

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

FISKER, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

**FISKER OWNER'S ASSOCIATION'S RESPONSE TO THE LIQUIDATING
TRUSTEE'S JUNE 13, 2025 CHAPTER 11 STATUS REPORT**

The Fisker Owners Association (“FOA”), by and through its undersigned counsel, files this response (this “Response”) to the *Liquidating Trustee's Chapter 11 Status Report Addressing Vehicle Recall-Related Matters* (the “Status Report”) [D.I. 1047].² We respond solely to clarify and respond to certain statements in the Status Report. Prior to filing the Status Report, we shared most of the concerns outlined below with the Liquidating Trustee (the “Trustee”), but the Trustee declined to incorporate them into the Status Report. Accordingly, we submit this Response to ensure the Court has a complete and accurate record. The FOA respectfully states as follows:

First, the agreement (the “Transfer Agreement”) with American Lease is not a “vendor” contract. *See* Status Report at ¶ 17 (“On November 5, 2024, the Liquidating Trustee and American Lease entered into an agreement (the “Agreement”) where, in exchange for certain funding, American Lease agreed to act as a vendor for the Liquidating Trust ...”). As is evident from its name, it is a “Transfer Agreement,” pursuant to which the Trust purported to “transfer,” and American Lease purported to “assume,” all the Trust’s obligations with respect to the recall work

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of their respective employer identification numbers or Delaware file numbers, are as follows: Fisker Inc. (0340); Fisker Group Inc. (3342); Fisker TN LLC (6212); Blue Current Holding LLC (6668); Platinum IPR LLC (4839); and Terra Energy Inc. (0739). The address of the Debtors’ corporate headquarters is 14 Centerpointe Drive, La Palma, CA 90623.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Status Report.



and reimbursement claims. Indeed, the Transfer Agreement lacks all the features of a typical vendor contract. For example, there is no mechanism in the Transfer Agreement for the Trust to exercise any oversight over American Lease or to terminate the agreement for misconduct or any other reason. While the Trustee says he reviews reports from American Lease, the agreement contains no reporting or cash expenditure reconciliation requirements whatsoever. Nor has the Trustee indemnified American Lease. In short, the Transfer Agreement does not create an agent-principal relationship: it is a full delegation and assignment of the Trust's recall-related responsibilities to a commercial entity.

This delegation has fundamentally undermined the Trust's ability to process recalls in an effective and transparent manner. As we explained at the Hearing, the Fisker cloud supports both American Lease's fleet of vehicles *and* the rest of the Fisker Ocean population; it is the mechanism by which both recalls *and* other support services are pushed out "over the air" ("OTA") to *all* Fisker vehicles, American Lease-owned and not. As a result, American Lease—and, by extension, the Trust, since American Lease is effectively the Trust for purposes of the recall work—has operated under an irreconcilable conflict of interest regarding the facilitation of the recall work, because American Lease has a vested interest in shifting as much of its cloud-related operating costs to vehicle owners.³ And that is precisely what has happened since the Effective Date, as we outlined at the Hearing. Indeed, even in the weeks since the Hearing, we understand that American Lease has taken further steps to use its control of the Fisker cloud to interfere with vehicle operations. We have brought these concerns to the Trustee's attention.

³ In fact, the FOA has paid American Lease over \$700,000 on behalf of owners after American Lease threatened to shut off OTA access and demanded payment without specifying if the FOA was paying for OTA updates to support the recall process.

Second, the Status Report omits several important facts relating to the Transfer Agreement and the Trustee's engagements with the FOA. To be clear, the Trustee did not consult with or inform the FOA about the Transfer Agreement until after the parties had executed it. As we stated at the Hearing, instead of running straight to the Court to address this material deviation from the Plan, the FOA chose to try to work with American Lease and the Trustee to reach an arrangement where the recalls would continue at no-cost to owners, as is required by the Plan and federal and state law. Those efforts failed. It was only after six months of enduring American Lease's threats to shut off access to the Fisker cloud, and the Trustee's failure to exercise oversight over American Lease, that we sought the Court's assistance. So, to suggest that the FOA's indulgence of the Trustee and willingness to try to resolve vehicle owner concerns without rushing to Court is somehow tantamount to acquiescence to the American Lease arrangement is misleading.

Third, while the Status Report touts that "86% of Fisker Ocean Vehicles have received the NHTSA-mandated recall updates (OS 2.2.1 and OS 2.2.2)," we have reason to believe this figure is inflated and inaccurate. *See* Status Report at ¶ 21. In particular, the Status Report omits NHTSA-mandated water pump and door handle recall progress, the former of which lags the OTA updates and the latter of which has not even started at all. In fact, on information and belief, American Lease has restricted access to service tooling required to perform the water pump and door handle repairs. Specifically, we understand American Lease has required service personnel who can fix the water pumps and door handles to sign up as a "service plan provider" and purchase access to the FAST tool. Moreover, the Trustee's report ignores the many irregularities in the OTA update process, including instances where vehicle owners received only partial updates that were inaccurately reported as complete.

Finally, it is not the FOA's obligation to run the recall process or to identify a vendor to do that work for the Trustee. When stating that he chose American Lease to perform the recall work and distribute claims, the Trustee never explains how he selected American Lease in the first place, notwithstanding the obvious conflict of interest, nor did the Trustee consult with the FOA (or any other vehicle owners) before selecting American Lease for this critical work. *See* Status Report ¶ 16. It was only at the Trustee's request—six months too late—that the FOA identified a potential vendor to do the work.

The FOA remains committed to working with the Trustee to achieve a practical outcome that serves vehicle owners and complies with the Plan and the law.

Dated: June 17, 2025

STEVENS & LEE, P.C.

/s/ Joseph H. Huston, Jr.
Joseph H. Huston, Jr. (No. 4035)
919 North Market Street
Suite 1300
Wilmington, DE 19801
(302) 425-3310
jhh@stevenslee.com

– and –

COOLEY LLP

/s/ Daniel S. Shamah
Daniel S. Shamah (admitted *pro hac vice*)
55 Hudson Yards
New York, NY 10001-2157
(212) 479-6000
dshamah@cooley.com

Counsel to Fisker Owners Association

CERTIFICATE OF SERVICE

The undersigned certifies that on June 17, 2025, he caused a true copy of the foregoing Joinder to be served electronically through the Court's CM/ECF System upon all parties in interest registered to receive notice.

/s/ Joseph H. Huston, Jr.

Joseph H. Huston, Jr. (No. 4035)