

ENTERED

February 15, 2023

Nathan Ochsner, Clerk

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

| | | |
|--|---|--------------------------|
| |) | Chapter 11 |
| In re: |) | |
| |) | Case No. 23-90088 (DRJ) |
| AVAYA INC., <i>et al.</i> , ¹ |) | |
| |) | (Jointly Administered) |
| Debtors. |) | |
| |) | Re: Docket No. 16 |

**ORDER (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE INSURANCE COVERAGE ENTERED
INTO PREPETITION AND SATISFY PREPETITION
OBLIGATIONS RELATED THERETO, (B) RENEW, AMEND,
SUPPLEMENT, EXTEND, OR PURCHASE INSURANCE POLICIES,
(C) CONTINUE TO PAY BROKERAGE FEES, AND (D) MAINTAIN
THE SURETY BOND PROGRAM, AND (II) GRANTING RELATED RELIEF**

Upon the emergency motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") (a) authorizing the Debtors to (i) continue insurance coverage entered into prepetition and satisfy prepetition obligations related thereto in the ordinary course of business, (ii) renew, amend, supplement, extend, or purchase insurance coverage in the ordinary course of business on a postpetition basis, (iii) satisfy payment of prepetition obligations on account of and continue to pay Brokerage Fees, and (iv) maintain the Surety Bond Program on an uninterrupted basis; and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://www.kcellc.net/avaya>. The location of Debtor Avaya Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.

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



enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, if any; and this Court having determined that the legal and factual bases set forth in support of the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors are authorized, but not directed, to continue the Insurance Policies including, without limitation, the Insurance Policies identified on **Exhibit 1** attached hereto and any related agreements, and to pay any prepetition or postpetition obligations related to the Insurance Policies, including the Insurance Premiums, and any amounts owed to the Insurance Carriers and the Insurance Broker in the amounts and categories described in the Motion.

2. The Debtors, upon consultation with each of the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group, are authorized, but not directed, to renew, amend, supplement, and/or extend the Insurance Policies, and to purchase new insurance policies in the ordinary course of business, and to execute other agreements in connection therewith, including letters of credit.

3. The Debtors are authorized, but not directed, to pay the prepetition Brokerage Fees in the amounts described in the Motion and to continue to pay Brokerage Fees on a postpetition basis in the ordinary course.

4. The Debtors are authorized, but not directed, to maintain the Surety Bond Program without interruption, including, without limitation, payment of the Surety Premiums and any other agreements related to the Surety Bond Program, and to pay any prepetition or postpetition obligations related to the Surety Bond Program, in each case in the ordinary course of business and consistent with prepetition practices.

5. The Debtors, upon consultation with each of the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group, are authorized to renew, amend, supplement, and/or extend the Surety Bonds, including, without limitation, the Surety Bonds identified on **Exhibit 2** attached hereto, or to purchase new Surety Bonds, and to execute other agreements, such as letters of credit, in connection with the Surety Bond Program in each case in the ordinary course of business and consistent with prepetition practices.

6. The Debtors are not authorized by this Order to take any action with respect to a surety bond that would have the effect of transforming a prepetition undersecured or unsecured Surety Bond obligation into a postpetition or secured obligation. Such relief may be sought by separate motion, which may be heard on an expedited basis.

7. The Debtors shall notify the U.S. Trustee, the Akin Ad Hoc Group, the PW Ad Hoc Group, and any statutory committee appointed in these cases if the Debtors renew, amend, supplement, extend, terminate, replace, increase, or decrease existing insurance and surety coverage or change insurance or surety carriers, enter into any premium financing agreements, or obtain additional insurance or surety coverage.

8. Nothing in this Order authorizes the Debtors to accelerate any payments not otherwise due.

9. Notwithstanding anything to the contrary in this Order, nothing herein shall be deemed to authorize the payment by the Debtors of the prepetition Deductibles and SIRs. The Debtors' right to seek relief from this prohibition upon further notice and hearing, including on an emergency basis, are reserved.

10. The Debtors shall maintain a matrix or schedule of payments made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date and amount of the payment; (c) the category or type of payment, as further described and classified in the Motion. The Debtors shall provide a copy of such matrix or schedule to the U.S. Trustee, any statutory committee appointed in these Chapter 11 Cases, the PW Ad Hoc Group, and the Akin Ad Hoc Group within ten days of the end of each calendar month beginning upon entry of this Order.

11. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other

applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

12. The banks and financial institutions on which checks were drawn or electronic funds transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

13. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

14. Notwithstanding anything to the contrary in this Order, any payment made or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any) imposed on the Debtors under any order(s) of this Court approving the postpetition secured debtor-in-possession financing facility and the use of cash collateral (any such order, a "Financing Order"), including any documentation with respect to such financing and any budget in connection with such Financing Order. In the event of any conflict between the terms of this Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

15. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any person to whom any obligations under the Insurance Policies or Surety Bonds are owed.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

17. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), and the Bankruptcy Local Rules are satisfied by such notice.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order.

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: February 15, 2023.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1**Insurance Policies¹**

| <u>Type of Policy Coverage</u> | <u>Insurance Carrier(s)</u> | <u>Policy Number</u> | <u>Policy Term</u> | <u>Approximate Annualized Gross Premium²</u> |
|---------------------------------------|------------------------------------|-----------------------------|---------------------------|--|
| Crime | Beazley US | V22773220501 | 3/31/2022 – 3/31/2023 | \$35,560.60 |
| Crime (Excess) | Zurich American Insurance Company | FID050799004 | 3/31/2022 – 3/31/2023 | \$60,283.45 |
| | AXIS | P00100012660403 | 3/31/2022 – 3/31/2023 | |
| D&O Liability Go Forward | Berkley | BPRO8077611 | 3/31/2022 – 3/31/2023 | \$2,116,088.14 (All D&O Liability) |
| | AXA XL | ELU18174622 | 3/31/2022 – 3/31/2023 | |
| | Markel | MKLM6EL0007947 | 3/31/2022 – 3/31/2023 | |
| | Sompo | DOX10012266204 | 3/31/2022 – 3/31/2023 | |
| | Beazley | V213DB220501 | 3/31/2022 – 3/31/2023 | |
| | Old Republic | ORPRO12101860 | 3/31/2022 – 3/31/2023 | |
| | Starr | 1000623272221 | 3/31/2022 – 3/31/2023 | |
| | Argo | MLX76031704 | 3/31/2022 – 3/31/2023 | |
| | Swiss Re | DOE200135104 | 3/31/2022 – 3/31/2023 | |
| | CAN | 596853951 | 3/31/2022 – 3/31/2023 | |
| | Chubb CODA BDA | 21827002A | 3/31/2022 – 3/31/2023 | |
| | Everest BDA | SCBEX00038221 | 3/31/2022 – 3/31/2023 | |
| AWAC BDA | C070169002 | 3/31/2022 – 3/31/2023 | | |
| Navigators UK | FSGDO2200081 | 3/31/2022 – 3/31/2023 | | |

¹ The Debtors request authority to honor and renew existing Insurance Policies, as applicable, regardless of whether the Debtors inadvertently failed to include a particular Insurance Policy herein.

² The annualized Insurance Premium does not include any additional taxes.

| Type of Policy Coverage | Insurance Carrier(s) | Policy Number | Policy Term | Approximate Annualized Gross Premium² |
|---------------------------------|------------------------------------|----------------------|-----------------------|---|
| | Chubb UK | FSGDO2200082 | 3/31/2022 – 3/31/2023 | |
| | Beazley UK | FSGDO2200084 | 3/31/2022 – 3/31/2023 | |
| | Canopus | CUAI061601 | 3/31/2022 – 3/31/2023 | |
| | Zurich UK | FSGDO2200121 | 3/31/2022 – 3/31/2023 | |
| | AIG UK | FSGDO2200566 | 3/31/2022 – 3/31/2023 | |
| D&O Liability Run-Off | US Specialty Ins. Co. (HCC Global) | 14-MGU-17-A40257 | 12/15/2017 – 2023 | \$453,534 (All D&O Liability) |
| | XL Specialty | ELU149281-17 | 12/15/2017 – 2023 | |
| | Markel | MKLM6EL0002984 | 12/15/2017 – 2023 | |
| | Endurance | DOX10010915400 | 12/15/2017 – 2023 | |
| | Beazley | V1E387170101 | 12/15/2017 – 2023 | |
| | Old Republic | ORPRO39350 | 12/15/2017 – 2023 | |
| | Berkley | BPRO8026942 | 12/15/2017 – 2023 | |
| | Argonaut | MLX760250200 | 12/15/2017 – 2023 | |
| | Lloyds (Hiscox) | FSUSC1700612 | 12/15/2017 – 2023 | |
| | Lloyds (CV Starr) | FSUSC1700613 | 12/15/2017 – 2023 | |
| | Lloyds (Navigators) | FSUSC1700623 | 12/15/2017 – 2023 | |
| | Zurich plc | FSUSC1700611 | 12/15/2017 – 2023 | |
| D&O Liability Run-Off (Renewed) | Gemini Insurance Co. | BPRO8077611 | 3/31/2023 – 3/31/2029 | \$5,034,813 (All D&O Liability) |
| | XL Specialty Insurance Co. | ELU18174622 | 3/31/2023 – 3/31/2029 | |
| | Markel American Insurance Co. | MKLM6EL0007947 | 3/31/2023 – 3/31/2029 | |

| Type of Policy Coverage | Insurance Carrier(s) | Policy Number | Policy Term | Approximate Annualized Gross Premium² |
|--------------------------------|--|----------------------|-----------------------|---|
| | Endurance American Specialty Insurance Co. | DOX10012266204 | 3/31/2023 – 3/31/2029 | |
| | Beazley Insurance Company, Inc. | V213DB220501 | 3/31/2023 – 3/31/2029 | |
| | Old Republic Insurance Company | ORPRO12101860 | 3/31/2023 – 3/31/2029 | |
| | Starr Indemnity & Liability Company | 1000623272221 | 3/31/2023 – 3/31/2029 | |
| | Argonaut Insurance Co. | MLX76031704 | 3/31/2023 – 3/31/2029 | |
| | North American Specialty Insurance Co. | DOE200135104 | 3/31/2023 – 3/31/2029 | |
| | Continental Casualty Co. | 596853951 | 3/31/2023 – 3/31/2029 | |
| | Lloyd's Syndicate No. 1221 | FSGDO2200081 | 3/31/2023 – 3/31/2029 | |
| | Chubb European Group SE | FSGDO2200082 | 3/31/2023 – 3/31/2029 | |
| | Lloyd's Syndicate No. 2623 | FSGDO2200084 | 3/31/2023 – 3/31/2029 | |
| | Lloyd's Syndicate No. 4444 | CUAI061601 | 3/31/2023 – 3/31/2029 | |
| Defense Base Act | The Insurance Co. of the State of PA (AIG) | 012345352 | 9/30/2022 – 9/30/2023 | \$7,015.50 |
| Domestic Automobile | Zurich American Insurance Company | BAP015816706 | 9/30/2022 – 9/30/2023 | \$148,953 |
| E&O Liability | Lloyds Beazley | W3071E220201 | 9/30/2022 – 9/30/2023 | \$790,500 |
| E&O Liability (Excess) | Arch | NPL006726801 | 9/30/2022 – 9/30/2023 | \$1,924,014.00 (All excess EPL Liability) |
| | AmTrust AHC | AES121272901 | 9/30/2022 – 9/30/2023 | |
| | AXA XL | MTE003879410 | 9/30/2022 – 9/30/2023 | |
| | Zurich | EOC932670509 | 9/30/2022 – 9/30/2023 | |

| Type of Policy Coverage | Insurance Carrier(s) | Policy Number | Policy Term | Approximate Annualized Gross Premium² |
|---|--|----------------------|-----------------------|---|
| Employment Practices Liability | CNA | 652420619 | 3/31/2022 – 3/31/2023 | \$97,750 |
| Employment Practices Liability (Excess) | North Rock Bda | 652420619 | 3/31/2022 – 3/31/2023 | \$100,063.00 |
| | Sompo | EPX30005359501 | 3/31/2022 – 3/31/2023 | |
| | Magna Carta Bda | MCEN208682 | 3/31/2022 – 3/31/2023 | |
| | Zurich | EPL050836404 | 3/31/2022 – 3/31/2023 | |
| | Hanseatic Bda | HIPD205233 | 3/31/2022 – 3/31/2023 | |
| Fiduciary Liability | Euclid | SFD31211995 | 3/31/2022 – 3/31/2023 | \$74,104.06 |
| Fiduciary Liability (Excess) | XL Specialty Insurance Co. | ELU18174522 | 3/31/2022 – 3/31/2023 | \$124,290.38 |
| | Chubb / Ace | DOXG25114942008 | 3/31/2022 – 3/31/2023 | |
| | Freedom Specialty Insurance Company (Nationwide) | XMF2202445 | 3/31/2022 – 3/31/2023 | |
| | Zurich | FLC868083803 | 3/31/2022 – 3/31/2023 | |
| Foreign Casualty Package | The Insurance Co. of the State of PA (AIG) | 800279159 | 9/30/2022 – 9/30/2023 | \$288,700.12 |
| | | 800279160 | | |
| | | 8375093 | | |
| | | 7073322 | | |
| General Liability | Zurich American Insurance Company | GLO015816506 | 9/30/2022 – 9/30/2023 | \$13,000 |
| Global Property | AIG | 015680518 | 3/31/2022 – 3/31/2023 | \$200,032.27 |
| Umbrella | XL Insurance America, Inc. | US00076703LI22A | 9/30/2022 – 9/30/2023 | \$170,000 |
| Umbrella (Excess) | AIG | 14572405 | 9/30/2022 – 9/30/2023 | \$274,125 |
| | Liberty Insurance | ECA2359941062 | 9/30/2022 – 9/30/2023 | |

| Type of Policy Coverage | Insurance Carrier(s) | Policy Number | Policy Term | Approximate Annualized Gross Premium² |
|------------------------------------|--|----------------------|-----------------------|---|
| | Underwriters Inc. | | | |
| | Navigators | LA22FXRZ032N5IV | 9/30/2022 – 9/30/2023 | |
| | Travelers Property Casualty Company of America | EX7T26423622NF | 9/30/2022 – 9/30/2023 | |
| Cargo Stock Throughput | AIG | 023550544 | 3/30/2022 – 3/30/2023 | \$158,282 |
| Cargo Stock Throughput (Excess) | Falvey (Lloyd's 1221) | MCFAL3000046 | 3/30/2022 – 3/30/2023 | \$97,980 |
| Special Risk Coverage (KRE) | Hiscox | UKA301435121 | 3/31/2022 – 3/31/2023 | \$28,178.50 |
| Workers' Compensation ³ | Zurich American Insurance Company | WC015816606 | 9/30/2022 – 9/30/2023 | \$275,999 |
| | Zurich American Insurance Company | WC015816806 | 9/30/2022 – 9/30/2023 | |

³ The Debtors do not seek authority to maintain workers' compensation coverage and to pay prepetition amounts related thereto under this Motion, but rather request such authority as part of the Wages Motion, which was filed concurrently herewith.

Exhibit 2**Surety Bonds¹**

| Bond Number | Surety / Issuing Carrier | Principal | Beneficiary | Type of Bond | Bond Term² | Bond Premium |
|--------------------|--------------------------------------|------------------|------------------------------------|---------------------|------------------------------|---------------------|
| 800032667 | Atlantic Specialty Insurance Company | Avaya Inc. | State of California | LP | 03/01/2020 – 03/01/2023 | \$975.00 |
| 21C000QNF | Intact Insurance Company | Avaya Inc. | U.S. Customs and Border Protection | CU | 05/26/2022 – 05/26/2023 | \$750.00 |
| 800032662 | Atlantic Specialty Insurance Company | Avaya Inc. | State of Iowa | LP | 06/30/2020 – 06/30/2023 | \$375.00 |
| 800032663 | Atlantic Specialty Insurance Company | Avaya Inc. | State of New Mexico | LP | 06/30/2020 – 06/30/2023 | \$390.00 |
| 800032664 | Atlantic Specialty Insurance Company | Avaya Inc. | State of Oregon | LP | 06/30/2020 – 06/30/2023 | \$300.00 |
| 800032666 | Atlantic Specialty Insurance Company | Avaya Inc. | State of Arkansas | LP | 06/30/2020 – 06/30/2023 | \$390.00 |
| 800032670 | Atlantic Specialty Insurance Company | Avaya Inc. | City of Albuquerque, New Mexico | LP | 06/30/2020 – 06/30/2023 | \$260.00 |

¹ The Debtors request authority to honor and renew existing Surety Bonds, as applicable, regardless of whether the Debtors inadvertently failed to include a particular Surety Bond herein.

² For the avoidance of doubt, all Surety Bonds listed herein remain active as of the Petition Date. Each expiration date herein reflects the billing dates for annual Surety Bonds or the original expected expiration date for projects related thereto.

| Bond Number | Surety / Issuing Carrier | Principal | Beneficiary | Type of Bond | Bond Term ² | Bond Premium |
|-------------|--------------------------------------|-------------------|---|--------------|-------------------------|--------------|
| 800032671 | Atlantic Specialty Insurance Company | Avaya Inc. | State of Arizona | LP | 06/30/2020 – 06/30/2023 | \$260.00 |
| 800032672 | Atlantic Specialty Insurance Company | Avaya Inc. | City of Springfield, Missouri, Division of Purchases | LP | 06/30/2020 – 06/30/2023 | \$260.00 |
| 800032673 | Atlantic Specialty Insurance Company | Avaya Inc. | State of Washington | LP | 06/30/2020 – 06/30/2023 | \$260.00 |
| 800032674 | Atlantic Specialty Insurance Company | Avaya Inc. | State of Nevada | LP | 06/30/2020 – 06/30/2023 | \$1,950.00 |
| 800032675 | Atlantic Specialty Insurance Company | Avaya Inc. | State of Arizona | LP | 06/30/2020 – 06/30/2023 | \$780.00 |
| 800032676 | Atlantic Specialty Insurance Company | Avaya Inc. | Metropolitan Government of Nashville and Davidson County | LP | 06/30/2020 – 06/30/2023 | \$1,560.00 |
| 962021624 | Intact Insurance Company | Avaya Canada Corp | Her Majesty in Right of Canada | CU | 08/01/2022 – 08/01/2023 | \$100.00 |
| 200811047 | Atlantic Specialty Insurance Company | Avaya Inc. | Bureau of Customs and Border Protection | CU | 08/30/2022 – 08/29/2023 | \$12,000.00 |
| 800111550 | Atlantic Specialty Insurance Company | Avaya Inc. | Bureau of Customs and Border Protection | CU | 10/30/2022 – 10/30/2023 | \$24,000.00 |
| 800032679 | Atlantic Specialty Insurance Company | Avaya Inc. | Consolidated City of Indianapolis & Unknown 3rd Parties, State of Indiana | LP | 12/31/2022 – 12/31/2023 | \$150.00 |

| Bond Number | Surety / Issuing Carrier | Principal | Beneficiary | Type of Bond | Bond Term ² | Bond Premium |
|-------------|--------------------------------------|------------|--|--------------|-------------------------|--------------|
| 800032680 | Atlantic Specialty Insurance Company | Avaya Inc. | Minnesota Department of Labor and Industry, CCLD Licensing and Certification | LP | 03/01/2022 – 03/01/2024 | \$694.00 |
| 800032681 | Atlantic Specialty Insurance Company | Avaya Inc. | Illinois Environmental Protection Agency | PF | 06/14/2021 – 06/14/2024 | \$28,808.00 |
| 800032665 | Atlantic Specialty Insurance Company | Avaya Inc. | State of Tennessee | LP | 06/30/2021 – 06/30/2024 | \$65,000.00 |
| 800032677 | Atlantic Specialty Insurance Company | Avaya Inc. | Commonwealth of Virginia | LP | 08/09/2021 – 08/31/2024 | \$3,250.00 |
| 800032678 | Atlantic Specialty Insurance Company | Avaya Inc. | Port Authority of Allegheny County | PF | 09/01/2021 – 09/01/2024 | \$7,831.00 |
| 800007381 | Atlantic Specialty Insurance Company | Avaya Inc. | City of St. Louis Department of Public Safety | LP | 09/07/2021 – 09/07/2024 | \$650.00 |
| 800007389 | Atlantic Specialty Insurance Company | Avaya Inc. | St. Louis County, Department of Public Works | LP | 10/01/2021 – 10/01/2024 | \$650.00 |