

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

In re:

AFH AIR PROS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10356 (PMB)

(Jointly Administered)

**LIMITED OBJECTION OF CONTINENTAL CASUALTY COMPANY
AND NATIONAL FIRE INSURANCE COMPANY OF HARTFORD,
AND THEIR APPLICABLE AFFILIATES, TO CONFIRMATION OF
THE SECOND AMENDED CHAPTER 11 PLAN OF
LIQUIDATION OF AFH AIR PROS, LLC AND ITS DEBTOR AFFILIATES**

Continental Casualty Company and National Fire Insurance Company of Hartford (together, with their North American insurance affiliates, collectively, “CNA” or the “*Claimant*”), by their undersigned counsel, submit this limited objection and reservation of rights (the “*Limited Objection*”) to the *Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtor Affiliates* [Dkt. No. 478] (as may be amended, supplemented, or otherwise modified, the “*Plan*”). In support of this Limited Objection, CNA respectfully states the following.

Preliminary Statement

The Plan fails to preserve, and in fact may revoke, setoff rights and other rights of secured claimholders. By its injunctions and other provisions, the Plan purports to abrogate all rights of setoff and recoupment. CNA holds claims secured, in part, by setoff and/or recoupment rights, as well as security interests in certain collateral, which are potentially impaired by these

¹ The last four digits of AFH Air Pros, LLC’s tax identification number are 1228. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the claims and noticing agent at <https://www.veritaglobal.net/AirPros>. The mailing address for the debtor entities for purposes of these chapter 11 cases is: 150 S. Pine Island Road, Suite 200, Plantation, Florida 33324.



injunctions and other provisions. Pursuant to CNA's timely asserted proof of claim and applicable law, the Plan cannot nullify CNA's setoff rights and security interests in any event. Moreover, pursuant to the Plan "Other Secured Claims" are unimpaired. Thus, the Plan should not be confirmed until it is modified or clarified to make clear that creditors' setoff and recoupment rights are preserved. By this Limited Objection, CNA seeks modification of the Plan, and/or any order confirming the Plan, preserving creditors' rights of setoff and recoupment, security interests, and related rights. While CNA welcomes the Plan provision confirming that all insurance policies remain in full force and effect in accordance with their terms (Plan, § IV.K.1) and that "Other Secured Claims" are unimpaired, CNA seeks confirmation and clarification that creditors' setoff and recoupment rights are preserved in all respects.

Background

A. Background

1. On March 16, 2025 (the "***Petition Date***"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Georgia ("***Bankruptcy Court***").

2. On June 24, 2025, the Debtors filed the current version of the Plan.

3. On June 24, 2025, the Debtors filed the *Second Amended Disclosure Statement for the Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtor Affiliates* [Dkt. No. 479] (as may be amended, supplemented, or otherwise modified, the "***Disclosure Statement***").

4. A combined hearing on confirmation of the Plan and approval of the Disclosure Statement (the "***Confirmation Hearing***") has been set for August 6, 2025.

B. Nature of CNA's Claims

5. Both prior and subsequent to the commencement of the case, CNA provided Debtor AFH Air Pros, LLC with insurance coverage under various insurance policies, including but not limited to those listed on the attached **Schedule A** hereto, incorporated herein by reference (collectively, and as may have been amended from time to time, the “***Policies***”). Pursuant to the Policies, the Debtors’ obligations thereunder are secured, in part, by a letter of credit in the amount of \$3,449,000, subject to annual adjustments (the “***Letter of Credit***”² or the “***Collateral***”) as collateral.

6. On April 30, 2025, the Debtors filed their *Motion of the Debtors for Entry of an Order Authorizing the Debtors to Enter into a Stipulation with the CNA Insurance Companies and Assume Related Insurance Policies and Agreements* [Docket No. 288], seeking authority to enter into a stipulation (the “***Stipulation***”) with CNA. Pursuant to the Stipulation, the parties agreed that (i) the Policies would be extended through and including July 9, 2025; (ii) the Policies, as extended would be deemed assumed pursuant to 11 U.S.C. § 365(a); (iii) the Debtors would make payments totaling \$1,748,382 to cure amounts owing under the Policies (the “***CNA Cure Payments***”); (iv) the Debtors would make payment of \$344,744 in additional premium and deposit an additional \$360,000 in the Collateral; and (v) acknowledge CNA’s first-priority liens in the Collateral.

7. The Court entered an Order approving the Stipulation on May 9, 2025 [Docket No. 327] (the “***Stipulation Order***”). Debtors made payment in accordance with the Stipulation Order on May 9, 2025.

8. CNA timely filed a proof of claim setting forth in more detail the foregoing rights and claims. *See* Claim No. 162 against Debtor AFH Air Pros, LLC (the “***CNA Proof of Claim***”). The CNA Proof of Claim is fully incorporated herein by reference.

² The Policies and the Letter of Credit are collectively referred to herein as the “***Program***”.

9. In addition to the foregoing, the CNA Proof of Claim described unliquidated amounts that are potentially due and owing to CNA by the Debtors. As loss experience under the Policies and related agreements continues to develop, such amounts may become liquidated. CNA reserved the right to amend and/or supplement each of its proofs of claim.

10. In addition, the CNA Proof of Claim asserted rights of setoff, recoupment, and other equitable rights to the full extent applicable. The CNA Proof of Claim reserves all of CNA's rights and preserves all defenses in connection therewith.

C. The Plan

11. The Plan preserves, for the Debtors' unilateral benefit, the Debtors' setoff and recoupment rights. *See* Plan, § IX.E.

12. In addition, section X.F of the Plan, entitled "Non-Discharge of the Debtors; Injunction," purports, *inter alia*, to permanently enjoin all creditors from asserting any rights of setoff other than setoffs exercised prior to the Petition Date. *See* Plan, § X.F(4).

13. Moreover, section X.F of the Plan arguably interferes with the rights of secured creditors, like CNA, to their collateral by enjoining creditors and parties in interest from "creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action." Plan, § X.F(3).

14. Among other provisions relating to insurance and insurance policies, the Plan makes clear that insurance policies, like the Policies between the Debtors and CNA, remain fully in force and effective in accordance with their terms:

Up to and including their policy expiration date(s), all Insurance Policies in effect as of the Effective Date shall remain in full force and effect according to their terms and the coverage obligations of the insurers and third-party administrators under such Insurance Policies shall continue following the Effective Date (including any obligations to pay, defend, and process insured claims).

Plan, § IV.K(1).

Limited Objection Regarding Setoff and Recoupment Rights

15. By permanently enjoining all creditors from asserting any rights of setoff in connection with any claims or interests in the Debtors' assets, the Plan purports to abrogate the rights, including those of setoff, of creditors such as CNA, whose claims support such rights of setoff. To the extent that the Plan abrogates, fails to preserve, or impairs setoff and recoupment rights in any way, CNA objects to confirmation of the Plan. Moreover, CNA objects to confirmation of the Plan to the extent that the Plan interferes with CNA's rights over the collateral securing its claim against the Debtors, including but not limited to CNA's rights to draw on the applicable letters of credit securing the Debtors' obligations to CNA.

16. The Bankruptcy Code recognizes setoff rights that exist under non-bankruptcy law. *See* 11 U.S.C. § 553(a) (“[e]xcept as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case . . .”).

17. A creditor's claim that is subject to setoff is secured to the extent of the amount subject to setoff. *See* 11 U.S.C. § 506(a)(1) (“An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff . . .”).

18. As described above, in the CNA Proof of Claim, CNA asserted and reserved its rights of setoff and/or recoupment with respect to amounts possibly due and owing between CNA and the Debtors. Moreover, as set forth in CNA's proofs of claim, the Debtors' obligations

to CNA are secured by letters of credit and CNA expressly asserts and reserves all of its rights to the fullest extent possible under the letters of credit, including, but not limited to, the right to draw down on the letters of credit and to apply any letter of credit proceeds to any indebtedness owing from the Debtors to CNA.

19. The Plan purports to abrogate all setoff and recoupment rights even as it unilaterally preserves the Debtors' setoff and recoupment rights. *See* Plan, § X.F. CNA holds claims secured, in part, by setoff and/or recoupment rights and its rights in certain letters of credit that are potentially impaired by the injunctions and releases contained in the Plan and described herein.

20. By the terms of the Plan itself, any such impairments are impermissible. First, in other instances, the Plan preserves, as it must, "any defenses, including coverage defenses" held by insurers such as CNA. Plan, IX.H(3). These defenses include CNA's rights to setoff and recoupment, its security interests in its collateral (such as the applicable letters of credit), and CNA's right to apply the proceeds from any draws on its letters of credit to the Debtors' obligations to CNA.

21. Second, the Plan provides that all insurance policies shall remain fully in force and effect in accordance with their terms. *See* Plan, § IV.K(1). By their terms, the CNA Policies and other Program agreements between the Debtors and CNA preserve CNA's rights to setoff and recoupment and CNA's security interests in its collateral (such as the applicable letters of credit).

22. Third, pursuant to the Stipulation, the Policies have been assumed by the Debtors. *See* Stipulation Order, ¶ 2. In addition to the Plan provisions providing for the continuation of the Policies in accordance with their terms, the assumption of the Program preserves all of CNA's existing rights under the Policies and applicable law—including the rights of setoff and

recoupment. By their terms, the Policies and other Program agreements between the Debtors and CNA preserve CNA's rights to setoff and recoupment and CNA's security interests in its collateral (such as the applicable letters of credit). Since the Policies have been assumed in accordance with the Stipulation, these agreements, and the rights contained therein, must be enforced in full. *See, e.g., In re Hawker Beechcraft, Inc.*, 486 B.R. 264, 278 (Bankr. S.D.N.Y. 2013) (“[A] debtor must assume or reject an entire contract, and cannot cherry-pick the provisions it does not like...”).

23. Finally, when a creditor timely asserts and reserves its rights of setoff against a debtor pre-confirmation, as CNA has asserted here in its timely filed proofs of claim, a proposed plan cannot extinguish such rights. *Cf. In re Cont'l Airlines*, 134 F.3d 536, 542 (3d Cir. 1998) (barring creditor from asserting post-confirmation setoff rights “without timely filing a proof of claim and asserting the set-off in the reorganization proceedings”); *Daewoo Int’l (Am.) Corp. Creditor Tr. v. SSTs Am. Corp.*, No. 02 CIV. 9629 (NRB), 2003 WL 21355214, at *17 (S.D.N.Y. June 11, 2003) (where plan barred setoff, creditors precluded from asserting setoff rights post-confirmation that were not timely raised or asserted in a pre-confirmation proof of claim or otherwise). While the Plan provides that “Other Secured Claims” are Unimpaired (*see* Plan, § III.B(2)), the Plan cannot abrogate CNA's setoff rights and security interests in any event. The Plan should not be confirmed until the Plan or confirmation order is modified to clarify that creditors' setoff and recoupment rights are preserved.

24. To the extent that such rights are impaired, the Plan fails to be “fair and equitable” with respect to secured creditors. *See* 11 U.S.C. § 1129(b)(2)(A). Thus, CNA files this Limited Objection to the Plan to the extent that the Plan fails to preserve creditors' rights of setoff and recoupment and secured interests. Subject to this clarification and the relief requested herein, CNA has no further objection to confirmation of the Plan on this basis.

Reservation of Rights

CNA reserves the right to amend or supplement this Limited Objection and/or its filed proof of claim, based upon any facts or arguments that come to light prior to the Confirmation Hearing on the Plan.

WHEREFORE, CNA respectfully requests that this Court (i) deny confirmation absent a modification of the Plan preserving creditors' rights of setoff and recoupment and providing insurers with the protections outlined herein; and/or (ii) to the extent that the Court enters an order confirming the Plan, such an order will include language that preserves creditors' rights of setoff and recoupment and provides insurers with the necessary preservations or rights as set forth herein; and (iii) grant such other and further relief as may be just and fitting under the circumstances.

Dated: July 28, 2025
Atlanta, Georgia

/s/ Gary W. Marsh
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CERTIFICATE OF SERVICE

I, Gary W. Marsh, an attorney, certify that on July 28, 2025, I caused the foregoing to be served by electronic notice through the CM/ECF system of the United States Bankruptcy Court for the Northern District of Georgia on those parties entitled to electronic service.

/s/ Gary W. Marsh

Schedule A

Policy Number	Source Policy Year	Report Policy Term	Resource Policy Term	Line of Business
7037129042	2023	05/2023	05/2023	Work Comp
7037129056	2023	05/2023	05/2023	Liability
7037129073	2023	05/2023	05/2023	Auto
7092115796	2023	05/2023	05/2023	Work Comp (CA)
7039516591	2023	05/2023	05/2023	Auto (PD)
7037129042	2024	05/2024	05/2024	Work Comp
7037129056	2024	05/2024	05/2024	Liability
7037129073	2024	05/2024	05/2024	Auto
7092115796	2024	05/2024	05/2024	Work Comp (CA)
7039516591	2024	05/2024	05/2024	Auto (PD)