

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

NEW ENGLAND MOTOR FREIGHT, INC.,
et al.,

Debtors.¹

Chapter 11

Case No. 19-12809 (JKS)

(Jointly Administered)

**SUMMARY OF THE AUTO LIABILITY PROTOCOL
SET FORTH IN THE DEBTORS' AND OFFICIAL COMMITTEE
OF UNSECURED CREDITORS' JOINT COMBINED PLAN OF
LIQUIDATION AND DISCLOSURE STATEMENT**

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¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

INTRODUCTION

WHAT IS THIS DOCUMENT? This document contains (and constitutes) a “Summary of the Auto Liability Claims Protocol” contained in the Joint Combined Plan of Liquidation and Disclosure Statement (as may be amended, supplemented, or modified, the “**Combined Plan and DS**”) filed by debtors New England Motor Freight, Inc. and certain affiliates² (the “**Debtors**”) and the Official Committee of Unsecured Creditors appointed in the Debtors’ Chapter 11 Cases (the “**Committee**,” and with the Debtors, collectively, the “**Plan Proponents**”) pending in the United States Bankruptcy Court for the District of New Jersey (the “**Bankruptcy Court**”). It is prepared specifically for persons or entities (“**Auto Liability Claimants**”) who hold, may hold and/or have asserted claims against one or more of the Debtors for personal injury or property damage, whether arising before or after the Petition Date, relating to or arising out of motor vehicle accidents relating to the Debtors’ commercial trucking and transportation operations (“**Auto Liability Claims**”), which are covered by or subject to the Debtors’ Excess Indemnity Contracts (as defined below). Auto Liability Claims are classified under Class 5B in each of the two substantively consolidated Estates set forth in the Combined Plan and DS.

WHAT IS THE PURPOSE OF THIS SUMMARY? The purpose of this Summary is to provide Auto Liability Claimants with an abridged summary of the terms of the Auto Liability Claims Protocol contained in the Combined Plan and DS that will govern the resolution and payment, if applicable, of their Auto Liability Claims.

WHAT DO I NEED TO DO WITH THIS SUMMARY? You should review this Summary, the Combined Plan and DS, including, but not limited to, Sections II.B(f), IV.B, VI.B and X of the Combined Plan and DS, the Auto Liability Claims Protocol Settlement Agreement attached as Exhibit C to the Combined Plan and DS (and any additional information you find helpful), and comply with the terms of the Auto Liability Claims Protocol in a timely manner. Failure to comply with the terms of the Auto Liability Claims Protocol will result in you being unable to liquidate your Claims and/or receive any distribution, if applicable, from the Debtors’ insurers on account of such Claim(s).

WHERE CAN I GET A COPY OF THE COMBINED PLAN AND DS AND MORE INFORMATION ABOUT THE COMBINED PLAN AND DS? To obtain copies of the Combined Plan and Disclosure Statement and other Plan-related documents, you may: (a) download electronic copies at no charge through the Case Website, <https://www.donlinrecano.com/Clients/nemf/Index>, maintained by Claims and Balloting Agent; (b) at no charge by writing to the Claims and Balloting Agent at nemfinfo@donlinrecano.com; (c) by calling the Claims and Balloting Agent at (866) 416-0554; or (d) for a fee on the Bankruptcy Court’s website (<http://www.njb.uscourts.gov>). Note, a PACER account is required to access the Bankruptcy Court’s website.

² The Debtors in the chapter 11 bankruptcy cases (the “**Chapter 11 Cases**”) and the last four digits of each Debtor’s taxpayer identification number are as follows: New England Motor Freight, Inc. (7697); Eastern Freight Ways, Inc. (3461); NEMF World Transport, Inc. (2777); Apex Logistics, Inc. (5347); Jans Leasing Corp. (9009); Carrier Industries, Inc. (9223); Myar, LLC (4357); MyJon, LLC (7305); Hollywood Avenue Solar, LLC (2206); United Express Solar, LLC (1126); and NEMF Logistics, LLC (4666).

ARTICLE I

RELEVANT BACKGROUND INFORMATION

A. Overview of the Debtors

Prior to the February 11, 2019 (the “**Petition Date**”), the Debtors offered a broad range of commercial transportation services. Debtor New England Motor Freight, Inc. (“**NEMF**”) was a leading less-than-truckload (“**LTL**”) carrier with a focus in the Mid-Atlantic, Midwest and Northeast United States. NEMF also offered LTL services to its customers across the United States and Canada through a number of partnerships and interline carrier arrangements with other LTL providers. In addition to the LTL business, the Debtors provided truckload (“**TL**”) services through Debtor Eastern Freight Ways, Inc. Debtor Jans Leasing Corp. was a trucking equipment lessor, Debtor Carrier offered dedicated third party logistics services, Debtor Apex Logistics offered transportation brokerage services, and Debtor NEMF World Transport, Inc. provided non-vessel operation common carrier operations between the United States and Puerto Rico. Additional information regarding the Debtors’ businesses is set forth in the Joint Combined Plan and DS.

B. Debtors’ Trucking Fleet Excess Indemnity Contracts

The Debtors’ commercial trucking and transportation operations are insured, *inter alia*, through certain excess indemnity contracts. All Auto Liability Claims subject to this Summary related to Debtors’ various insurance contracts with United States Fire Insurance Company (“**U.S. Fire**”) or Protective Insurance (“**Protective**”), and together with U.S. Fire, “collectively, the “**Insurers**”). The various insurance contracts are identified on **Exhibit A** to the Auto Liability Claims Settlement Agreement (the “**Excess Indemnity Contracts**”) which is attached to the Combined Plan and DS as **Exhibit C**. While the terms and provisions contained in each of the Excess Indemnity Contracts speak for themselves and govern the obligations of the parties to each such contract, the Debtors represent that the terms and conditions are materially the same across all of the Excess Indemnity Contracts. Under each of the Excess Indemnity Contracts, the Debtors have a self-insured retention amount of \$500,000.00 (the “**Self-Retention**”) that applies to each claimed occurrence. The Insurers are obligated to indemnify one or more of the Debtors for amounts paid by the Debtors on a per occurrence basis above the Self-Retention.

In order to guarantee the Debtors’ obligations to the public for the payment of Auto Liability Claims within the Self-Retention (and above, up to \$1,000,000 “for each accident”), both Insurers filed surety bonds and certificates with federal and state regulatory agencies and others (the “**Surety Bonds**”). In exchange for the

foregoing surety obligations, the Debtors executed various collateral and indemnity agreements with the Insurers providing for the Debtors' indemnification of the Insurers for payments pursuant to the terms and conditions of the Surety Bonds because of the Debtors' inability or refusal to make such payments. As collateral to secure the Debtors' Self-Retention and potential indemnification obligations, the Debtors caused letters of credit to be issued in favor of Insurers. After the Petition Date, both Protective (in the amount of \$9,539,000) (the "**Protective LC Proceeds**") and U.S. Fire (in the amount of \$2,450,000) (the "**U.S. Fire LC Proceeds**," and collectively with the Protective Auto Liability LC Proceeds, the "**Auto Liability LC Proceeds**") drew down on their respective letters of credit and are currently holding such funds.

Historically, the Debtors managed the administration and payment of Auto Liability Claims primarily in-house. Given the Debtors' bankruptcy and the wind-down of their businesses, the Debtors can no longer administer such claims.

C. The Chapter 11 Cases

a). *General*

Prior to the Petition Date, several factors severely impacted the profitability of the Debtors' businesses, ultimately prompting the liquidity crisis that dictated the Debtors' decision to commence the Chapter 11 Cases in order to conduct an orderly liquidation of their assets. While the Debtors' operations were profitable for decades since the current ownership group acquired NEMF in 1977, the Debtors suffered a downward trend over recent years, which was exacerbated in late 2018 by the unexpected loss of key accounts, the shortage of drivers, a new Union contract with onerous retroactive terms, and the L/C Lenders' ultimate unwillingness to restructure the Debtors' letters of credit obligations under terms acceptable to the Debtors. Changes and competition within the industry had an ongoing negative impact on the Debtors' revenues. Most of the LTL companies competing with the Debtors operate under non-unionized conditions. At the same time, there has been an industry-wide shortage of drivers, which put the Debtors, with an aging fleet of vehicles, at a severe disadvantage. While the Debtors made extensive efforts to reduce costs and re-focus business, such efforts were not enough to effectively reduce losses and stave off a bankruptcy filing. As such, on February 11, 2019, the Petition Date, the Debtors each filed a petition for relief under chapter 11 of Title 11 of the United States Code in the Bankruptcy Court, which are jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure as *In re*; *New England Motor Freight, Inc. et al.*, Case No. 19-12809-JKS.

Pursuant to Section 1102(a)(1) of the Bankruptcy Code, on February 21, 2019, the Office of the United States Trustee for Region Three (the "U.S. Trustee") appointed the a five-member official committee of unsecured creditors (the "**Creditors' Committee**") [Docket No. 138] as the representative of the Debtors' unsecured creditor constituency in the Chapter 11 Cases. Since its formation, the Creditors' Committee has participated in virtually every aspect of the Chapter 11 Cases. Since the commencement of the Chapter 11 Cases, the Debtors and the

Creditors' Committee has work to liquidate all of the Debtors' assets in order to maximize distribution to the Debtors' creditors.

On May 1, 2019, the Bankruptcy Court entered the Order Establishing Bar Dates and Procedures and Approving the Form and Manner of Notice Thereof [ECF No. 519], establishing June 18, 2019 at 5:00 p.m. as the deadline for holders of general unsecured claims against the Debtors' estates arising prior to the Petition Date, including Auto Liability Claims, to file proofs of claim in the Chapter 11 Cases (the "**General Bar Date**"). Additionally, on June 12, 2019, the Debtors filed a motion to establish a special administrative claims bar date for holders of Auto Liability Claims arising after the Petition Date through and including April 9, 2019. The Bankruptcy Court granted that motion and established August 12, 2019 at 5:00 p.m. (prevailing Eastern Time) (the "**Special Administrative Claim Bar Date**") as the deadline for any person or entity holding or asserting an Auto Liability Claims which arose from the Petition Date through April 9, 2019 to file proofs of claims in the Chapter 11 Cases. **Holders of Auto Liability Claims who failed to file a proof of Claim against the Debtors on or prior to the General Bar Date or the Special Administrative Claim Bar Date, as applicable, shall have their Auto Liability Claims disallowed.**

b). ***Litigation and Negotiation Relating to Auto Liability Claims***

On the Petition Date, there were approximately 73 active lawsuits involving Auto Liability Claims with loss dates since 2014 pending against the Debtors (with approximately 63 of those lawsuits having a driver formerly employed by the Debtors named as a co-defendant) in state and federal courts across multiple states (the "**Auto Liability Actions**"). Approximately 227 proofs of claim were filed which could be characterized as Auto Liability Claims, which includes claims related to the Auto Liability Actions.

On March 14, 2019, the Debtors commenced an adversary proceeding in the Bankruptcy Court (the "**Auto Liability Injunction Action**") seeking a preliminary injunction enjoining the continuation or commencement any action against any of the Debtors' employees and/or former employees who may be individually liable for Auto Liability Claims (collectively, the "**Drivers**"), including the Auto Liability Actions, and/or extending the automatic stay to protect the Debtors' estates on account of possible indemnity claims the Drivers may possess against the Debtors if judgment is entered against a Driver in any Auto Liability Action. On April 16, 2019, the Court entered a temporary restraining order in the Auto Liability Injunction Action staying the Auto Liability Actions (the "**TRO**"), and directing the parties, including the Insurers and an ad hoc group of counsel representing holders of Auto Liability Claims, to meet and confer regarding a consensual protocol to govern the orderly resolution of all Auto Liability Claims. The Court subsequently extended the TRO, with the consent of the parties—including the Insurers and an ad hoc group of counsel representing holders of Auto Liability Claims—while those discussions continued, including through the General Bar Date on June 18, 2019, and the Special Administrative Claims Bar Date applicable to certain Auto Liability Claims (defined below) arising after the Petition Date. The TRO is currently in effect through

November 5, 2019 and the Debtors will seek an extension through confirmation of the Combined Plan and DS.

Since that time, the Debtors and the Creditors' Committee worked with the Insurers and the ad hoc group of counsel representing holders of Auto Liability Claims to reach a consensus on the procedures to be used for the resolution of Auto Liability Claims. The Insurers and the Debtors have disagreed on several issues relating to, among other things, coverage of the Debtors' Self-Retention from the Auto Liability LC Proceeds with respect to holders of Auto Liability Claims who did not file a proof of claim in the Chapter 11 Cases, defense of the Drivers in connection with Auto Liability Claims, and the Insurers' obligation to manage, administer, and/or defend Auto Liability Claims within the Debtors' Self-Retention.

To resolve the disputes and issues that exist among the Insurers and the Debtors, including with respect to certain proofs of claim filed by the Insurers, the applicable Excess Indemnity Contracts, Surety Bonds, and/or other collateral and indemnity agreements, and in order to avoid potentially high litigation costs (that would diminish the Auto Liability LC Proceeds), uncertainty, and delay of any and all possible legal proceedings, the Plan Proponents and the Insurers agreed to the salient terms of the Auto Liability Claims Settlement Agreement. The Settlement Agreement is dependent and contingent upon entry of a final and non-appealable order of the Bankruptcy Court confirming the Combined Plan and DS, which incorporates the terms of the Auto Liability Claims Settlement Agreement.

D. The Joint Combined Plan and DS

On October 21, 2019, the Debtors and the Creditors' Committee (the "**Plan Proponents**") filed the Combined Plan and DS [ECF No. 932].³ The Combined Plan and DS, among other things, provides for the satisfaction of claims against and interests in the Debtors through, among other mechanisms, a pro rata distribution of the proceeds of the Debtors' orderly liquidation of assets. Specifically, with respect to holders of Auto Liability Claims, the Combined Plan and DS classifies the Holders of such claims in Class 5B (Auto Liability Claims). Holders of Auto Liability Claims are impaired under the Combined Plan and DS and therefore, are entitled to vote to accept or reject the Plan. As such, enclosed with this Summary of the Auto Liability Claims Protocol, is the Ballot for you (Holders of Auto Liability Claims) to vote to accept or reject the Combined Plan and DS.

The Combined Plan and DS also provides for the satisfaction and payment of Auto Liability Claims through the Auto Liability Claims Protocol described in Article II.C.12 of the Combined Plan and DS. Under the Combined Plan and DS, there are two consolidated groups of Debtors, the Consolidated NEMF Debtors and the Consolidated Eastern Debtors. Holders of Auto Liability Claims are classified under Class 5B in each consolidated estate. As noted above, the Auto Liability Protocol resulted from the discussions among the Plan Proponents, the Insurers and the ad hoc group of counsel representing holders of Auto Liability Claims and is memorialized

³ The Plan Proponents subsequently filed amended versions of the Combined Plan and DS.

in the Auto Liability Claims Settlement Agreement between the Plan Proponents and the Insurers attached as **Exhibit C** to the Combined Plan and DS.

The Combined Plan and DS serves as and is deemed a motion for entry of an order by the Bankruptcy Court approving the Auto Liability Claims Protocol. A hearing to consider approval of the Combined Plan and DS, including approval of the Auto Liability Claims Protocol, by the Bankruptcy Court is currently scheduled for **January 14, 2020 at 11:00 a.m.** (Prevailing Eastern Time) (the “**Confirmation Hearing**”). Any objection to the approval by the Bankruptcy Court of the Auto Liability Claims Protocol or the Combined Plan and DS must be in writing and filed with the Bankruptcy Court by **January 6, 2020 at 4:00 p.m.** (Prevailing Eastern Time).

THE FOLLOWING SUMMARY OF CERTAIN PRINCIPAL PROVISIONS OF THE JOINT COMBINED PLAN AND DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE JOINT COMBINED PLAN AND DISCLOSURE STATEMENT, WHICH IS ALSO SEPARATELY FILED. THE STATEMENTS CONTAINED IN THIS SUMMARY DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE JOINT COMBINED PLAN AND DISCLOSURE STATEMENT OR DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO JOINT COMBINED PLAN AND DISCLOSURE STATEMENT AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS. IN THE EVENT OF ANY DISCREPANCY BETWEEN THIS SUMMARY AND ANY PROVISION OF THE JOINT COMBINED PLAN AND DISCLOSURE STATEMENT, THE JOINT COMBINED PLAN AND DISCLOSURE STATEMENT OR ORDER CONFIRMING THE JOINT COMBINED PLAN AND DISCLOSURE STATEMENT WILL CONTROL

ARTICLE II

AUTO LIABILITY CLAIMS PROTOCOL

Under the terms of the Auto Liability Protocol:

- 1. Insurers’ Assumption of Administration.** Upon the Effective Date of the Combined Plan and DS, the Insurers shall assume from the Debtors the sole right and obligation to administer all Auto Liability Claims, including the obligation to investigate, defend (including the selection of counsel and all other matters involving litigation), and settle such Auto Liability Claims.
- 2. The Auto Liability Claims Injunction and Mandatory ADR Procedures.** In order to resolve their Auto Liability Claims and to receive payment on account of such Claims, each Auto Liability Claimant, whether or not such Claimant filed a proof of claim against one or more of the Debtors in the Chapter 11 Cases, must participate in the alternative dispute resolution procedures set forth on **Exhibit B** to the Auto Liability

Claims Settlement Agreement (the “**ADR Procedures**”). A copy of the ADR Procedures is attached hereto. All Auto Liability Claimants will be prohibited from litigating (in any forum), collecting, recovering, or receiving payment of, on account of or with respect to any Auto Liability Claims, from or against the Debtors, the Drivers, the Debtors’ estates, or from or against the Insurers until such ADR Procedures have been followed. Each Auto Liability Claimant **must** participate in the ADR Procedures and engage with the applicable Insurer pursuant to the ADR Procedures in a good faith effort to resolve such Auto Liability Claimant’s Auto Liability Claim.

3. **Payment on Account of Resolved Auto Liability Claims.** **Auto Liability Claimants shall not be entitled to receive any distribution or payment from any assets of the Debtors other than the Auto Liability LC Proceeds.** Auto Liability Claimants shall be entitled to receive up to 100% of the agreed upon, settled or judgment value of each such Claimant’s Auto Liability Claim from the Protective Auto Liability LC Proceeds and/or the U.S. Fire Auto Liability LC Proceeds (as applicable), and/or from the Insurers directly.
4. **Litigation After Unsuccessful Mandatory Mediation.** Should an Auto Liability Claimant fail to resolve its Auto Liability Claim after completion of the ADR Procedures, the applicable Insurer and the Auto Liability Claimant are required to file a joint statement with the Bankruptcy Court advising the Court that the mediation did not result in a settlement (an “**Unsuccessful Mediation Notice**”). Unless the Auto Liability Claimant and the applicable Insurer agrees to enter into additional mediation, arbitration or other alternative dispute resolution procedures as may be mutually acceptable to them, then within two (2) business days after the filing of an Unsuccessful Mediation Notice, the Auto Liability Claimant is then permitted to pursue any legally available remedy in the forum in which the Auto Liability Claim arose, so as to liquidate and fix the value of such Auto Liability Claim.
5. **Limitations on Litigation.** Should an Auto Liability Claimant decide to pursue litigation after the filing of an Unsuccessful Mediation Notice, such Auto Liability Claimant: (1) must bring such lawsuit within sixty (60) days after the Unsuccessful Mediation Notice is filed, ***provided, however, that the statute of limitations for such Auto Liability Claimant to bring such lawsuit did not expire prior to the Petition Date***; (ii) is prohibited from naming one or more of the Drivers as defendant(s) to such lawsuit; and (iii) may name one or more of the Debtors only as a “nominal party” with service of any such Summons and Complaint perfected on the applicable Auto Insurer.

In exchange for the resolution and complete satisfaction and payment, if applicable, of their Auto Liability Claims pursuant to the Auto Liability Claims

Protocol, Article X.B of the Combined Plan and DS provides the following release and injunction in connection with the Auto Liability Claims Protocol:

1. **Release of Auto Liability Claims Against the Debtors *et al.*** As of the Effective Date, all holders of Auto Liability Claims shall be deemed to grant a release of Auto Liability Claims in favor of the Auto Liability Claims Released Parties (Debtors, the Drivers, the Debtors' Estates, all Estate representatives, the Exculpated Parties, the Released Parties and the Liquidating Trust) *provided, however*, that Holders of Auto Liability Claims shall not be deemed to release their rights to include one or more of the Debtors as a "nominal" party to any future litigation against an Insurer in order to seek payment of such Auto Liability Claims from the Insurers and/or the Auto Liability Claims LC Proceeds, pursuant to the Auto Liability Claims Protocol. No Holder of an Auto Liability Claim shall be entitled to receive a Distribution from the Liquidating Trust on account of such Auto Liability Claim. *For the avoidance of doubt, Holders of Auto Liability Claims shall not be deemed to grant any release in favor of the Insurers upon or after the Effective Date, except as provided for in the Auto Liability Claims Protocol.*
2. **Auto Liability Claims Injunction.** Upon the Effective Date, all Holders of Auto Liability Claims shall be enjoined from taking any action, directly or indirectly, for the purpose of collecting, recovering or receiving payment or recovery with respect to an Auto Liability Claim until and unless each such Holders comply with the terms of the ADR Procedures. This Auto Liability Claims Injunction shall dissolve automatically with respect to any Auto Liability Claim two (2) business days after the filing of an Unsuccessful Mediation Notice for such Auto Liability Claim. Upon the filing of such Unsuccessful Mediation Notice, the Holder of such Auto Liability Claim shall automatically be deemed to have been granted relief from the automatic stay, the Injunction listed in Article X(C) of the Combined Plan and DS, and this Auto Liability Injunction for the limited purpose, if necessary, of listing one or more of the Debtors as a "nominal" party to any future litigation commenced by such Holder to seek payment of such Auto Liability Claim from the Auto Insurers and/or the Auto Liability Claims LC Proceeds, including any amount within the Self-Retention. *For the avoidance of doubt, no Holder of Auto Liability Claim, even after the Auto Liability Injunction is dissolved, shall be entitled to receive any Distribution from the Liquidating Trust Assets on account of such Auto Liability Claim. Holders of Auto Liability Claims shall only be entitled to receive payment on account of such Auto Liability Claim from the applicable Auto Insurer and the Auto Liability Claims LC Proceeds held by such Auto Insurer.*

ADR Procedures

A. Effectiveness of the ADR Procedures

1. The Plan shall provide and any Confirmation Order so order, that the alternative dispute resolution procedures described herein (the “ADR Procedures”) shall apply to all Holders of Auto Liability Claims whether or not such Holder has filed a proof of claim against one or more of the Debtors.

2. The Plan shall contain an injunctive provision (the "Auto Liability Claims Injunction") with respect to such Auto Liability Claims prohibiting any Holders of Auto Liability Claims from taking any of the following actions for the purpose of, directly or indirectly, litigating, collecting, recovering, or receiving payment of, on or with respect to any Auto Liability Claims, from or against the Debtors, the Drivers, the Debtors' Estates, all Estate representatives, the Exculpated Parties, and the Released Parties and/or the Liquidating Trust (collectively, the “Auto Liability Claims Released Parties”), or from or against the Auto Insurers, until such Holder participates in the ADR Procedures set forth in the Auto Liability Claims Protocol, including, but not limited to:

- a. commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding (including a judicial, arbitral, administrative or other proceeding) in any forum against or affecting the Auto Liability Claims Released Parties and/or the Insurers or any property or interests in property of the Auto Liability Claims Released Parties and/or the Insurers; and
- b. proceeding in any manner in any place with regard to any matter that is subject to resolution pursuant to the ADR Procedures, except in conformity and compliance with the ADR Procedures.

B. Initial Period of Mandatory Disclosures and Informal Discovery

3. Following the Effective Date, each Holder of an Auto Liability Claim — either individually or through its agents, attorneys and representatives — shall engage with the applicable Insurer in negotiations regarding the potential resolution of the Auto Liability Claim in accordance with the terms of the Auto Liability Claims Protocol. Those negotiations may include, without limitation, the informal exchange of requests for information and other discovery, as well as the assertion of rights, remedies, claims and defenses arising from or relating to the applicable Auto Liability Claim. The Holders of Auto Liability Claims and the Insurers shall engage in cooperative, informal exchanges and requests for information and other discovery, in a good faith effort to resolve the Auto Liability Claims.

C. Mandatory Mediation

4. If, after ninety (90) days from the Effective Date, an Auto Liability Claim has not been resolved and/or settled through the informal negotiation process, either the applicable Auto Insurer or the Holder of the Auto Liability Claim may file a written request with the Bankruptcy Court for the Auto Liability Claim to be referred to non-binding mediation (a “Mediation”).

Request”). Upon the filing of a Mediation Request by either party, the Auto Liability Claim shall automatically be referred to mandatory, non-binding mediation without further order or action of the Bankruptcy Court.

5. The mediation shall take place in Newark, New Jersey or in such a location as may be mutually acceptable to the parties and the mediator. After the filing of a Mediation Request, the Holder of the Auto Liability Claim and the applicable Auto Insurer shall cooperate in the selection of a qualified mediator. In the event that the Holder of the Auto Liability Claim and the applicable Auto Insurer are unable to agree on such a selection within ten (10) days, they shall jointly move the Bankruptcy Court to appoint a qualified mediator of its own choosing. Once a mediator is selected or assigned as provided herein, such parties shall schedule and complete mediation within sixty (60) days of such appointment (or such later date to which a Holder of Auto Liability Claim and the applicable Insurer may further stipulate). Following selection or assignment of a mediator, the parties and the mediator shall confer to determine which provisions of Local Bankruptcy Rule 9019-2, if any, shall be applicable to the mediation.

6. The applicable Insurer and the Holder of the Auto Liability Claim shall equally share the cost of the mediator’s fees and expenses. Such parties shall agree upon mutually acceptable mediation procedures in consultation with the mediator. All proceedings and writings incident to the mediation shall be privileged and confidential, and shall not be reported or placed in evidence. The ADR Procedures, and any disputes that may arise out of the same, shall be subject to the jurisdiction of the Bankruptcy Court.

D. Litigation After Unsuccessful Mandatory Mediation

7. Should mediation fail to resolve the Auto Liability Claim, the applicable Insurer and the Holder of the Auto Liability Claim shall file a joint statement with the Bankruptcy Court, with notice to Liquidating Trustee, advising the Court that the mediation did not result in a settlement (an “Unsuccessful Mediation Filing”), and within two (2) business days of the Unsuccessful Mediation Filing the Holder of the Auto Liability Claim shall be permitted to pursue any legally available remedy, so as to liquidate and fix the value of such Auto Liability Claim. Notwithstanding the foregoing, the such parties may reserve their respective rights to agree to such additional mediation, arbitration or other alternative dispute resolution procedures as may be mutually acceptable to them.

8. To the extent a Holder of an Auto Liability Claim elects to file a lawsuit to liquidate its Auto Liability Claim after the Unsuccessful Mandatory Mediation, then (i) the statute of limitations for such Holder of the Auto Liability Claim to file a lawsuit to liquidate such Auto Liability Claim in the forum in which the Auto Liability Claim arose shall be extended to sixty (60) days from the date the Insurer and the Holder of the Auto Liability Claim filed their joint statement of the Unsuccessful Mediation provided, however, that such statute of limitations had not expired prior to the Petition Date; (ii) the Holder of the Auto Liability Claim may name one or more of the Debtors as a “nominal party” in a lawsuit filed after the Unsuccessful Mandatory Mediation, but service of any Summons and Complaint shall be accepted and considered valid once perfected on the applicable Insurer.

E. Miscellaneous

9. The deadlines and/or provisions contained in these ADR Procedures may be extended and/or modified on consent of the applicable Insurer and the Holder of an Auto Liability Claim.

10. Nothing in these ADR Procedures shall reduce, enlarge, waive, modify or otherwise alter the terms and conditions of the Excess Indemnity Contracts or the parties' rights in connection with the Excess Indemnity Contracts. For the avoidance of doubt, notwithstanding these ADR Procedures, all policy limits, exclusions, terms and conditions, and any other provisions of the Excess Indemnity Contracts and the relevant coverage are expressly reserved.

11. Nothing in these ADR Procedures shall reduce, enlarge, waive, modify or otherwise alter the rights, claims, and defenses of the parties in relation to any Auto Liability Claim or the Excess Indemnity Contracts, any of which may be asserted or raised in further litigation in any court of competent jurisdiction should these ADR Procedures provided herein fail to resolve such Auto Liability Claim.

12. Upon approval of the settlement between the Debtors and the Insurers and inclusion or modification of the ADR Procedures as part of the confirmed Plan, the Insurers shall be authorized to take all actions reasonably required to settle or litigate the pending Auto Liability Claims to conclusion in accordance with these ADR Procedures.

13. These ADR Procedures, and any disputes that may arise out of these ADR Procedures, shall be subject to the jurisdiction of the Bankruptcy Court.