

ENTERED

March 28, 2023

Nathan Ochsner, Clerk

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

In re:

IEH AUTO PARTS HOLDING LLC, *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-90054 (CML)
)
) (Jointly Administered)
)
) **RE: Docket No. 184**

**ORDER (A) AUTHORIZING THE RETENTION AND
EMPLOYMENT OF TRIPLE P RTS, LLC AS RESTRUCTURING
ADVISOR TO THE DEBTORS AND (B) GRANTING RELATED RELIEF**

Upon the application (the “Application”)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 retain and employ Triple P RTS, LLC (“Portage Point”) as restructuring advisor to the Debtors, 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 Berger 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

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.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.



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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 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 ORDERED THAT:

1. The Debtors are authorized to retain and employ Portage Point as restructuring advisor 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. The terms of the Engagement Letter, including without limitation the compensation provisions, are reasonable terms and conditions of employment and are hereby approved as set forth herein.

3. The indemnification provisions set forth in the Indemnification Letter, attached as Addendum A to the Engagement Letter, are hereby approved, subject, during the pendency of these chapter 11 cases, 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 Indemnified Person (as defined in the Indemnification Letter) in accordance with the Indemnification Letter 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 Letter to the contrary, the Debtors shall have no obligation to indemnify Portage Point or provide contribution or reimbursement to Portage Point (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 Portage Point'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 Portage Point'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 Portage Point should not receive indemnity, contribution, or reimbursement under the terms of the Indemnification Letter, 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 Portage Point 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 Letter 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, Portage Point 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 Letter (as modified by this Order), including without limitation, the advancement of defense costs, Portage Point must file an application therefor in this Court, and the Debtors may not pay any such amounts to Portage Point 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 Portage Point 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, Portage Point.

4. Portage Point shall file applications for interim and final allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in Bankruptcy Code sections 330 and 331, such Bankruptcy Rules and Local Bankruptcy Rules as may then be applicable, and any applicable orders and procedures of this Court. For billing purposes, Portage Point shall keep its time in one tenth (1/10) hour increments.

5. Portage Point shall file a notice with this Court and provide no less than ten (10) business days' notice to the Debtors, the U.S. Trustee, and any official committee, before any

increases in the hourly rates set forth in the Application or the Engagement Letter are implemented. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

6. To the extent the Debtors wish to expand the scope of Portage Point's services beyond those services set forth in the Engagement Letter or this Order, the Debtors shall seek further approval from this Court.

7. In the event that, during the pendency of these cases Portage Point seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in Portage Point's fee applications and such invoices and time records shall be in compliance with the Bankruptcy Local Rules, and shall be subject to approval of the Court under the standards of Bankruptcy Code sections 330 and 331, without regard to whether such attorney has been retained under Bankruptcy Code section 327.

8. Portage Point shall not charge a markup to the Debtors with respect to fees billed by non-affiliated independent or third-party contractors who are hired by Portage Point to provide services to the Debtors and shall ensure that any such non-affiliated independent or third-party contractors are subject to conflict checks and disclosures in accordance with the requirements of the Bankruptcy Code and Bankruptcy Rules.

9. Portage Point will use its best efforts, and will coordinate with the Debtors and their other retained professionals, not to duplicate any of the services provided to the Debtors by any of their retained professionals.

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

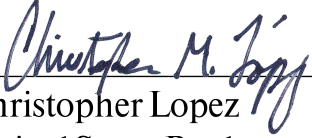
11. Notice of the Application is deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

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

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

Signed: March 28, 2023



Christopher Lopez
United States Bankruptcy Judge