

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

In re

NU RIDE INC., *et al.*,¹

Reorganized Debtors.

Chapter 11

Case No. 23-10831 (MFW)

(Jointly Administered)

Ref. Docket No. 1499

**LIMITED OBJECTION AND RESERVATION OF RIGHTS
REGARDING MOTION OF DARREN POST, STEVE BURNS, JULIO
RODRIGUEZ, AND CAIMIN FLANNERY FOR ENTRY OF AN ORDER
GRANTING: (I) RELIEF FROM THE AUTOMATIC STAY AND/OR PLAN
INJUNCTION TO OBTAIN INSURANCE PROCEEDS AND (II) RELATED RELIEF**

Post-Effective Date Debtor Nu Ride Inc. ("Nu Ride") respectfully submits this Limited Objection and Reservation of Rights regarding the motion of certain of the Debtors' former directors and/or officers [Docket No. 1499] (the "Motion") to modify the Plan Injunction² to permit the Debtors' D&O Insurers to pay Defense Costs related to the District Court Action.

BACKGROUND

1. As this Court is aware, but Movants may not be,³ this Motion sits against the backdrop of ongoing litigation between Nu Ride and certain of the D&O Insurers. The Motion seeks to modify the Plan Injunction as to the exact same insurance policy already at issue in an adversary proceeding pending before this Court, in which the insurance companies contest jurisdiction. For the benefit of Movants and non-parties to that litigation, a brief summary follows:

¹ The Reorganized Debtors and the last four digits of their respective taxpayer identification numbers are: Lordstown Motors Corp. (3239); Lordstown EV Corporation (2250); and Lordstown EV Sales LLC (9101). The Reorganized Debtors' service address is: Nu Ride Inc. c/o William Gallagher, CEO, M3 Partners, 1700 Broadway, 19th Floor, New York, NY 10019.

² Capitalized terms not defined herein have the meanings set forth in the Motion.

³ Movants did not reach out to Nu Ride prior to filing the Motion. After being served with the Motion, counsel for Nu Ride informed counsel to Movants that the Adversary Proceeding had been filed.



2. On October 25, 2024, Nu Ride commenced an adversary proceeding (No. 24-ap-50179, the “Adversary Proceeding”) against the D&O Insurers seeking a declaratory judgment as to coverage under the primary layer policy for the tower of D&O Policies at issue in the Motion. The primary D&O Insurer (“Certain Underwriters”) subsequently created a jurisdictional dispute that has been pending since December. Without first obtaining, or even seeking, this Court’s determination as to jurisdiction, and without regard to the Plan Injunction, they filed a subsequent, competing proceeding in New York State Court (the “New York Action”). Their complaint failed to reference the already pending Adversary Proceeding in this Court. Only *after* filing the New York Action did Certain Underwriters file a motion to dismiss the Adversary Proceeding (the “Motion to Dismiss”) on the grounds that this Court lacks subject matter jurisdiction, notwithstanding that the Plan specifically includes actions against the D&O Insurers as retained causes of action.⁴ Nu Ride filed an opposition to the Motion to Dismiss [Adv. D.I. 27] on the grounds that the facts and circumstances of this case establish a close nexus between the availability of insurance and the network of compromises that the parties managed to achieve to confirm the Plan and resolve these Chapter 11 cases. Certain Underwriters filed a reply [Adv. D.I. 28]. They then failed to comply with the requirement set forth in Del. Bankr. L.R. 7007-4 to file a notice of completion of briefing. Nu Ride filed a letter to the Court attaching such notice [Adv. D.I. 29] and delivered the requisite binders to the Court. The Motion to Dismiss remains pending as of the date hereof.

⁴ As set forth in Nu Ride’s opposition to the Motion to Dismiss, Nu Ride and Certain Underwriters entered into a stipulation (memorialized in a Stipulated Order [Adv. D.I. 14]) whereby Nu Ride agreed to extend the deadline for Certain Underwriters to respond to the motion for summary judgment *and* complaint to December 20, 2025. Without first notifying Nu Ride that they no longer intended to abide by the terms of the Stipulated Order (or giving Nu Ride an opportunity to enforce that Stipulated Order), Certain Underwriters then filed a motion to hold their bargained-for deadline to respond to the summary judgment motion in abeyance pending their Motion to Dismiss the complaint.

3. Notwithstanding the pending Motion to Dismiss in this Court, the New York Action proceeds apace: as Nu Ride indicated in its Status Report [Adv. D.I. 30], on March 20, 2025. Although the New York State Supreme Court agreed to stay the New York Action initially, to give this Court an opportunity to rule on the Motion to Dismiss and prevent the potential for inconsistent rulings, that stay expired on April 24, 2025. Nu Ride’s deadline to respond to the complaint in the New York Action is May 12, 2025.

4. While Nu Ride was litigating with the primary layer insurer, the District Court Action was proceeding against the Movants and the other defendants to that action (the “Ohio Defendants”). Nu Ride understands that the Ohio Defendants’ deadline to respond to the operative complaint in the District Court Action is approaching, and Movants intend to seek coverage under the D&O Policies for the costs of defending that action (the “Defense Costs”).

5. Although Movants named certain of the Debtors’ D&O Insurers in the Motion, there are additional D&O Insurers who issued “side-A only” D&O Policies to the Debtors—that is, policies that provided coverage to the Debtors’ covered officers and directors only, and not to the Debtors. Nu Ride understands that the Movants’ position is that such D&O Policies (the “Side-A Only Policies”) are not property of the estate, and therefore did not need to be included in the Motion.

6. Certain of the Ohio Defendants, including the Movants, filed proofs of claim against the Debtors, including for indemnification. Nu Ride and the Claims Ombudsman (as defined in the Plan) filed non-substantive objections to certain of these claims as amended and superseded and untimely filed. *See Post-Effective Date Debtors’ and Claims Ombudsman’s Joint Third (Non-Substantive) Omnibus Objection to Claims* [D.I. 1296] and *Post-Effective Date Debtors’ and Claims Ombudsman’s Joint Fifth (Non-Substantive) Omnibus Objection to Claims*

[D.I. 1298]. Nu Ride believes there are additional substantive grounds to object to the Ohio Defendants' and Movants' claims, and intends to so object at the appropriate time. From Nu Ride's perspective, the Adversary Proceeding, the District Court Action, certain shareholder derivative actions (which are also Retained Causes of Action under the Plan) (the "Derivative Actions"), and the objections to Movants' claims are interconnected, and Nu Ride is in the process of resolving the Debtors' rights and obligations with respect to each of these in order to maximize value for all of its stakeholders, including the Debtors' creditors.

LIMITED OBJECTION

7. The need for modification of the Plan Injunction highlights this Court's jurisdiction over the D&O Policies and claims for coverage thereunder. Moreover, the instant Motion demonstrates the nexus between the D&O Policies and the interlocking compromises (including, for example, the resolution of the Ohio Defendants' claims against the estates) that made up the confirmed Plan. Nu Ride is aligned with the Movants regarding the D&O Insurers', including Certain Underwriters', obligation to provide coverage under the D&O Policies, and does not object to Movants' request to modify the Plan Injunction to obtain coverage. Indeed, Nu Ride believes that it and the Movants ought to be proceeding in concert against the D&O Insurers, including with respect to the Side-A Only Policies.

8. Nu Ride requests that any Order granting the Motion include the following language:

- a. The Order pertains to the Defense Costs only.
- b. Movants and Nu Ride shall use commercially reasonable efforts to coordinate obtaining coverage for the Defense Costs under the D&O Policies, including as to the settlement of any claims involving such coverage.
- c. Nothing in the Order requires Nu Ride to incur any expenses in connection with any action by the Movants to seek coverage under the D&O Policies.

- d. Movants' rights against the Debtors or Nu Ride (including in the event that coverage under the D&O Policies is unavailable, in whole or in part, to the Movants), shall be limited to any proofs of claim filed by Movants in accordance with the *Order (A) Establishing Bar Dates and Related Procedures for Filing Proofs of Claim, Including Claims Arising Under Section 503(b)(9) of the Bankruptcy Code, (B) Approving the Form, Manner, and Procedures of Notice Thereof, and (C) Granting Related Relief* [D.I. 319] (the "Bar Date Order"), and to the treatment ascribed for such claims in the Plan. Neither Movants, nor any of Movants' agents, attorneys, employees, or other representatives, shall attempt to cause any action to be taken to collect any assets of the Debtors or their estates, other than from any applicable D&O Policies, or via a proof of claim filed in accordance with the Bar Date Order. Nu Ride and the Claims Ombudsman retain their rights to raise any and all objections, defenses, and counterclaims to such claims.

RESERVATION OF RIGHTS

Nu Ride reserves all rights regarding the D&O Policies (including any action ultimately brought by Movants to obtain coverage under such D&O Policies), the Adversary Proceeding, the New York Action, the Derivative Actions, and any proofs of claim filed by Movants.

CONCLUSION

For the foregoing reasons, Nu Ride respectfully requests that the Court include the language in paragraph 8 hereof in any Order granting the Motion.

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Dated: April 29, 2025
Wilmington, Delaware

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