

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
	)	
PROTERRA INC, <i>et al.</i> , ¹	)	Case No. 23-11120 (BLS)
	)	
Debtors.	)	Jointly Administered
	)	

**ONTARIO INTERNATIONAL AIRPORT AUTHORITY'S LIMITED OBJECTION TO
DEBTORS' MOTION FOR ENTRY OF FINAL ORDER (I) AUTHORIZING
MAINTENANCE, ADMINISTRATION AND CONTINUATION OF DEBTORS'
CUSTOMER PROGRAMS AND (II) GRANTING RELATED RELIEF**

Ontario International Airport Authority ("OIAA"), by and through its counsel, Leech Tishman Fuscaldto & Lampl, Inc., objects to the Debtors' motion for entry of final order (i) authorizing maintenance, administration, and continuing of Debtors' customer programs, and (ii) granting related relief ("**OIAA Limited Objection**") on the grounds that it provides the Debtors with the authority to unilaterally modify and/or terminate their Customer Programs (defined below) without providing their non-debtor counterparties due process

1. Prior to the Petition Date, OIAA purchased various vehicles from the Debtors, which included certain ongoing warranties. OIAA asserts certain claims against the Debtors in connection therewith.

2. On August 7, 2023, the Debtors filed their *Motion for Entry of Interim and Final Order (I) Authorizing Maintenance, Administration, and Continuation of*

¹The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Proterra Inc (9565); and Proterra Operating Company, Inc. (8459). The location of the Debtors' service address is: 1815 Rollins Road, Burlingame, California 94010.



Debtors' Customer Programs and (II) Granting Related Relief (“**Motion**”). In the Motion, the Debtors sought and seek, among other things, the entry of an interim and final order authorizing, but not directing, the Debtors to continue, replace, implement, modify, and/or terminate one or more of the customer-related warranty programs (“**Customer Programs**”) in each case as the Debtors deem appropriate in their business judgment and in the ordinary course of business, without further Court Order.

3. On August 10, 2023, the Debtors obtained an interim order granting such relief.

4. OIAA generally supports the Debtors' request to continue the Customer Programs. However, OIAA submits the Motion goes beyond simply asking this Court for unilateral authority to continue the Customer Programs and seeks unilateral unfettered authority to modify and/or terminate Customer Programs, including warranty programs, seemingly without any regard to the terms and conditions of the operative agreements controlling those Customer Programs.

5. Apart from seeking the ability to continue the Customer Programs, the Debtors by their Motion are also seeking the authority, *inter alia*, to modify and/or terminate Customer Programs: (i) in the ordinary course of business; (ii) in the sole business judgment of the Debtors; (iii) without further Court approval; and, most importantly, (iv) without advance notice to their non-debtor counterparties.

6. OIAA submits that granting the relief requested in the Motion and proposed final order would effectively provide the Debtors with carte blanche

authority to modify and/or terminate Customer Programs without regard to the operative documents controlling those programs and without any due process for non-debtor counterparties to object/respond.

7. Although it is not OIAA's intention in filing this OIAA Limited Objection to place an undue burden upon the Debtors, there must be some balance in the interest of fairness to non-debtor counterparties. As a result, it is respectfully requested that any final order granting the Motion be modified to provide that if the Debtors seek to modify and/or terminate a Customer Program, the Debtors must file with the Court, and serve upon each affected non-debtor counterparty (and their counsel, if such counsel has filed a Notice of Appearance in these cases), notice of their intent to modify and/or terminate a Customer Program ("**Modification/Termination Notice**"). In the event of a modification, the Modification/Termination Notice should also be required to provide the details of the proposed modifications to the specific Customer Program.

8. Any final order should also be modified to provide that to the extent the affected non-debtor counterparty objects to the Debtors' proposed modification and/or termination, such non-debtor counterparty be required to file with the Court an objection to the proposed modification and/or termination on or within fourteen (14) days after the filing of the Modification/Termination Notice with the Court ("**Objection Deadline**").

9. If the affected non-debtor counterparty does not object by the Objection Deadline, the Debtors' proposed modification and/or termination of the Customer

Program with respect to the affected non-debtor counterparty shall be deemed effective without further Court order, subject to any other rights of the non-debtor counterparty under or related to such program.

10. Based on the above, and for the convenience of the Court, the Debtors and other parties in interest, OIAA proposes the following paragraph be inserted as new paragraph 4 in the proposed final order:

In the event the Debtors seek to modify and/or terminate a Customer Program with a particular non-debtor counterparty, the Debtors shall file with the Court, and serve upon each affected non-debtor counterparty (and their counsel, if such counsel has filed a Notice of Appearance in these cases), notice of their intent to modify and/or terminate a Customer Program (**“Modification/Termination Notice”**). In the event of a modification, the Modification/Termination Notice shall provide the details of the proposed modifications to the Customer Program. To the extent that the affected non-debtor counterparty objects to the Debtors’ proposed modification and/or termination, such non-debtor counterparty shall be required to file with the Court an objection to the proposed modification and/or termination on or within fourteen (14) days after the filing of the Modification/Termination Notice with the Court (**“Objection Deadline”**). A hearing shall be scheduled to resolve the objection at the next available omnibus hearing date that will provide the affected non-debtor counterparty with at least seven (7) days notice of said hearing. If the affected non-debtor counterparty does not object by the Objection Deadline, the Debtors’ proposed modification and/or termination of the Customer Program with respect to the affected non-debtor counterparty shall be deemed effective without further court order, subject to any other rights of the non-debtor counterparty under or related to such program.

11. It is respectfully submitted that the proposed revisions to the final order afford the applicable non-debtor counterparties due process by having an opportunity to object to the Debtors’ proposed modification and/or termination of their Customer Program, particularly any warranty program.

CONCLUSION

12. For the reasons set forth above, OIAA respectfully submits that the proposed modification to final order as set forth in paragraph 9 above is fair, reasonable and not unduly burdensome, and prays that the Court grants such relief and any other and further relief as is just and proper.

Dated: Wilmington, Delaware
August 31, 2023

Respectfully submitted,

LEECH TISHMAN FUSCALDO & LAMPL,
LLC

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CERTIFICATE OF SERVICE

Counsel certifies that a true and correct copy of the foregoing has been forwarded to all counsel via the electronic filing system of the United States Bankruptcy Court for the District of Delaware, on this 31st day of August, 2023.

/s/Jeffrey M. Carbino

Jeffrey M. Carbino