

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

In re: §  
§ Chapter 11  
IEH AUTO PARTS HOLDING LLC, *et al.*,<sup>1</sup> §  
§ Case No. 23-90054 (CML)  
Debtors. §  
§ (Jointly Administered)  
§

**SAFETY NATIONAL CASUALTY CORPORATION’S LIMITED OBJECTION TO DEBTORS’ PROPOSED FIRST 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**

Safety National Casualty Corporation (“Safety National”), by and through counsel, respectfully files this limited objection (the “Objection”) to the Debtors’ proposed *First 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* [Dkt. No. 465] (the “Plan”), and in support of this Objection would show the Court as follows:

**I. INTRODUCTION**

1. Under Art. V.C of the Plan, the Debtors seek to assume all Insurance Policies held by the Debtors, including certain Insurance Policies with Safety National. Such assumption requires that the Debtors assume the Insurance Policies as they are without nonconsensual modifications and provide adequate assurance of future performance. Several of the provisions of

<sup>1</sup> 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.



Art. V.C, however, seek to alter the rights and obligations of both the Debtors and non-debtor contract counterparties under the Insurance Policies, and are additionally silent on other obligations and rights. As such, Safety National files this limited objection requesting that specific language be included in the Plan and/or any Confirmation Order<sup>2</sup> ratifying or affirming the rights and obligations under the Safety National Insurance Policies.

## II. BACKGROUND

### A. Debtors' Insurance Policies with Safety National

2. In 2015, Safety National entered into insurance programs with Debtor IEH Auto Parts LLC ("IEH Auto Parts") including, but not limited to, the following:

- a. For policy periods from May 31, 2015 forward, such policy periods expiring May 31, 2018, Safety National provided large deductible workers' compensation/employers liability insurance coverage to IEH Auto Parts, Policy Number LDS4052968 (the "Worker's Comp Policy");
- b. For policy periods from May 31, 2015 forward, such policy periods expiring May 31, 2018, Safety National provided workers' compensation coverage (Wisconsin) to IEH Auto Parts, Policy Number PS4054962 (the "WI Worker's Comp Policy" together with the Worker's Comp Policy, the "Worker's Comp Policies");
- c. For policy periods from May 31, 2015 forward, such policy periods expiring May 31, 2018, Safety National provided a deductible automobile casualty liability/physical damage coverage to IEH Auto Parts, Policy Number CAS4052967 (the "Auto Policy", and together with the Worker's Comp Policies and the Auto Policy, collectively, the "Safety National Policy Agreements").

3. In conjunction with the Safety National Policy Agreements, Safety National entered into ancillary related agreements with IEH Auto Parts, including, but not limited to, an Indemnity Agreement dated May 31, 2015 (the "Indemnity Agreement", and together with the Safety National Policy Agreements and other related ancillary agreements, the "Safety National Insurance Policies"). The Safety National Insurance Policies continue to operate in run off, and

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<sup>2</sup> Capitalized terms shall have the same meaning as in the Plan unless otherwise defined herein.

both the Debtors and Safety National continue to have ongoing obligations related to administering and defending claims under the Safety National Insurance Policies.

4. Among other obligations, Safety National and Debtor IEH Auto Parts continue to have obligations for the defense of claims or suits brought for damages covered by the Safety National Insurance Policies. Under the Safety National Insurance Policies, Safety National has an obligation to defend any claim, proceeding, or suit against IEH Auto Parts for damages payable by the Safety National Insurance Policies. In pertinent part, the Worker's Comp Policies state:

**D. We Will Defend**

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

Worker's Comp Policies, Part 2.D. Similarly, the Auto Policy states:

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

Auto Policy, Section II.A.

5. Under the Safety National Insurance Policies, IEH Auto Parts also maintains a duty to cooperate and assist in the defense of any claim, proceeding or suit, including by providing corporate representatives and other agents with knowledge of the applicable claims for deposition, testimony, and to execute sworn documents in the course of litigation (the “Debtors’ Defense Obligations”). In pertinent part, the Safety National Insurance Policies state as follows:

**PART FOUR  
YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

Worker’s Comp Policies, Part 4.

- b. Additionally, you and any other involved "insured" must:
- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
  - (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
  - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
  - (4) Authorize us to obtain medical records or other pertinent information.
  - (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

Auto Policy, Section IV.A.2.b.

6. Further, the Safety National Insurance Policies grant Safety National certain rights to collect on and satisfy any outstanding obligations owed by IEH Auto Parts including without limitation the right to draw on letters of credit posted for Safety National's benefit.

**B. Debtors' Chapter 11 Cases and Assumption and Treatment of the Safety National Insurance Policies**

7. On January 31, 2023 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description of the Debtors, their businesses, and the facts and circumstances support the Debtors' chapter 11 cases are set forth in greater detail in the First Day Declaration.

8. On May 2, 2023, the Debtors filed their proposed Plan at Docket Number 465. Article V.C of the Plan deals with treatment of Insurance Policies, which is defined to mean "any and all insurance policies, insurance settlement agreements, coverage-in-place agreements, and other agreements, documents, or instruments relating to the provision of insurance entered into by or issued to or for the benefit of, at any time, the Debtors or its predecessors." Plan, Art. I.A.73.

Art. V.C. states that any and all Insurance Policies under which the Debtors are insured shall automatically become vested in the Estate as of the Effective Date, and that to the extent such Insurance Policies are deemed Executory Contracts that the Plan shall serve as a motion to assume or ratify such Insurance Policies, unless there has been a separate order entered by the Bankruptcy Court rejecting such Insurance Policies. There is no such order rejecting the Safety National Insurance Policies, and as such, it is the intent of the Debtors to assume the Insurance Policies.

9. Though the Plan language at Article V.C seeks to ratify any existing contracts and assume any contracts that are executory, provisions within Article V.C seemingly attempt to alter the operation of the Debtors' Insurance Policies. Some parts of Art. V.C alter the obligations of the Debtors, for example the operation of deductibles or SIRs and the Debtors' obligations to fund such deductibles and SIRs. Art V.C is also silent on whether the Debtors maintain other obligations under the Insurance Policies. As such, out of an abundance of caution, Safety National files this limited objection to the Plan, objecting to the extent the Plan seeks to alter Safety National's and the Debtors' rights and obligations under the Safety National Insurance Policies, including, but not limited to, the Debtors' Defense Obligations and Safety National's rights to satisfy the Debtors' obligations with tools such as a letter of credit.

### **III. REQUESTED RELIEF**

10. Because the Plan provides that the Safety National Insurance Policies will be assumed and vested with the Estate, Safety National serves this limited objection to any language in the Plan, Plan Supplement, Confirmation Order, or any related documents that non-consensually modifies the rights and obligations under the Safety National Insurance Policies. For the avoidance of doubt and to preserve the rights and obligations under the Safety National Insurance Policies,

Safety National requests that the following language regarding treatment of Safety National's policies be included at Article V.C of the Plan and/or any Confirmation Order.

- (v) **Provisions Governing Safety National Contracts.** Notwithstanding any provision in the Disclosure Statement, Plan, Plan Supplement, Confirmation Order, any agreements between the Debtors and the GUC Administrator, any other document related to any of the foregoing, or any other order of the Bankruptcy Court:
- (1) Each of the Debtors' Insurance Policies with Safety National Casualty Corporation and related agreements (the "Safety National Insurance Policies") and any agreement, documents, or instructions relating thereto, are treated as Executory Contracts under the Plan and shall be assumed under the Plan and vested in the Estate as of the Effective Date.
  - (2) Notwithstanding any provision in the Disclosure Statement, Plan, Plan Supplement, Confirmation Order, any agreements with the Debtors and the GUC Administrator, or any other related document, nothing shall alter, modify, amend, impair or prejudice the legal, equitable or contractual rights, obligations, and defenses of Safety National, the Debtors (or, after the Effective Date, the Wind-Down Debtors) or any other individual or entity, as applicable, under any of the Safety National Policies. Any such rights and obligations shall be determined under the Safety National Insurance Policies and applicable non-bankruptcy law.
  - (3) As proscribed under the Safety National Policies, after the Effective Date, the Debtors and/or Wind-Down Debtors, through the Plan Administrator, shall maintain a duty to cooperate and assist in the defense of any claim, proceeding, or suit against the Debtors for damages payable by the Safety National Insurance Policies. Such obligations shall include, but are not limited to, appointing a representative of the Debtors as proscribed under Rule 9001(5) of the Federal Rules of Bankruptcy Procedure with knowledge of the applicable claims for deposition, testimony, and to execute sworn documents in the course of litigation.
  - (4) The rights of Safety National to satisfy any of the Debtors' and/or Wind-Down Debtors' obligations under the Safety National Policies shall be determined under the Safety National Insurance Policies and applicable non-bankruptcy law.

#### IV. ARGUMENT & AUTHORITIES

11. The Debtors are choosing to assume the Safety National Insurance Policies under Section 365 of the Bankruptcy Code, and as such, the Safety National Insurance Policies must be

assumed in total, with all obligations and rights intact. “It is well-settled that an executory contract cannot be assumed in part and rejected in part. . . . Rather, a debtor “must assume the entire contract, *cum onere*”—the debtor must accept “both the obligations and the benefits of the executory contract.” *In re Escarent Entities, L.P.*, 423 F. App'x 462, 466 (5th Cir. 2011) (citing *Stewart Title Guar. Co. v. Old Republic Nat'l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir.1996); *In re Nat'l Gypsum Co.*, 208 F.3d 498, 506 (5th Cir.2000)); see *Tompkins ex. rel A.T. v. Troy Sch. Dist.*, 199 Fed. Appx. 463, 468 (6th Cir. 2006) (holding that it is a basic principle of contract law that a party to an agreement is constrained to accept the burden as well as the benefits of the agreement); *St. Paul Fire & Marine Ins. Co. v. Compaq Computer Corp.*, 457 F.3d 766, 773 (8th Cir. 2006) (finding that a party who accepts the benefit of a contract must also assume its burdens); *Bhushan v. Loma Alta Towers Owners Assoc., Inc.*, 148 Fed. Appx. 882, 888 (11<sup>th</sup> Cir. 2005) (stating “one who has accepted a contract’s benefit may not challenge its validity in order to escape its burdens”); *S & O Liquidating P’ship v. C.I.R.*, 291 F.3d 454, 459 (7th Cir. 2002) (“A party who has accepted the benefits of a contract cannot ‘have it both ways’ by subsequently attempting to avoid its burdens.”); *In re Flemng Cos.* 499 F.3d 300, 308 (3d Cir. 2007) (“The [debtor]... may not blow hot and cold. If he accepts the contract he accepts it *cum onere*. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other.”) (internal citations and quotations omitted) (alteration in original); *In re Texas Rangers Baseball Partners*, 521 B.R. 134, 180 (Bankr. N.D. Tex. 2014) (“A debtor may not merely accept the benefits of a contract and reject the burdens to the detriment of the other party.”). Where an order of the bankruptcy court alters the rights and obligations under an assumed executory contract, the court is in effect modifying the agreement. *In re Escarent Entities, L.P.*, 423 F. App'x at 467. Where this is done without the consent of the non-debtor party, this is in essence an un-agreed to modification, and the “bankruptcy court thus



violate[s] its obligation to ensure that [the Debtor] assume[s] the contract *in toto*.” *Id*; *see, e.g., Wilson v. Career Educ. Corp.*, 729 F.3d 665, 679 (7th Cir. 2013) (“A court may not rewrite a contract to suit one of the parties but must enforce the terms as written.”) (citation omitted); *In re Jeffrey L. Miller Investments, Inc.* 610 B.R. 692, 703 (Bankr. M.D. Fla. 2019) (stating that it is the court’s “duty to enforce [a] contract as written- not rewrite it to make it more reasonable for one of the parties”); *In re Lloyd E. Mitchell, Inc.*, 06-13250-NVA, 2012 Bankr. LEXIS 5531 (Bankr. D. Md. Nov. 29, 2012) (noting that “insurance contracts cannot be re-written by th[e] Court”).

12. Here, Safety National has not agreed to any modification of rights under the Safety National Insurance Policies, and as such, the Debtors must assume them as they were agreed to, with all rights and obligations of both contract parties intact. The Plan language at Art V.C. seems to alter the rights and obligations under some provisions of the Insurance Policies and stays silent on other obligations. As such, out of an abundance of caution and for avoidance of doubt, Safety National requests that the above proposed language be included in the Plan or any Confirmation Order in order to clarify and preserve all rights and obligations under the Safety National Insurance Policies.

13. Further, in order to assume an executory contract, a debtor must provide adequate assurance of future performance under the contract. 11 U.S.C. Section 365(b)(1)(C). Here, the Debtors have not provided adequate assurance of their future performance, and in particular, have not provided adequate assurance that they will perform the Debtors’ Defense Obligations. This assurance is particularly important because Art. V.C has the effect of lifting of the stay to the extent of insurance on claims covered under the Safety National Insurance Policies. As such, the Debtors must provide for the appointment of a representative as proscribed under Rule 9001(5) of the Federal Rules of Bankruptcy Procedure with knowledge of the applicable claims so that the

Debtors may perform the Debtors' Defense Obligations in future, such as providing a corporate representative for deposition, testimony, and to execute sworn documents in the course of litigation.

## V. RESERVATION OF RIGHTS

14. Safety National specifically reserves all of its rights with respect to the Safety National Insurance Policies and its right to further object to the Plan or assert any additional claims as appropriate.

## VI. CONCLUSION

Accordingly, the Safety National respectfully requests that the aforementioned language be included in the Plan or any Confirmation Order, and in the alternative that the Court deny confirmation of the Debtors' *First 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*, and grant such other and further relief to which the Safety National is justly entitled.

Dated this 26th day of May 2023.

Respectfully Submitted,

/s/ Leanne G. O'Donnell

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**CERTIFICATE OF SERVICE**

I hereby certify that on this the 26<sup>th</sup> day of May, 2023, a true a correct copy of the foregoing *Safety National Casualty Corporation's Limited Objection to Debtors' Proposed First 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* served upon all parties noticed pursuant to the Court's ECF filing system.

*/s/ Leanne G. O'Donnell*

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Leanne G. O'Donnell