

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

) Chapter 11
In re:)
) Case No. 23-90054 (CML)
IEH AUTO PARTS HOLDING LLC, <i>et al.</i> , ¹)
) (Jointly Administered)
Debtors.)
) Re: Docket No. 182

CERTIFICATE OF NO OBJECTION

Pursuant to the *Procedures for Complex Chapter 11 Cases in the Southern District of Texas*, the undersigned proposed counsel for the above-captioned debtors (collectively, the “Debtors”) certifies as follows:

1. On March 2, 2023, the Debtors filed the *Debtors’ Application for Entry of an Order (A) Authorizing the Retention and Employment of Lincoln International LLC as Investment Banker to the Debtors and (B) Granting Related Relief* [Docket No. 182] (the “Application”).

2. The deadline for parties to file an objection to the relief requested in the Application was March 23, 2023 (the “Objection Deadline”). No objections were filed on the docket on or before the Objection Deadline. Proposed counsel to the Debtors did not receive any informal responses on or before the Objection Deadline.

3. The Debtors request that the Court enter the attached proposed order at the earliest convenience of the Court.

1 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.



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Houston, Texas
Dated: March 24, 2023

/s/ Veronica A. Polnick

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*Proposed Counsel to the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on March 24, 2023 I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Veronica A. Polnick

Veronica A. Polnick

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In re:

IEH AUTO PARTS HOLDING LLC, *et al.*,

Debtors.

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) Chapter 11
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) Case No. 23-90054 (CML)
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) (Jointly Administered)
)
) **RE: Docket No. 182**

**ORDER (A) AUTHORIZING THE RETENTION AND
EMPLOYMENT OF LINCOLN INTERNATIONAL LLC AS INVESTMENT
BANKER TO THE DEBTORS AND (B) GRANTING RELATED RELIEF**

Upon the application (the “Application”)¹ of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to retain and employ Lincoln International LLC (“Lincoln”) as investment banker, pursuant to the terms of the Engagement Letter; and (b) granting related relief, all as more fully set forth in the Application; and upon the Murphy 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 that this Court may 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 Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided as set forth herein; and this Court having reviewed the Application and having determined that the legal and factual bases set forth in support of the Application establish just

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

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 to retain Lincoln as investment banker to the Debtors in these chapter 11 cases effective as of the Petition Date on the terms and conditions set forth in the Engagement Letter attached as Exhibit A to the Application, as may be modified by this Order.

2. Except to the extent set forth herein, the Engagement Letter (together with all attachments thereto), including the Fee Structure and the Indemnification Agreement, is approved pursuant to sections 327 and 328(a) of the Bankruptcy Code, and the Debtors are authorized and directed to perform their payment, reimbursement, contribution, and indemnification obligations and their non-monetary obligations in accordance with the terms and conditions, and at the times specified, in the Engagement Letter. Subject to Paragraph 5 of this Order, all compensation and reimbursement of expenses payable under the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to any other standard of review including, but not limited to, that set forth in section 330 of the Bankruptcy Code.

3. Lincoln shall file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any applicable orders of this Court. Lincoln is hereby authorized to keep reasonably detailed time records in half-hour increments, and shall not be required to conform to any schedules of hourly rates, and will submit, with any interim or final fee application, together with the time records, a narrative summary of services rendered and will identify each professional rendering services and the total amount of compensation requested by Lincoln.

4. Lincoln will review its files periodically during the pendency of these chapter 11 cases to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new relevant facts or relationships are discovered or arise, Lincoln will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

5. Lincoln shall be compensated in accordance with the terms of the Engagement Letter. Notwithstanding anything to the contrary herein, the fees and expenses payable to Lincoln pursuant to the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code, except by the U.S. Trustee. This Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Lincoln's compensation and expense reimbursements under sections 330 and 331 of the Bankruptcy Code.

6. Notwithstanding anything to the contrary in the Application or any of its attachments, no amounts shall be paid to Lincoln absent an order of this Court approving a fee application filed on notice to parties in interest in these chapter 11 cases under the procedures set forth in any order establishing procedures for compensation and reimbursement of expenses of professionals, except that the Debtors are authorized to pay the Monthly Advisory Fee to Lincoln each month when required under the Engagement Agreement without a prior fee statement or application, provided that Lincoln shall file interim fee applications with time entries and requests for reimbursement that comply with Bankruptcy Local Rule 2016-1, except as otherwise expressly set forth in this Order, pursuant to the deadlines and other procedures set forth in any order establishing procedures for compensation and reimbursement of expenses of professionals.

7. In the event that, during the pendency of these cases, Lincoln seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys, appropriately redacted to preserve applicable privileges, shall be included in Lincoln's fee applications and such invoices and time records shall be in compliance with the Bankruptcy Local Rules and approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code; *provided, however*, that Lincoln shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of Lincoln's fee applications in these chapter 11 cases. Notwithstanding the foregoing, Lincoln shall only be reimbursed for any legal fees incurred in connection with these cases to the extent permitted under applicable law and the decisions of the Court.

8. The indemnification, contribution, and reimbursement provisions set forth in the Indemnification Agreement are approved, subject, during the pendency of these chapter 11 case, to the following:

- a. subject to the provisions of subparagraphs (b) and (d) below, the Debtors are authorized to indemnify, and to provide contribution and reimbursement to, and shall indemnify, and provide contribution and reimbursement to, any Lincoln Party (as defined in the Indemnification Agreement) in accordance with the Indemnification Agreement for any claim arising from, related to, or in connection with the services provided for in the Engagement Letter;
- b. notwithstanding subparagraph (a) above or any provisions of the Indemnification Agreement to the contrary, the Debtors shall have no obligation to indemnify Lincoln or provide contribution or reimbursement to Lincoln (i) for any claim or expense that is judicially determined (the determination having become final and no longer subject to appeal) to have arisen from Lincoln's self-dealing, breach of fiduciary duty (if any), gross negligence, willful misconduct, or bad faith; (ii) for a contractual dispute in which the

Debtors allege the breach of Lincoln's contractual obligations if this Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) for any claim or expense that is settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing pursuant to subparagraph (c) hereof to be a claim or expense for which Lincoln should not receive indemnity, contribution, or reimbursement under the terms of the Indemnification Agreement, as modified by this Order;

- c. if, during the pendency of the Debtors' cases, the indemnification is held unenforceable by reason of the exclusions set forth in subparagraph (b) above (*i.e.*, self-dealing, breach of fiduciary duty (if any), gross negligence, willful misconduct, or bad faith) and Lincoln makes a claim for the payment of any amounts by the Debtors on account of the Debtors' contribution obligations, then the proviso beginning with the word "provided" in the first sentence of the second paragraph of the Indemnification Agreement shall not apply;
- d. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, Lincoln believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Indemnification Agreement (as modified by this Order), including without limitation, the advancement of defense costs, Lincoln must file an application therefor in this Court, and the Debtors may not pay any such amounts to Lincoln before the entry of an order by this Court approving the payment. This subparagraph (d) is intended only to specify the period of time during which this Court shall have jurisdiction over any request by Lincoln for indemnification, contribution, and/or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, Lincoln.

9. To the extent the Debtors wish to expand the scope of Lincoln's services beyond those services set forth in or contemplated by the Engagement Letter or this Order (and as to which additional compensation would otherwise be payable), the Debtors shall be required to seek further approval from this Court. The Debtors shall file notice of any proposed additional services and

any underlying engagement agreement with the Court and serve such notice on the U.S. Trustee, counsel for the Committee, and any party requesting notice under Bankruptcy Rule 2002. If no such party files an objection within fourteen days of the Debtors filing such notice, such additional services and any underlying engagement agreement may be approved by the Court by further order without further notice or hearing.

10. Lincoln is authorized to apply any prepetition advance or retainer to satisfy any unbilled or other remaining prepetition fees and expenses Lincoln becomes aware of during its ordinary course billing review and reconciliation. Any remaining retainer held by Lincoln shall be held by Lincoln as security throughout these chapter 11 cases until Lincoln's fees and expenses are fully paid. Lincoln shall note or otherwise indicate any such application of prepetition advances or retainers on any fee applications filed with the Court.

11. Notwithstanding anything in the Application, the Murphy Declaration, or the Engagement Letter to the contrary: (a) Lincoln shall, to the extent that Lincoln uses the services of independent contractors, subcontractors, or employees of foreign affiliates or subsidiaries (collectively, the "Contractors") in these cases, (i) pass through the cost of such Contractors to the Debtors at the same rate that Lincoln pays the Contractors and (ii) seek reimbursement for actual costs only; and (b) the Debtors shall ensure that the Contractors are subject to the same conflict checks as required for Lincoln, including filing such disclosures required by Bankruptcy Rule 2014 with the Court.

12. Lincoln shall make reasonable efforts to avoid any duplication of services provided by any of the Debtors' other retained professionals in these chapter 11 cases.

13. To the extent there is any inconsistency between the terms of the Engagement Letter, the Application, the Murphy Declaration, and this Order, the terms of this Order shall govern.

14. Notice of the Application is deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

15. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

17. Notwithstanding any term in the Engagement Letter to the contrary, this Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2023
Houston, Texas

CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE