

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

In re:

AMERICAN TIRE DISTRIBUTORS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 24-12391 (CTG)
)
) (Jointly Administered)
)
) **Re: Docket No. 676**

**ORDER (I) CONDITIONALLY APPROVING THE
ADEQUACY OF THE DISCLOSURE STATEMENT,
(II) APPROVING THE SOLICITATION AND VOTING
PROCEDURES WITH RESPECT TO CONFIRMATION OF
THE DEBTORS' JOINT CHAPTER 11 PLAN, (III) APPROVING
THE FORM OF BALLOT AND NOTICES IN CONNECTION THEREWITH,
(IV) SCHEDULING CERTAIN DATES AND DEADLINES AND SHORTENING
NOTICE WITH RESPECT THERETO, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an order (this "Order"), (a) conditionally approving the adequacy of the *Disclosure Statement for the Amended Joint Chapter 11 Plan of American Tire Distributors, Inc. and its Debtor Affiliates* [Docket No. 761], (b) approving the Solicitation and Voting Procedures with respect to confirmation of the Plan, (c) approving the form of Ballot and notices in connection therewith, (d) scheduling certain dates and deadlines with respect thereto, and (e) granting related relief, all as more fully set forth in the Motion; and upon the First

¹ The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification numbers, are American Tire Distributors, Inc. (4594); ATD New Holdings II, Inc. (4985); ATD New Holdings III, Inc. (0977); ATD New Holdings, Inc. (3406); ATD Sourcing Solutions, LLC (5225); ATD Technology Solutions Inc. (N/A); FLX FWD Logistics, LLC (3334); Hercules Tire International Inc. (N/A); Terry's Tire Town Holdings, LLC (7409); The Hercules Tire & Rubber Company (3365); Tire Pros Francorp, LLC (1813); Tirebuyer.com, LLC (9093); and Torqata Data and Analytics LLC (4992). The location of Debtors' principal place of business and the Debtors' service address in these chapter 11 cases is 12200 Herbert Wayne Court, Huntersville, NC 28078.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Day Declaration; and the United States District Court for the District of Delaware having jurisdiction over this matter pursuant to 28 U.S.C. § 1334, which was referred to this Court under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found 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 Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing 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 HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

I. Conditional Approval of the Disclosure Statement.

2. The Disclosure Statement, substantially in the form attached hereto as **Exhibit 1**, is hereby approved on a conditional basis as providing Holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with sections 105 and 1125 (a)(1) of the Bankruptcy Code and Bankruptcy Rule 3017.

3. The Disclosure Statement (including all applicable exhibits thereto) provides Holders of Claims or Interests, and other parties in interest with sufficient notice of the injunction, exculpation, and release provisions contained in Article VIII of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

II. Approval of the Solicitation and Voting Procedures.

4. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures, substantially in the form attached hereto as **Exhibit 2**, which are hereby approved in their entirety.

III. Approval of the Materials and Timeline for Soliciting Votes and the Procedures for Confirming the Plan.

A. Approval of Certain Dates and Deadlines with Respect to the Plan and Disclosure Statement.

5. The following dates are hereby established (subject to modification as necessary) with respect to the solicitation of votes to accept, and voting on, the Plan as well as filing objections to the Plan and confirming the Plan:

Event	Date	Description
Disclosure Statement Objection Deadline	February 14, 2025, at 4:00 p.m. (prevailing Eastern Time)	Deadline by which objections to the conditional approval of the Disclosure Statement must be filed and served so as to be actually received by the appropriate notice parties (the “ <u>Disclosure Statement Objection Deadline</u> ”).
Voting Record Date	February 20, 2025	Date for determining (i) which Holders of Claims in the Voting Classes, as defined herein, are entitled to vote to accept or reject the Plan and (ii) whether Claims have been properly assigned or transferred to an assignee under Bankruptcy Rule 3001(e) such that the assignee or transferee, as applicable, can vote to accept or reject the Plan (the “ <u>Voting Record Date</u> ”).
Conditional Disclosure Statement Hearing	February 20, 2025, at 11:30 a.m. (prevailing Eastern Time) (or at such other time as the Debtors may be heard)	Date and time of the Conditional Disclosure Statement Hearing, subject to the Court’s availability.
Publication Deadline	Two (2) business days following entry of the Order (or as soon as reasonably practicable thereafter)	Date by which the Debtors will submit the Combined Hearing Notice in a format modified for publication (the “ <u>Publication Notice</u> ”).

Event	Date	Description
Solicitation Deadline	Two (2) business days following entry of the Order (or as soon as reasonably practicable thereafter)	Deadline for distributing Solicitation Packages, including Ballots, to Holders of Claims and Interests entitled to vote to accept or reject the Plan (the “ <u>Solicitation Deadline</u> ”).
Deadline to File the Plan Supplement	The date that is no later than seven (7) days prior to the Plan Objection Deadline (as defined herein)	Date by which the Debtors will File the initial Plan Supplement.
Plan Objection Deadline	March 24, 2025, at 12:00 p.m. (prevailing Eastern Time)	Deadline by which objections to the Plan and final approval of the Disclosure Statement must be filed with the Court and served so as to be actually received by the appropriate notice parties (the “ <u>Plan Objection Deadline</u> ”).
Voting Deadline	March 24, 2025, at 4:00 p.m. (prevailing Eastern Time)	Deadline by which <i>all</i> Ballots must be properly executed, completed, and delivered so that they are <i>actually received</i> (the “ <u>Voting Deadline</u> ”) by Donlin, Recano & Company, LLC, the claim and noticing agent and administrative agent retained by the Debtors in these chapter 11 cases (the “ <u>Notice, Claims, and Solicitation Agent</u> ”). ³
Confirmation Brief and Plan Objection Reply Deadline	March 26, 2025	Date by which the Debtors will File the reply to objections to confirmation of the Plan.
Deadline to File Voting Report	March 26, 2025	Date by which the report tabulating the voting on the Plan (the “ <u>Voting Report</u> ”) shall be filed with the Court.
Combined Confirmation Hearing	March 27, 2025 (or such other time as the Debtors may be heard)	Date and time of the Combined Hearing, subject to the Court’s availability.

B. Approval of the Form of, and Distribution of, Solicitation Packages to Parties Entitled to Vote on the Plan.

6. In addition to a copy of this Order, the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those Holders of Claims in the Voting Classes entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

³ An order authorizing the Debtors to retain and employ Donlin, Recano & Company, Inc., to provide noticing and claims services and serve as claims and noticing agent was entered by the Court on October 25, 2024 [Docket No. 81]. A separate order authorizing the Debtors to retain and employ Donlin Recano & Company, Inc. as administrative advisor was entered by the Court on December 11, 2024 [Docket No. 441]. On January 14, 2025, Donlin Recano & Company, Inc. gave notice to all parties that its name had changed to Donlin Recano & Company, LLC effective as of January 10, 2025. See Docket No. 601.

- a. this Order (without exhibits, except for the Solicitation and Voting Procedures);
- b. a copy of the Solicitation and Voting Procedures, substantially in the form attached hereto as **Exhibit 2**;
- c. a Ballot, with applicable voting instructions, substantially in the forms attached hereto as **Exhibit 3**, **4**, or **5**, respectively, as determined by the Class of each Holder of Claims being solicited;⁴
- d. a pre-addressed, postage prepaid return envelope, to the extent a Holder of Claims is solicited by mail;⁵
- e. the Cover Letter in support of the Plan, substantially in the form attached hereto as **Exhibit 9**; and
- f. the Combined Hearing Notice substantially in the form attached hereto as **Exhibit 10**

7. The Solicitation Packages provide the Holders of Claims entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on the Plan in accordance with Bankruptcy Rules 2002(b) and 3017(d), the Bankruptcy Code, and the Local Rules.

8. The Debtors shall distribute Solicitation Packages by email, where available, and otherwise by first-class U.S. mail, to all Holders of Claims entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

9. The Debtors are authorized, but not directed or required, to distribute the Plan and Disclosure Statement to Holders of Claims entitled to vote on the Plan by providing instructions

⁴ The Debtors will use commercially reasonable efforts to ensure that any Holder of a Claim who has filed duplicate Claims against the Debtors (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class.

⁵ The Debtors will provide pre-addressed, postage pre-paid reply envelopes only to those Holders who receive a Ballot directly from the Debtors.

as part of the Solicitation Package for accessing these documents through the Debtors' restructuring website (<https://www.donlinrecano.com/atd>) (the "Case Website"), and if requested, a hard copy or flash drive. On or before the Solicitation Deadline, the Debtors shall provide (a) complete Solicitation Packages (other than Ballots) to the U.S. Trustee and (b) the Order (in electronic format) and the Combined Hearing Notice to all parties required to be notified under Bankruptcy Rule 2002 and Local Rule 2002-1 as of the Voting Record Date.

10. Any party that receives materials in electronic format, but would prefer to receive materials in paper format, may contact the Notice, Claims, and Solicitation Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

11. The Notice, Claims, and Solicitation Agent is authorized to assist the Debtors in (a) distributing the Solicitation Package, (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by Holders of Claims and Interests against the Debtors, (c) responding to inquiries from Holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Package, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (d) soliciting votes on the Plan, and (e) if necessary, contacting creditors regarding the Plan.

12. The Notice, Claims, and Solicitation Agent is also authorized to accept Ballots via electronic, online transmissions, solely through the E-Ballot Portal. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any E-Ballot submitted in this manner and the creditor's electronic signature will be deemed to be immediately

legally valid and effective. E-Ballots submitted via the E-Ballot Portal shall be deemed to contain an original signature.

13. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first class mail; (b) overnight courier; (c) personal delivery; or (d) via the E-Ballot Portal, so that the Ballots are actually received by the Notice, Claims, and Solicitation Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. The Debtors are authorized to extend the Voting Deadline in their sole discretion and without further order of the Court.

C. Approval of the Combined Hearing Notice.

14. The Combined Hearing Notice constitutes adequate and sufficient notice of the hearing to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

15. The Combined Hearing Notice, substantially in the form attached hereto as **Exhibit 10**, shall be filed by the Debtors and served, within two business days following entry of this Order, upon the Debtors' entire creditor matrix and all interest holders of record.

16. In addition, the Debtors shall publish the Combined Hearing Notice in a format modified for publication (the "**Publication Notice**") one time, as soon as reasonably practicable after entry of this Order, in *The New York Times* (national edition) or another similar nationally circulated news publication and *The Charlotte Observer*.

D. Approval of Notice of Filing of the Plan Supplement.

17. The Debtors are authorized to file and post the Plan Supplement on the Debtors' restructuring website at <https://www.donlinrecano.com/atd>, which will be filed and posted on the

date that is no later than seven (7) days prior to the Plan Objection Deadline, substantially in the form attached hereto as **Exhibit 11**.

E. Approval of the Form of Notices of Non-Voting Status and Opt In Forms.

18. Except to the extent the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to Holders of Claims in Non-Voting Classes, as such Holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Notice, Claims, and Solicitation Agent shall distribute by mail (first-class postage prepaid), Notices of Non-Voting Status and Opt In Forms in lieu of Solicitation Packages, the form of each attached hereto as **Exhibits 6, 7, and 8**, respectively, of which is hereby approved, to those parties, outlined below, who are not entitled to vote on the Plan:

Class	Status	Treatment
Classes 1 and 2	Unimpaired—Conclusively Presumed to Accept	Will receive a Notice of Non-Voting Status and Opt In Form, substantially in the form attached to the Order as <u>Exhibit 6</u> in lieu of a Solicitation Package.
Classes 8 and 9	Impaired—Deemed to Reject	Will receive a Notice of Non-Voting Status and Opt In Form, substantially in the forms attached to the Order as <u>Exhibit 7</u> in lieu of a Solicitation Package.
N/A	Disputed Claims	Holders of Claims and Interests that are subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their Claim. As such, Holders of such Claims will receive a Notice of Non-Voting Status and Opt In Form, substantially in the forms attached to the Order as <u>Exhibit 8</u> (which notice shall be served together with such objection).

19. The Debtors are not required to distribute Solicitation Packages or other solicitation materials to the following: (a) Holders of Claims that have already been paid in full during these chapter 11 cases or that are authorized to be paid in full in the ordinary course of business pursuant

to an order previously entered by this Court; (b) any party to whom a notice of the hearing regarding the Court's approval of the Disclosure Statement was sent but was subsequently returned as undeliverable; or (c) Holders of Class 6 Intercompany Claims and Class 7 Intercompany Interests.

20. The Debtors are authorized to cause the Notices of Non-Voting Status and Opt In Forms to be delivered via first-class mail and/or e-mail, as applicable, through the Claims, Noticing, and Solicitation Agent to Holders of Claims and Interests in the Non-Voting Classes.

21. The Debtors are authorized to accept Opt In Forms via hard copy or electronically through the Opt In Portal.

F. Approval of Assumption Notice.

22. The Debtors are authorized to distribute by first-class U.S. mail, an Assumption Notice of any Executory Contracts or Unexpired Leases, substantially in the form attached hereto as **Exhibit 12**, to the applicable counterparties to Executory Contracts and Unexpired Leases that will be assumed pursuant to the Plan, within the time periods specified in the Plan.

G. Approval of Rejection Notice.

23. The Debtors are authorized to distribute by first-class U.S. mail, a Rejection Notice of any Executory Contracts or Unexpired Leases, substantially in the form attached hereto as **Exhibit 13**, to the applicable counterparties to Executory Contracts and Unexpired Leases that will be rejected pursuant to the Plan, within the time periods specified in the Plan. If certain, but not all, of a contract counterparty's Executory Contracts and Unexpired Leases are assumed pursuant to the Plan, the Confirmation Order will be a determination that such counterparty's Executory Contracts and Unexpired Leases that are being rejected pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and Unexpired Leases that are being assumed pursuant to the Plan. Parties seeking to contest this finding with respect to their

Executory Contracts or Unexpired Leases must file a timely objection by the Plan Objection Deadline on the grounds that their agreements are integrated and not severable.

H. Approval of the Procedures for Filing Objections to the Plan.

24. Objections to the Plan will not be considered by the Court unless such objections are timely filed and properly served in accordance with this Order. Additionally, all objections to confirmation of the Plan or requests for modifications to the Plan, if any, must: (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Rules; (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the notice parties identified in the Combined Hearing Notice on or before March 24, 2025, at 12:00 p.m., prevailing Eastern Time.

IV. Miscellaneous.

25. The Debtors may make non-substantive changes to the Disclosure Statement, Plan, Combined Hearing Notice, Solicitation Packages, Notices of Non-Voting Status and Opt In Forms, Ballots, Publication Notice, Cover Letter, Solicitation and Voting Procedures, Plan Supplement Notice, Assumption Notice, Rejection Notice, Voting and Tabulation Procedures, and related documents after the entry of this Order without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

26. The Debtors reserve the right to modify the Plan without further order of the Court in accordance with Article X of the Plan, including the right to withdraw the Plan as to any or all Debtors at any time before the Confirmation Date.

27. Nothing contained in the Motion or this Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount, validity or priority of, or basis for any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

28. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

29. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

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

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