

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

FISKER INC., *et al.*,

Debtors.

Chapter 11

Case No. 24-11390 (TMH)

(Jointly Administered)

**Objection deadline: October 4, 2024**

**Hearing: October 9, 2024 @ 10:00 a.m.**

**AMERICAN LEASE LLC’S EMERGENCY (I) OBJECTION TO APPROVAL OF  
PROPOSED COMBINED PLAN AND DISCLOSURE STATEMENT AND (II)  
REQUEST FOR ADJOURNMENT OF HEARING SCHEDULED THEREON**

American Lease LLC, the Buyer under that certain Fleet Sales Agreement dated as of June 30, 2024 (as it may have been amended, supplemented, or otherwise modified, the “Purchase Agreement”) [*see* Dkt. No. 110-1] and approved by entry of this Court’s order dated July 17, 2024 (as amended, the “Sale Order”) [Dkt. No. 243], hereby respectfully (i) objects on an emergency basis to approval of the Debtors’ proposed combined chapter 11 plan and disclosure statement (hereafter, the “Plan”) and (ii) requests an adjournment of the October 9 hearing (the “October 9 Hearing”) currently scheduled thereon:

1. Pursuant to the terms and conditions of the Purchase Agreement and related Sale Order, Buyer received the rights to purchase up to the entire Fisker Inventory of vehicles, including the substantial number of vehicles located in overseas locations (the “Sale”), for a total potential purchase price of up to a maximum \$46.25 million.<sup>1</sup> It was envisioned by the parties that the

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<sup>1</sup> To date, since entry of the Sale Order, Buyer has received delivery from Debtors of approximately 1,100 vehicles and paid the Debtors’ estates a total of approximately \$42.5 million. The remaining Fisker Inventory subject to the Sale (but not yet delivered to Buyer) is believed to total approximately 2,200 vehicles. None of the vehicles purchased by Buyer have been placed into operation yet.



Fisker Inventory of vehicles would be purchased and delivered to Buyer over time, as and when readied and made available by Debtors in a reasonable and timely manner.

2. Since Court approval of the Sale and Buyer's payment for and acceptance of initial deliveries of Fisker vehicles, multiple logistical problems and other challenges have been encountered.<sup>2</sup>

3. Until Friday, October 4, the parties have endeavored to solve and/or work through and around such problems and challenges in an effort by all sides to salvage and realize upon their respective rights and benefits and satisfy their respective obligations relating to the approved Sale.

4. Buyer understands the Sale payments are critical to the effectuation and implementation of the proposed Plan.

5. Given that Debtors advised Buyer for the first time on October 4 that Debtors cannot perform certain fundamental obligations with respect to Buyer's operation of the purchased vehicles, the proceeds of Sale payments must be held and segregated pending resolution of these critical issues.

**A. October 4 Discussions with Debtors.**

6. On Friday, October 4 at approximately 8pm EST, Buyer representatives were informed by Debtors that operational control of the Fisker vehicles subject to the Sale cannot, as a technical matter, be "ported" from the Fisker server to which the vehicles are currently linked to a distinct server owned and/or controlled by Buyer (hereafter, "Porting of the Purchased Vehicles").

7. The ability to engage in and implement a seamless and successful Porting of the Purchased Vehicles undeniably constituted a primary and significant inducement upon which

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<sup>2</sup> The Court has been made aware of some but not all of those issues and challenges. (See recent contested matters filed by Debtors involving the Toccata Dealer Group and related Fisker vehicles.)

American Lease reasonably relied in entering into the Purchase Agreement and subsequently making Sale payments. All parties have understood throughout the Sale and closing process that Porting of the Purchased Vehicles would occur as Buyer gained possession and control of their purchased fleet of Fisker vehicles. Once the porting process was complete, operational control of the purchased vehicles would be removed from the Debtor-owned and/or controlled server. Using its purchased License (see Sale Purchase Agreement) to the relevant Fisker software and IP, Buyer thereafter could operate its connected fleet of purchased Fisker vehicles from its own server, without any continuing reliance on or involvement of the Debtor's server. In furtherance thereof and consistent with a common understanding and reflection of the parties' respective intentions, the Court should be aware that since entry of the Sale Order, the parties have been diligently working and collaborating with regard to the Porting of the Purchased Vehicles. Now, the fundamental failure and inability of Debtors to effect the Porting of the Purchased Vehicles frustrates a primary purpose underlying the Purchase Agreement and denies Buyer a significant portion of the (license) benefits thereunder, including the ability to operate the purchased vehicles as contemplated.

8. **Now, on the eve of the October 9 Hearing, Buyer has just been informed that Porting of the Purchased Vehicles will not be possible.** Buyer cannot overstate the significance of this unwelcome news, conveyed to it only after it has paid the estates tens of millions of dollars under the Purchase Agreement. It is unclear at the present time what, if anything, Debtor representatives have known about the impossibility or impracticability of implementing Porting of the Purchased Vehicles, and when they learned or otherwise knew of that critical information.

9. Buyer does not waive and expressly reserves all rights, postpetition claims or administrative expenses, postpetition causes of action, defenses, objections, damages, and other

remedies available to it under the Purchase Agreement, Sale Order, and any other applicable law or equity, as against the Debtors, their bankruptcy estates, and any other responsible third parties.

**B. Objection to Proposed Plan and Disclosure Statement.**

10. Upon information and belief, Sale payments Buyer has made are a primary source of monies needed for implementation of the proposed chapter 11 Plan.

11. Buyer submits that, failing an ability to effect a prompt Porting of the Purchased Vehicles, it will have postpetition administrative expense and priority damage claims totaling in the millions, thereby rendering Debtors' future performance under the terms of a confirmed chapter 11 plan impossible or otherwise not feasible. Confirmation should therefore be denied if the October 9 Hearing moves forward as scheduled.

**C. Request for Adjournment of the October 9 Hearing.**

12. The failure to apprise Buyer (until the last possible moment) of the critical inability to implement Porting of the Purchase Vehicles carries the very real possibility of extreme and undue prejudice to Buyer should the October 9 Hearing proceed forward as currently scheduled.

13. The circumstances presented may necessitate that Buyer seek to take some expedited and targeted discovery of Debtor representatives in advance of participating in a contested confirmation hearing.

14. Buyer has asked the Debtors to voluntarily adjourn the October 9 Hearing for a short and reasonable period of time but such requests have been refused.

15. Buyer therefore respectfully requests this Court for entry of an order granting a short and reasonable adjournment of the October 9 Hearing so that Buyer is afforded a full, fair, and meaningful opportunity to prepare for, participate in, and challenge confirmation of the Plan.

16. If the October 9 Hearing proceeds, Buyer requests that entry of any order confirming the Plan preserve in full for a later day the above and fully reserved rights and claims of Buyer.

Dated: October 7, 2024

**ASHBY & GEDDES, P.A.**

/s/ Gregory A. Taylor

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