would have been reimbursed, such as attorneys’ fees for certain covered claims, (c) inability to obtain similar types and levels of insurance or surety bond coverage, and (d) incurrence of higher costs for reestablishing lapsed policies or surety bonds or obtaining new insurance or surety bonds coverage.

26. Similarly, although the Debtors do not believe that they have any material outstanding prepetition obligations or payment defaults with respect to their Insurance and Surety Bond Obligations, the Debtors are seeking authority to pay any such amounts to ensure continuing insurance or surety bond coverage during the Chapter 11 Cases.

27. In fact, courts in this jurisdiction routinely grant relief similar to that requested herein. *See, e.g., In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Mar. 11, 2024) [D.I. 163]; *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 13, 2023) [D.I. 523]; *In re*

MD Helicopters, Inc., No. 22-10263 (KBO) (Bankr. D. Del. Apr. 20, 2022) [D.I. 172]; *In re BHCosmetics Holdings, LLC*, No. 22-10050 (CSS) (Bankr. D. Del. Feb. 4, 2022) [D.I. 106]; *In re Alto Maipo Del. LLC*, No. 21-11507 (KBO) (Bankr. D. Del. Dec. 8, 2021) [D.I. 116]; *In re PWM Prop. Mgmt. LLC*, No. 21-11445 (MFW) (Bankr. D. Del. Dec. 1, 2021) [D.I. 179]; *In re Riverbed Tech., Inc.*, No. 21-11503 (CTG) (Bankr. D. Del. Nov. 18, 2021) [D.I. 83]. The Debtors submit that the circumstances described herein warrant similar relief.

28. Finally, the Debtors submit that payment of the Insurance and Surety Bond Obligations and the Broker Fees is necessary and appropriate and, therefore, may be authorized by the Court under section 105(a) of the Bankruptcy Code, pursuant to what is referred to interchangeably as the “doctrine of necessity” or “necessity of payment rule.” The doctrine of necessity functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable powers to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (noting that a court may authorize payment of prepetition claims when payment is essential to continued operation of the debtor, such as where there is a “possibility that the creditor will employ an immediate economic sanction, failing such payment”); *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (noting that the doctrine of necessity “permit[s] immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code “provides a statutory basis for the payment of pre-petition claims” under the doctrine of necessity).

29. The United States Supreme Court first articulated the doctrine of necessity over 140 years ago, in *Miltenberger v. Logansport Ry. Co.*, in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors, and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. 106 U.S. 286, 311–12 (1882). This doctrine has become an accepted component of modern bankruptcy jurisprudence and its application by courts largely adheres to the Supreme Court’s reasoning in *Miltenberger*. See, e.g., *In re Just for Feet, Inc.*, 242 B.R. at 824–25 (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

30. The Court’s power to utilize the “doctrine of necessity” in the Chapter 11 Cases derives from the Court’s inherent equity powers and its statutory authority to “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); see also *United States v. Energy Res. Co.*, 495 U.S. 545, 549 (1990) (finding that section 105(a) of the Bankruptcy Code is “consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships” (citations omitted)). As such, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors’ assets. See *In re Nixon*, 404 F. App’x 575, 578 (3d Cir. 2010) (“It is well settled that the court’s power under § 105(a) is broad.” (citation omitted)); *In re Nortel Networks, Inc.*, 532 B.R. 494, 554 (Bankr. D. Del. 2015) (“The Third Circuit has construed [section 105 of the Bankruptcy Code] to give bankruptcy courts ‘broad authority’ to provide appropriate equitable relief to assure the orderly conduct of reorganization proceedings, and to ‘craft flexible remedies that, while not

expressly authorized by the Code, effect the result the Code was designed to obtain.” (citations omitted)); *Patrick v. Dell Fin. Servs. (In re Patrick)*, 344 B.R. 56, 58 (Bankr. M.D. Pa. 2005) (“There is no doubt that § 105(a) is a ‘powerful [and] versatile tool’ designed to empower bankruptcy courts to fashion orders in furtherance of the Bankruptcy Code.” (quoting *Joubert v. ABN AMRO Mortg. Grp., Inc. (In re Joubert)*, 411 F.3d 452, 455 (3d Cir. 2005))).

31. The doctrine of necessity is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. For instance, courts have acknowledged that the “doctrine of necessity stands for the proposition that a bankruptcy court may allow payment outside of a plan of reorganization on account of a prepetition obligation where such payment is critical to the reorganization process.” *Friedman’s Inc. v. Roth Staffing Cos., L.P. (In re Friedman’s Inc.)*, No. 09-10161 (CSS), 2011 WL 5975283, at *3 (Bankr. D. Del. Nov. 30, 2011) (cleaned up); *see also Off. Comm. Of Unsecured Creditors v. Motor Coach Indus. Int’l (In re Motor Coach Indus. Int’l)*, No. 09-078-SLR, 2009 WL 330993, at *2 n.5 (D. Del. Feb. 10, 2009) (“The ‘doctrine of necessity’ or ‘necessity of payment’ doctrine is a general rubric for the proposition that a court can authorize the payment of prepetition claims if such payment is essential to the continued operation of the debtor.” (citations omitted)). Accordingly, pursuant to section 105(a) of the Bankruptcy Code, the Court is empowered to grant the relief requested herein.

32. Here, the Debtors’ ability to pay their Insurance and Surety Bond Obligations and Broker Fees in a timely manner and maintain and honor their Insurance and Surety Bond Programs is critical to the ongoing operation of their business, as discussed above, and therefore necessary to preserve the value of the Debtors’ estates. The Debtors believe that any prepetition amounts that they may pay in respect of Insurance and Surety Bond Obligations and Broker Fees would be

small relative to the size of the Debtors' estates and the critical benefits provided by the Insurance and Surety Bond Programs. As noted above, interruption of the Debtors' insurance or surety bond coverage could, among other things, cause the Debtors to violate state and/or federal law and expose the Debtors to direct liability for significant claims that otherwise would be covered by insurance or a surety bond, thus potentially substantially diminishing the value of the Debtors' estates. For the Debtors to pay what would be relatively small prepetition amounts under the Insurance and Surety Bond Programs and the Broker Fees to avoid such outcomes is in the best interests of the Debtors, their estates, and all of the Debtors' stakeholders and other parties in interest. Accordingly, the continuation of the Insurance and Surety Bond Programs, and the payment of any prepetition Insurance and Surety Bond Obligations and Broker Fees, falls within the sound business judgment of the Debtors and would benefit, rather than prejudice, the Debtors' creditors by preserving the property of the Debtors' estates. The Debtors, therefore, submit that the relief requested herein is appropriate under the doctrine of necessity and section 105(a) of the Bankruptcy Code.

33. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors' estates and stakeholders. Absent this relief, the value of the Debtors' estates would suffer, possibly precipitously. Consequently, the Debtors' stakeholders would benefit if the requested relief is granted.

C. The Court Should Authorize Applicable Financial Institutions To Honor and Process Related Checks and Transfers

34. The Debtors also request that all applicable financial institutions be authorized to (a) receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were

submitted before, on, or after the Petition Date and (b) rely on the Debtors' designation of any particular check as approved by the Proposed Orders.

Debtors' Reservation of Rights

35. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, or an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims related to the Insurance and Surety Bond Programs under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment or transfer made pursuant to the Court's order is not intended, and should not be construed, as an admission as to the amount, priority character, or validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Emergency Consideration

36. Pursuant to Local Rule 9013-1(m), the Debtors respectfully request emergency consideration of this Motion under Bankruptcy Rule 6003(b). Bankruptcy Rule 6003 provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" Fed. R. Bankr. P. 6003. As set forth in this Motion and the DiDonato Declaration, the Debtors believe that an orderly transition into chapter 11 is critical to preserve the value of the Debtors' estates and that any delay in granting the relief requested herein could cause immediate and irreparable harm. The Debtors also believe that they may need to make payments to the Carriers,

the Sureties, and the Brokers during the first 21 days of the Chapter 11 Cases. If the Debtors are not permitted to continue paying the Carriers, the Sureties, and the Brokers as they become due, and to reassure the Carriers, the Sureties, and the Brokers that authority has been granted to honor all such obligations, the Debtors could suffer immediate and irreparable harm. Accordingly, the relief requested herein is consistent with Bankruptcy Rule 6003.

Compliance with Bankruptcy Rule 6004(a) and Waiver of Bankruptcy Rule 6004(h)

37. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their business without interruption and to preserve value for their estates and economic stakeholders. Accordingly, the Debtors respectfully submit that ample cause exists to justify the (a) finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and (b) waiving of the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

38. Notice of this Motion will be provided to the following parties: (a) the U.S. Trustee; (b) those creditors holding the 30 largest unsecured claims against the Debtors’ estates (on a consolidated basis); (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney’s Office for the District of Delaware; (f) the state attorneys general for states in which the Debtors conduct business; (g) White & Case LLP, as counsel to

CVI Investments, Inc. (c/o Heights Capital Management, Inc.); (h) each Carrier; (i) each Surety; (j) each Broker; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the “**Notice Parties**”).

39. As this Motion is seeking “first-day” relief, the Debtors will serve copies of this Motion and any order entered in respect thereto as required by Local Rule 9013-1(m). A copy of this Motion and any order entered in respect thereto will also be made available on the Debtors’ case information website located at <https://www.veritaglobal.net/fisker>. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: June 20, 2024
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Evanthea Hammer

Robert J. Dehney, Sr. (No. 3578)
Andrew R. Remming (No. 5120)
Brenna A. Dolphin (No. 5604)
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-and-

DAVIS POLK & WARDWELL LLP

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Darren S. Klein (*pro hac vice* pending)
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Richard J. Steinberg (*pro hac vice* pending)
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steven.szanzer@davispolk.com
richard.steinberg@davispolk.com

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. _____

INTERIM ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW THEIR LIABILITY, PROPERTY, CASUALTY, SURETY BOND, AND OTHER INSURANCE PROGRAMS, AND HONOR ALL OBLIGATIONS IN RESPECT THEREOF AND (II) FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS

Upon the motion (the “**Motion**”)² of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of interim and final orders, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to (i) maintain, continue, review, purchase, renew or extend, and obtain, in their sole discretion, the Insurance and Surety Bond Programs through the Carriers and the Sureties on an uninterrupted basis and in accordance with the same practices and procedures as were in effect before the Petition Date and (ii) pay all Insurance Obligations, Surety Bond Obligations, and Broker Fees, whether due and payable before, on, or after the Petition Date, and (b) authorizing the applicable financial institutions to receive, process, honor, and pay all checks or wire transfers used by the Debtors to

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

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

pay the foregoing, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the DiDonato Declaration; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the DiDonato Declaration and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent set forth in this order (this “**Order**”).

2. The Debtors are authorized, but not directed, to maintain and continue, in their sole discretion, their Insurance and Surety Bond Programs (including those Insurance Programs and Surety Bond Programs listed on Schedule 1 and Schedule 2, respectively, annexed hereto) without interruption and in accordance with the same practices and procedures as were in effect prior to the Petition Date.

3. The Debtors are authorized, but not directed, to pay, in their sole discretion, the Insurance and Surety Bond Obligations and the Broker Fees, if any, that may be owed in connection with the Insurance and Surety Bond Programs, whether due and payable before, on, or after the Petition Date; *provided, however*, that, absent further order of the Court, any payments made pursuant to this Order on account of Insurance and Surety Bond Obligations owed for periods prior to the Petition Date shall not exceed \$483,838 in the aggregate.

4. The Debtors are authorized, but not directed, to renew or obtain, in their sole discretion, new insurance policies or surety bonds or execute other agreements in connection with their Insurance and Surety Bond Programs, including upon the expiration or termination of any Insurance Program or Surety Bond Program.

5. Notwithstanding anything to the contrary in the Insurance and Surety Bond Programs, in the event the Debtors default under the terms of any Insurance and Surety Bond Program, the Carrier or Surety shall not cancel any insurance policy or surety bond of the Debtors without first providing notice of such default in writing by overnight mail to the Debtors, their counsel, any official committee appointed in the Chapter 11 Cases, and the U.S. Trustee and with at least ten business days to cure. If the Debtors fail to cure the default within that time, then the Carrier or Surety may, in accordance with the terms of any applicable Insurance and Surety Bond

Program, and without further order of the Court, exercise any and all of its rights under such Insurance and Surety Bond Program.

6. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearinghouse transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized, but not required, to issue, in their sole discretion, new post-petition checks, or effect new fund transfers, for the Insurance and Surety Bond Obligations and the Broker Fees and to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and to reimburse the Carriers, the Sureties, the Brokers, or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

8. A final hearing to consider the relief requested in the Motion shall be held on _____, 2024 at _____.m (prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to _____, 2024 at _____.m (prevailing Eastern Time).

9. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

10. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

11. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

12. Any Bankruptcy Rule or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

13. The Debtors are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

14. The Court shall retain jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

Schedule 1

Insurance Programs

Schedule 1
Insurance Policies

Ref	Insured	Insurance Carrier	Policy Number	Policy Type	Coverage Period Start	Coverage Period End	Premium
1	Fisker Inc.	The Continental Insurance Company	CUE 7018153277	Umbrella Liability Policy	4/16/2024	4/16/2025	\$ 158,490
2	Fisker Inc.	N2G (Generali - U.S. Branch)	GGN0000041	Foreign Package Policy	4/16/2024	4/16/2025	\$ 55,434
3	Fisker Inc.	Transportation Insurance Company	BUA 7018153263	Business Auto Policy	4/16/2024	4/16/2025	\$ 620,425
4	Fisker Inc.	Valley Forge Insurance Company	7018153229	Package Policy	4/16/2024	4/16/2025	\$ 193,499
5	Fisker Inc.	Lloyd's Insurance Company S.A.	B0509MARCW2450055	Marine Stock Throughput Insurance Policy	5/15/2024	5/15/2025	\$ 912,500
6	Fisker Group Inc.	James River Insurance Company	00144812-0	Products Liability Policy	6/15/2023	6/15/2024	\$ 1,500,000
7	Fisker Group Inc.	James River Insurance Company	00144822-0	Commercial Excess Liability Policy	6/15/2023	6/15/2024	\$ 2,160,000
8	Fisker Inc.	Homesite Insurance Company	3000537302	Flood Insurance Policy	10/22/2023	10/22/2024	\$ 7,306
9	Fisker Inc.	XL Specialty Insurance Company	ELU193447-23	Primary D&O Policy	10/29/2023	4/5/2030	\$ 3,630,000
10	Fisker Inc.	Lloyd's Insurance Company S.A.	B0509FINMW2350924	D&O Excess Insurance Policy	10/29/2023	4/5/2030	\$ 1,248,062
11	Fisker Inc.	Lloyd's Insurance Company S.A.	B0509FINMW2350929	D&O Excess Insurance Policy	10/29/2023	4/5/2030	\$ 802,807
12	Fisker Inc.	Starr Indemnity & Liability Company	1000622937231	D&O Excess Insurance Policy	10/29/2023	4/5/2030	\$ 519,750
13	Fisker Inc.	Twin City Fire Insurance Co.	34 DA 0471255-23	Premier D&O Excess Insurance Policy	10/29/2023	4/5/2030	\$ 412,500
14	Fisker Inc.	Vantage Risk Assurance Company	P04ML0000045810	Excess Public Company D&O Policy	10/29/2023	4/5/2030	\$ 330,000
15	Fisker Inc.	National Union Fire Insurance Company of Pittsburgh, PA.	01-602-01-37	D&O Side-A Edge Insurance Policy	10/29/2023	4/5/2030	\$ 459,030
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17	Fisker Inc.	American Zurich Insurance Company	ER74213387	Builders Risk Coverage Policy	11/2/2023	11/2/2024	\$ 410
		American Zurich Insurance Company	ER78574065	Builders Risk Coverage Policy	12/16/2023	12/16/2024	\$ 622
18	Fisker Inc.	Great American Insurance Group	SAAE6650750300	Commercial Crime Policy	1/31/2024	1/31/2025	\$ 37,059
19	Fisker Inc.	Federal Insurance	J06189192	Fiduciary Liability Policy	1/31/2024	1/31/2025	\$ 5,203
20	Fisker Inc.	Twin City Fire Insurance Co.	57GT050685624	Employers Premier Choice Policy	1/31/2024	1/31/2025	\$ 92,823
21	Fisker Inc.	Illinois Union Insurance Company	PPL G47402943 001	Premises Pollution Liability Insurance Policy	4/24/2023	4/24/2026	\$ 14,294
22	Fisker Inc.	Everest National Insurance Company	ASSEX00374-241	D&O Runoff Liability Policy	4/5/2024	4/5/2030	\$ 300,000
23	Fisker Inc.	W. R. Berkley Corporation	BPRO8112574	D&O Runoff Liability Policy	4/5/2024	4/5/2030	\$ 295,000
24	Fisker Inc.	Berkshire Hathaway Specialty Insurance	47-EPC-334380-01	D&O Runoff Liability Policy	4/5/2024	4/5/2030	\$ 200,000

Schedule 2

Surety Bond Programs

Schedule 2
Surety Bonds

Ref	Entity/Principal (Obligor)	Beneficiary Name(s)	Surety Provider(s)	Bond Number(s)	Bond Description / Purpose	Bond Amount
1	Fisker Group Inc. DBA Fisker	State of Arizona	Old Republic Surety Company	B150024200	Vehicle Dealer Bond for Fisker's Arizona Dealer License with Arizona Department of Transportation (ADOT)	\$ 100,000
2	Fisker TN, LLC	Tennessee Motor Vehicle Commission and State of Tennessee	Hudson Insurance Company	TCS19174	Motor Vehicle Dealer Bond for Tennessee Dealer License	\$ 50,000
3	Fisker Group Inc. DBA Fisker	State of California	Old Republic Surety Company	A150011281	California DMV Commercial Requester Account Bond	\$ 50,000
4	Fisker Group, Inc	State of Maryland	Hudson Insurance Company	TCS23261	Maryland Bond with Rider for Maryland Distributor License	\$ 100,000
5	Fisker Group, Inc	State of Indiana - Secretary of State Auto Dealer Services Division	Hudson Insurance Company	TCS23342	Bond for Indiana Manufacturer License	\$ 25,000
6	Fisker Group, Inc	State of California	Old Republic Surety Company	A150008825	California Dealer Surety Bond	\$ 50,000
7	Fisker Group, Inc	Department of Transportation	Southwest Marine and General Insurance Company (an Arizona Corporation)	23C001N74	Customs Bond required by CBP to import vehicles and materials	\$ 3,500,000

Exhibit B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

FISKER INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

Re: Docket No. _____

**FINAL ORDER AUTHORIZING (I) DEBTORS TO CONTINUE AND RENEW
THEIR LIABILITY, PROPERTY, CASUALTY, SURETY BOND, AND OTHER
INSURANCE PROGRAMS, AND HONOR ALL OBLIGATIONS IN RESPECT
THEREOF AND (II) FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of Fisker Inc. and certain of its affiliates (collectively, the “**Debtors**”), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of interim and final orders, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to (i) maintain, continue, review, purchase, renew or extend, and obtain, in their sole discretion, the Insurance and Surety Bond Programs through the Carriers and the Sureties on an uninterrupted basis and in accordance with the same practices and procedures as were in effect before the Petition Date and (ii) pay all Insurance Obligations, Surety Bond Obligations, and Broker Fees, whether due and payable before, on, or after the Petition Date, and (b) authorizing the applicable financial institutions to receive, process, honor, and pay all checks or wire transfers used by the Debtors to pay the foregoing, as more fully described in the Motion; and the Court having jurisdiction to

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

consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the DiDonato Declaration; and the Court having held a hearing, if necessary, to consider the relief requested in the Motion on a final basis (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and the DiDonato Declaration and at the Hearing, if any, establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis to the extent set forth in this order (this “**Order**”).
2. The Debtors are authorized, but not directed, to maintain and continue, in their sole discretion, their Insurance and Surety Bond Programs (including those Insurance Programs and Surety Bond Programs listed on Schedule 1 and Schedule 2, respectively, annexed hereto) without

interruption and in accordance with the same practices and procedures as were in effect prior to the Petition Date.

3. The Debtors are authorized, but not directed, to pay, in their sole discretion, the Insurance and Surety Bond Obligations and the Broker Fees, if any, that may be owed in connection with the Insurance and Surety Bond Programs, whether due and payable before, on, or after the Petition Date, *provided, however*, that any payments made pursuant to this Order on account of Insurance and Surety Bond Obligations owed for periods prior to the Petition Date shall not exceed \$483,838 in the aggregate, absent further order of the Court.

4. The Debtors are authorized, but not directed, to renew or obtain, in their sole discretion, new insurance policies or surety bonds or execute other agreements in connection with their Insurance and Surety Bond Programs, including upon the expiration or termination of any Insurance Program or Surety Bond Program.

5. Notwithstanding anything to the contrary in the Insurance and Surety Bond Programs, in the event the Debtors default under the terms of any Insurance and Surety Bond Program, the Carrier or Surety shall not cancel any insurance policy or surety bond of the Debtors without first providing notice of such default in writing by overnight mail to the Debtors, their counsel, any official committee appointed in the Chapter 11 Cases, and the U.S. Trustee and with at least ten business days to cure. If the Debtors fail to cure the default within that time, then the Carrier or Surety may, in accordance with the terms of any applicable Insurance and Surety Bond Program, and without further order of the Court, exercise any and all of its rights under such Insurance and Surety Bond Program.

6. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or

automated clearinghouse transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized, but not required, to issue, in their sole discretion, new post-petition checks, or effect new fund transfers, for the Insurance and Surety Bond Obligations and the Broker Fees and to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and to reimburse the Carriers, the Sureties, the Brokers, or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

8. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

9. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

10. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the amount, priority, character, or validity of any claim against the Debtors on any grounds, (b) a grant of third-party beneficiary status or bestowal of any additional rights on any third party, (c) a

waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute the amount, priority, character, or validity of any claim on any grounds, whether under bankruptcy or non-bankruptcy law, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

11. Any Bankruptcy Rule or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

12. The Debtors are authorized to take any action necessary or appropriate to implement and effectuate the terms of, and the relief granted in, this Order without seeking further order of the Court.

13. The Court shall retain jurisdiction over any matter arising from or related to the implementation, interpretation, and enforcement of this Order.

Schedule 1

Insurance Programs

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22	Fisker Inc.	Everest National Insurance Company	ASSEX00374-241	D&O Runoff Liability Policy	4/5/2024	4/5/2030	\$ 300,000
23	Fisker Inc.	W. R. Berkley Corporation	BPRO8112574	D&O Runoff Liability Policy	4/5/2024	4/5/2030	\$ 295,000
24	Fisker Inc.	Berkshire Hathaway Specialty Insurance	47-EPC-334380-01	D&O Runoff Liability Policy	4/5/2024	4/5/2030	\$ 200,000

Schedule 2

Surety Bond Programs

Schedule 2
Surety Bonds

Ref	Entity/Principal (Obligor)	Beneficiary Name(s)	Surety Provider(s)	Bond Number(s)	Bond Description / Purpose	Bond Amount
1	Fisker Group Inc. DBA Fisker	State of Arizona	Old Republic Surety Company	B150024200	Vehicle Dealer Bond for Fisker's Arizona Dealer License with Arizona Department of Transportation (ADOT)	\$ 100,000
2	Fisker TN, LLC	Tennessee Motor Vehicle Commission and State of Tennessee	Hudson Insurance Company	TCS19174	Motor Vehicle Dealer Bond for Tennessee Dealer License	\$ 50,000
3	Fisker Group Inc. DBA Fisker	State of California	Old Republic Surety Company	A150011281	California DMV Commercial Requester Account Bond	\$ 50,000
4	Fisker Group, Inc	State of Maryland	Hudson Insurance Company	TCS23261	Maryland Bond with Rider for Maryland Distributor License	\$ 100,000
5	Fisker Group, Inc	State of Indiana - Secretary of State Auto Dealer Services Division	Hudson Insurance Company	TCS23342	Bond for Indiana Manufacturer License	\$ 25,000
6	Fisker Group, Inc	State of California	Old Republic Surety Company	A150008825	California Dealer Surety Bond	\$ 50,000
7	Fisker Group, Inc	Department of Transportation	Southwest Marine and General Insurance Company (an Arizona Corporation)	23C001N74	Customs Bond required by CBP to import vehicles and materials	\$ 3,500,000