

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	
AUTOMOTIVE PROFESSIONALS, INC.)	Case No. 07-6720
)	
Debtor.)	Honorable Carol A. Doyle

**MOTION OF CHAPTER 11 TRUSTEE FOR ENTRY OF AN ORDER APPROVING
SETTLEMENT, RELEASE AND POLICY BUYBACK AGREEMENT WITH
THE TRAVELERS INDEMNITY COMPANY**

Frances Gecker (the “Trustee”), not individually, but solely as the Chapter 11 trustee for Automotive Professionals, Inc. hereby makes and files this, her Motion of Chapter 11 Trustee for Entry of an Order Approving Settlement, Release and Policy Buyback Agreement with The Travelers Indemnity Company (the “Motion”). In support of her Motion, the Trustee respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
2. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. The relief sought is appropriate and proper pursuant to 11 U.S.C. §§ 105, 363(f), 363(h), 363(m) and 542 and Rules 6004 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

CASE BACKGROUND

4. On April 13, 2007 (the “Petition Date”), Automotive Professionals, Inc. (the “Debtor” or “API”) filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”).

5. On June 6, 2007, the Court ordered the appointment of a Chapter 11 trustee.

6. The Office of the United States Trustee selected the Trustee to serve as trustee, and on June 12, 2007, the Bankruptcy Court confirmed appointment of the Trustee, as chapter 11 trustee for API.

RELIEF REQUESTED

7. Pursuant to the Motion, the Trustee requests, pursuant to 11 U.S.C. §§ 105, 363(f), 363(h), 363(m) and 542 and Bankruptcy Rules 6004 and 9019, that this Court approve the terms of her agreement with The Travelers Indemnity Company (“Travelers”). The detailed terms of the policy buyback and settlement between the Trustee and Travelers are fully set forth in a Settlement, Release and Policy Buyback Agreement, a copy of which is attached hereto as Exhibit A and incorporated herein by reference (the “Agreement”). All capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement. To the extent that this Motion conflicts with the Agreement, the Agreement controls.

BACKGROUND TO AGREEMENT

8. API was in the business of servicing and marketing, directly or through automobile dealers (“Dealers”), vehicle service contracts to consumers (“VSCs”), which pay for the cost of automobile repairs for a fixed period of time after the expiration of the original manufacturer’s warranty. Pursuant to the terms of the VSCs, a formulaic percentage of the

consumer's purchase price was placed into a primary loss reserve fund (the "Travelers-Related Reserve Account" or collectively, the "Travelers-Related Reserve Accounts") in the name of the individual Dealer for the purpose of paying future valid covered repair costs and certain cancellation charges.¹

9. Travelers issued certain insurance policies to the Dealers and/or API (the policies issued to the Dealers or to API, together with all amendments and endorsements thereto, including the Endorsement (as hereinafter defined), are hereinafter referred to as the "Policies") whereby Travelers agreed to pay for valid covered repair claims and certain cancellation charges covered under VSCs to the extent that those valid covered repair claims and certain cancellation charges exceeded the Travelers-Related Reserve Account associated with a Dealer who sold that VSC (the "Excess Coverage").

10. Under this Excess Coverage mechanism, if/when a segregated Travelers-Related Reserve Account for a particular Dealer was exhausted through payment of valid covered repair claims and certain cancellation charges, Travelers became obligated to pay the valid covered repair claims and certain cancellation charges on VSCs sold through that Dealer from Travelers' own funds, even if Travelers-Related Reserve Accounts for other Dealers contained an excess amount of funds. Travelers, in addition to providing Excess Coverage to API, issued an Endorsement to the Policies (the "Endorsement") wherein Travelers was required to "drop down" and pay from dollar-one, the valid covered repair claims and certain cancellation charges that went unpaid for 60 days or more ("Drop Down Coverage").

¹ A Schedule of Travelers-Related Reserve Accounts is attached hereto as Exhibit B.

11. API began offering a separate Guaranteed Price Refund option (“GPR”) where for an added cost, API or the relevant Dealer guaranteed consumers a refund of their VSC purchase price if the VSC ran for its full term and the consumer did not submit a claim for benefits under the VSC. Travelers specifically declined to be involved in any manner in the GPR program when API decided to offer that program, and thus Travelers’ obligations extend only to valid covered repair claims and certain cancellation charges under VSCs.

12. On February 15, 2007, API executed an assignment for the benefit of creditors, with Michael Kayman as assignee (the “Assignment”). On March 2, 2007, the People of the State of Illinois, *ex rel.* Michael T. McRaith, Director of Insurance of the State of Illinois in the Circuit Court of Cook County, Chancery Division, in Case No. 07 CH 05829 obtained an *ex parte* Order of Conservation of API (the “Conservation Order”).

13. Because of API’s Assignment and subsequent Conservation Order, claims arising under these VSCs were not being administered nor were payments being made out of the Travelers-Related Reserve Accounts for valid covered repair claims. Pursuant to the Endorsement, Travelers has commenced processing and paying the valid covered repair claims and certain cancellation charges under VSCs that were neglected.

14. Travelers asserts that to the extent that it provides Drop Down Coverage pursuant to the Endorsement, it is entitled access to or full reimbursement from, up to the amount held in the Travelers-Related Reserve Account for each particular Dealer, for valid covered repair claims paid under VSCs (the “Travelers In-Reserve Repair Claims”) and for certain cancellation charges relating to such VSCs payable from the Travelers-Related Reserve Account (the

“Travelers In-Reserve Cancellation Charges” and together with the “Travelers In-Reserve Repair Claims,” the “Travelers In-Reserve Claims”).

15. Consumers are entitled in certain circumstances to cancel their VSCs and to be returned a portion of their contract price by Travelers (the “Travelers Cancellation Charge”), from the Travelers-Related Reserve Account or through the Drop Down Coverage or the Excess Coverage (the “Reserve Cancellation Charge”), from the CCR Account (as hereinafter defined) (the “CCR Cancellation Charge”), by API (the “API Cancellation Charge”), by API’s affiliate, Brokerage Professionals, Inc. (the “BPI Cancellation Charge”), by the relevant Agent (the “Agent Cancellation Charge”), and by the relevant Dealer (the “Dealer Cancellation Charge”).

16. API and Travelers were parties to Contingent Claim Reserve and Administration Escrow Contracts (“CCR Contracts”) wherein it was agreed that in the event API ceased to administer claims under VSCs, Travelers would be reimbursed from a specially created Contingent Claim Reserve escrow account held at J.P. Morgan Chase (“CCR Account”) for the fees and costs it incurred in administering such claims (“Travelers Expense Claim”).

17. When API ceased servicing claims under the VSCs, triggering Travelers’ Drop Down Coverage, Travelers retained Services Resources, Inc. (“SRI”) to handle the claims processing, and as a result has had to pay, from its own funds, SRI’s fees, as well as incur other significant internal and external costs in connection with the administration of claims, and enforcement of its rights under its agreements with API. Travelers subsequently began to internally process the claims, resulting in Travelers incurring substantial additional costs.

18. Pursuant to the Policies and CCR Contracts, Travelers believes it is entitled to reimbursement from the Travelers-Related Reserve Accounts and CCR Account, for the

Travelers In-Reserve Claims and the Travelers Expense Claims it incurs as a result of API's inability to meet its obligations. Travelers is subrogated to the Dealers' right to recover from amounts held in the Travelers-Related Reserve Accounts, and likewise is subrogated to priority claims of the consumers who purchased VSCs from API or the Dealers backed by the Policies (the "Travelers-Backed Consumers"), when it pays Travelers In-Reserve Claims that should have been paid by the Dealers or API from the Travelers-Related Reserve Accounts.

19. In a letter to Travelers, dated January 31, 2007, API alleged that Travelers owed it \$654,547 for repair claims and cancellation charges paid by API from 1997 to 2006 that should have been paid by Travelers under the Excess Coverage (the "Alleged Back-Charges"). Travelers has disputed that such amount is owed by it to API and further argues that API and the Debtor's estate is time-barred from asserting such claims against Travelers under the notice provision of the Policies.

20. As of July 31, 2007, the total aggregate amount held in all Travelers-Related Reserve Accounts relating to VSCs backed by the Policies was \$19,603,877.21. As of July 31, 2007, the balance in the CCR Account was \$398,154.24. Interest continues to accrue on the balances in both accounts.

21. A dispute has arisen between Travelers and the Trustee as to the estate and the Dealers' rights in the funds held in the Travelers-Related Reserve Accounts and in the CCR Account, Travelers' obligations under the Policies, and Travelers' obligation to pay the Alleged Back-Charges. In order to resolve that dispute, Travelers and the Trustee have agreed to enter into the Agreement, subject to the approval of this Court, which fully and finally compromises all disputes between the Trustee and Travelers, and ensures that all valid repair claims asserted

by the Travelers-Backed Consumers are paid in full. As part of the compromise and resolution of various disputes, the Trustee wishes to sell and Travelers wishes to repurchase the Policies, obtaining the standard buyer protections afforded by section 363 of the Bankruptcy Code.

**THE PROPOSED POLICY BUYBACK,
RELEASE AND SETTLEMENT AGREEMENT**

22. In order to resolve the outstanding issues relating to the claims asserted by and against Travelers and the Trustee, the Trustee and Travelers have agreed to enter into the Agreement. A summary of the key terms of the Agreement are as follows:

a. The Agreement is not final until an order approving the Agreement, substantially in the form attached hereto (the “Approval Order”), becomes final and non-appealable.

b. The Agreement effects a sale and buyback of the Policies to Travelers, effective when the Approval Order becomes final and non-appealable. The Trustee, on behalf of API, the bankruptcy estate of API, all Dealers, all Travelers-Backed Consumers, and all other parties in interest in the Bankruptcy Case, will sell to Travelers all interests in the Policies (the “Policy Buyback”) held by the bankruptcy estate of API, the Dealers, the Travelers-Backed Consumers and all other parties in interest in the Bankruptcy Case, and Travelers will buy back all of such interests in the Policies from the Trustee, pursuant to sections 363(b), 363(f) and 363(h) of the Bankruptcy Code, free and clear of all liens, claims, encumbrances, and other interests.

c. As consideration for the Policy Buyback, Travelers will (a) release its interests in the Travelers-Related Reserve Accounts, except as provided for in paragraph 3 of the

Agreement, and release its interests in the CCR Account, (b) pay \$654,547 to the bankruptcy estate of API within ten days after the Approval Order becomes final and nonappealable, (c) pay, under the terms of the relevant VSC, all valid covered repair claims that have been asserted by the Travelers-Backed Consumers that remain unpaid, or that will be asserted in the future, (d) pay the Travelers Cancellation Charges, Reserve Cancellation Charges, CCR Cancellation Charges and the API Cancellation Charges, with respect to any valid cancellation of a VSC made by any Travelers-Backed Consumer (provided, however, Travelers shall not be responsible for payment of the relevant BPI Cancellation Charge, Agent Cancellation Charge or Dealer Cancellation Charge), and (e) release all of its claims against the Debtor's bankruptcy estate, including its reimbursement claims against the Debtor's bankruptcy estate and the Debtor for the repair and cancellation claims it has already paid or will pay in the future. Travelers also agrees to treat as timely any claim by any Travelers-Backed Consumer (i) brought to the attention of the relevant Dealer prior to the expiration of the term of the relevant VSC even though Travelers, API or SRI may not have received notice of such claim prior to such expiration of the term of the VSC, or (ii) for which the Travelers-Backed Consumer can show, with reasonable certainty, that they otherwise attempted to provide notice of the claim prior to the expiration of the term of the relevant VSC.

d. Within ten days after the Approval Order becomes final and non-appealable, the Trustee shall pay Travelers \$4,850,000 (the "Escrow Release") in full satisfaction of Travelers' In-Reserve Claims and Travelers' Expense Claim against the bankruptcy estate of API. The Escrow Release shall be paid pro-rata from each of the Travelers-Related Reserve Account for each individual Dealer, as reflected in Exhibit B. Upon receipt of the Escrow Release, Travelers shall be deemed to have released any interest or claim it has in the Travelers-

Related Reserve Accounts. Upon receipt of an executed release from a Dealer releasing all of the Travelers Parties, the Trustee and the bankruptcy estate of API from all claims relating to the relevant Travelers-Related Reserve Account, any VSCs sold to any Travelers-Backed Consumer and any GPRs sold in connection therewith, the Trustee shall remit the remaining balance in the relevant Travelers-Related Reserve Account to such Dealer.

e. The Parties acknowledge and agree that: (i) Travelers is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code of all interests in the Policies held by the Trustee, the bankruptcy estate of API, all Dealers and all Travelers-Backed Consumers and all other parties in interest in the Debtor's case; (ii) the consideration exchanged by the Parties pursuant to the Agreement constitutes a fair and reasonable settlement of the Parties' disputes and of their respective rights and obligations relating to the Policies and constitutes reasonably equivalent value; (iii) the releases contained in the Agreement comply with the Bankruptcy Code; and (iv) the Agreement in no way voids, annuls or attempts to void or annul the Policies, that, with respect to the Trustee, the Dealers and the Travelers-Backed Consumers, have been fully performed.

f. Travelers agrees to hold harmless and indemnify the Trustee and API's bankruptcy estate from and against any and all claims, demands, fines, penalties, damages, obligations, and costs of any nature whatsoever, including the Trustee's attorneys' fees and costs incurred in connection therewith, asserted against the Trustee or API's bankruptcy estate by any Travelers-Backed Consumer for any valid repair claims under the VSCs, or for any valid claims for Travelers Cancellation Charges, Reserve Cancellation Charges, CCR Cancellation Charges or API Cancellation Charges.

g. The Approval Order shall contain an injunction pursuant to section 105 in conjunction with sections 363 and 542 of the Bankruptcy Code, enjoining all Dealers, the Travelers-Backed Consumers and all parties in interest from asserting any claims against the Travelers Parties (as hereinafter defined) with respect to the Policies or the Travelers-Related Reserve Accounts and enjoining any party-in-interest from asserting any claims arising under any GPR option sold by API (the “GPR Claims”) against the Travelers Parties. In furtherance of the sale and buyback free and clear under section 363 of the Bankruptcy Code to Travelers by the Trustee, the Parties agree that the Trustee will use her reasonable best efforts in the Bankruptcy Case to include, in any plan and any order confirming such plan, a supplemental injunction that protects the Travelers Parties against the assertion of claims that in any way relate to the Policies and any GPR Claims.

h. The Trustee, on behalf of the bankruptcy estate of API and all creditors of API, will release and forever discharge Travelers and its parents, and all of its affiliates, subsidiaries and their present and former officers, directors, partners, employees, agents, attorneys, shareholders and their successors, assigns, and other representatives, only in their capacity as such (the “Travelers Parties”) from liability for any and all claims, controversies, actions, causes of action, liabilities, demands, debts, damages, costs, attorneys’ fees, monies due on account, obligations, judgments and liabilities of any kind and nature whatsoever at law or in equity, past or present, in contract, in tort or otherwise, whether or not now or heretofore known, suspected, or claimed against the Travelers Parties, arising from or relating to the Policies, to the GPRs, or to any of Travelers’ agreements with API or its affiliates or the Dealers, including any and all claims under any of the avoidance provisions of the Bankruptcy Code, provided, however, that the Travelers Parties do not include API or any of its affiliates.

23. The Agreement provides that the Escrow Release will be paid pro-rata from each Travelers-Related Reserve Account for each individual Dealer. The Schedule of Travelers-Related Reserve Accounts attached hereto as Exhibit B reflects the pro rated amount of the Escrow Release to be allocated to each Travelers-Related Reserve Account, and the net amount remaining in each Travelers-Related Reserve Account after payment of the Escrow Release. The Agreement provides a substantial benefit for the Dealers because it resolves the issues relating to the Dealers' rights, if any, in the funds held in the Travelers-Related Reserve Accounts, and provides a mechanism for release of the majority of those funds to the Dealers well in advance of when the Dealers could otherwise expect to receive such funds.

RELIEF REQUESTED

24. The Trustee respectfully requests that this Court enter the Approval Order pursuant to sections 105, 363 and 542 of the Bankruptcy Code, and Bankruptcy Rules 6004 and 9019.

25. As an integral part of approval of this Motion and the Agreement, the Trustee requests that the Court, pursuant to sections 363(f) and 363(h) of the Bankruptcy Code, approve the sale of the Policies to Travelers, free and clear of any and all claims and interests. In connection with such sale, the Trustee also seeks a finding that Travelers is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code.

BASIS FOR APPROVING POLICY BUYBACK

26. Section 363 of the Bankruptcy Code provides that a trustee, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). To approve the use, sale or lease of property outside of the ordinary

course of business, this Court need only determine that the Trustee's decision to enter into the Agreement and Policy Buyback of the Policies is supported by an articulated business justification. *See, e.g., In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983); *see also Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986); *In re Abbott Dairies of Pa, Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986); *In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Telesphere Communications Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999); *In re Delaware & Hudson R.R. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991); *In re Eng'g Prods., Co.*, 121 B.R. 246, 247 (Bankr. E.D. Wis. 1990).

27. A court will authorize a trustee to sell property of the estate pursuant to section 363(b)(1) of the Bankruptcy Code when the transaction meets the "sound business judgment" test articulated by the courts. A transaction meets this test when:

- a. There is a sound business reason for the transaction;
- b. The interested parties received adequate notice, including full disclosure of the terms of the deal;
- c. The property is sold at a fair and reasonable price; and
- d. The proposed buyer is proceeding in good faith.

See Stephens Indus., Inc., 789 F.2d at 389-90; *Lionel Corp.*, 722 F.2d at 1071; *In re Taylor*, 198 B.R. 142, 156-57 (Bankr. D.S.C. 1996); *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *Delaware & Hudson R.R. Co.*, 124 B.R. at 176; *Matter of Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987). As discussed below, the Trustee's decision to

engage in the Policy Buyback and to consummate the Agreement is an exercise of reasonable business judgment that satisfies each prong of the “sound business judgment” test.

28. The Trustee respectfully submits that there are sound business reasons for the Trustee to enter into the Agreement and to consummate the Policy Buyback transaction. Section 363(b)(1) mandates that any sale outside of the ordinary course of business be at a fair and reasonable price. *In re Apex Oil Co.*, 92 B.R. 847, 866 (Bankr. E.D. Mo. 1988); *Phoenix Steel Corp.*, 82 B.R. at 335-36. Travelers is paying a fair price for the Policy Buyback. The consideration being paid for the Policy Buyback ensures that all Travelers-Backed Consumers will have their valid repair claims paid in full, and will have certain of their cancellation charges paid, including all cancellation charges owed by API. Due to Travelers’ release of the CCR Account and payment by Travelers of the Alleged Back-Charges, the Agreement results in more than \$1,050,000 in cash being made available to the Debtor’s estate. The Agreement will also result in almost \$15 million being made available for distribution to the Dealers, The Buyback and Agreement are the product of good faith negotiations between the Trustee and Travelers.

29. The Policy Buyback satisfies the requirements of section 363 of the Bankruptcy Code. Under section 363(f) of the Bankruptcy Code, a debtor in-possession may sell property free and clear of any lien, claim, or interest in such property if, among other things:

- a. applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which the property is sold is greater than all liens on such property;

- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept money satisfaction of such interest.

Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will be sufficient to permit the Policy Buyback free and clear of liens and claims.

30. Here, the Trustee may sell the Policies, which are property of the Debtor's estate,² free and clear of all liens and interests for four independent reasons. First, the putative or asserted interest(s) in the Policies are disputed. Second, the consideration for the sale includes payment in full of all valid repair claims and certain cancellation charges, the only claims any party-in-interest could assert against the Policies. In fact, Travelers has agreed to also pay the API cancellation charge, a charge clearly not covered under the Policies. Third, any such interest holder could be compelled to accept a money satisfaction of its interest. Fourth, any party claiming an interest in the Policies that fails to object to the Policy Buyback will be deemed to have consented to the sale.

² Many other courts, including this Court, have previously and properly concluded that insurance policies are property of the estate subject to sale under 11 U.S.C. § 363(b)(1). See *In re Allied Prods.*, 288 B.R. 533 (Bankr. N.D. Ill. 2003), *aff'd* 2004 WL 635212 (N.D. Ill. 2004). Federal courts of appeals and trial courts have routinely concluded that section 541(a) includes debtor's insurance policies. See, e.g., *The Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 748 (7th Cir. 1989) (concluding that insurance policy is property of the debtor's estate); *Homsy v. Floyd*, 51 F.3d 530, 534 (5th Cir. 1995) (language of section 541 is "unquestionably broad enough to cover a debtor's interest in liability insurance" (footnote omitted); *In re Edgeworth*, 933 F.2d 51, 55 (5th Cir. 1993) (holding that estate includes any contract rights that the debtor has under an insurance policy); *Tringali v. Hathaway Mach. Co.*, 796 F.2d 553, 560-61 (1st Cir. 1986) (same); *In re Keck Mahin & Cate*, 241 B.R. 583, 596 (Bankr. N.D. Ill. 1999) ("insurance contract is property of the estate"); *In re Forty-Eight Insulations, Inc.*, 54 B.R. 905, 907-09 (Bankr. N.D. Ill. 1985), *In re Johns-Mansville Corp.*, 40 B.R. 219, 229 (S.D.N.Y. 1984) (observing that insurance policies were "the most important single asset of [the debtor's] estate."); see also 11 U.S.C. § 541 "property of the estate consists of all legal and equitable interests of the debtor in property as of the commencement of the case."

31. To the extent any parties-in-interest claim an ownership interest in the Policies, the Trustee may sell the interests of the estate, the Dealers and the Travelers-Backed Consumers and all other parties in interest in the Policies under section 363(h) of the Bankruptcy Code because: (a) partition of the Policies is impracticable; (b) sale of the estate's undivided interest in the Policies would realize significantly less for the estate than would the sale of the Policies free of the interest of the Dealers, Travelers-Backed Consumers, and all other parties claiming an interest in the Policies; (c) the benefit to the estate of a sale of the Policies free of the interests of the Dealers, Travelers-Backed Consumers, and all other parties claiming an interest in the Policies outweighs the detriment, if any, to them.

32. Issuing an injunction barring any person from asserting any claim against Travelers is both necessary and appropriate and within this Court's jurisdictional power to approve the Policy Buyback contemplated here. *See, e.g., In re Energy Co-op., Inc.*, 886 F.2d 921, 929 (7th Cir. 1989) ("The power of the court under this provision [section 105(a) of the Bankruptcy Code] also includes the power to issue an injunction enjoining third parties from pursuing actions which are the exclusive property of the debtor's estate and are dismissed pursuant to a settlement agreement."); *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 93 (2nd Cir.), *cert. denied*, 488 U.S. 868 (1988) ("The authority to issue an injunction is thus a corollary to the power to dispose of assets free and clear and to channel claims to the proceeds"); *Fogel v. Zell*, 221 F.3d 955, 965 (7th Cir. 2000) ("[w]hen an asset of the estate is sold free and clear of any liens, the court can enjoin a creditor from suing to enforce a preexisting lien in the asset"). The Parties have agreed that the entry of an injunction is a necessary prerequisite for their agreeing to the terms and conditions of the Agreement. Travelers has asserted that absent injunctive relief, Travelers will not participate in the Agreement or Policy Buyback.

33. Proper notice of the injunction is being given to all interested parties. All Travelers-Backed Consumers who had separately purchased GPRs which were in force as of June 30, 2006 are being given notice of the Motion. All Dealers who sold VSCs to Travelers-Backed Consumers are being provided with notice and the opportunity to declare their interest in the Policies.

BASIS FOR APPROVING SETTLEMENT

34. Pursuant to Bankruptcy Rule 9019(a), after notice and a hearing, the court may approve a settlement or compromise. Fed. R. Bankr. P. 9019. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. *See Fogell*, 221 F.3d at 960.

35. A bankruptcy judge has discretion whether to approve a settlement agreement. *In re American Reserve Corp.*, 841 F.2d 159, 162 (7th Cir. 1987). The Court's discretion hinges upon whether the settlement is fair and equitable and in the best interests of the estate. *Depoiste v. Mary Holloway Found.*, 36 F.3d 582, 586 (7th Cir. 1994).

36. In making its determination, this Court must first compare the terms of the settlement with the probable costs and benefits of litigation. *Id.* (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968)) (the Court should try to apprise itself "of all facts necessary for an intelligent and objective opinion on the probabilities of ultimate success should the claim be litigated."). The Court should:

[F]orm an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of

course, is the need to compare the terms of the compromise with the likely rewards of the litigation.

Id. The Court should also consider the delay involved if the settlement is not approved “including the possibility that disapproving the settlement will cause wasting of assets.” *Amer. Reserve Corp.*, 841 F.2d at 161.

37. Second, the Court should determine whether the settlement falls within the reasonable range of litigation possibilities. *In re Energy Co-op.*, 886 F.2d at 929. Such inquiry does not, however, require an evidentiary hearing (*Depoister*, 36 F.3d at 586), or a mini-trial of the facts. *In re Purofied Down Prods. Corp.*, 150 B.R. 519, 522 (S.D.N.Y. 1993). Moreover, the latter “determination is to be weighted in favor of settlement, since a challenged settlement fails the test only if it falls below the lowest point in the range of reasonableness.” *Telesphere Communications*, 179 B.R. at 553 (internal citations omitted).

THE AGREEMENT SHOULD BE APPROVED

38. The Agreement is fair and reasonable and in the best interests of the estate and its creditors, and should be approved by the Court.

39. The issues raised by Travelers’ claims against the estate, and the determination of the estate’s interests in the Travelers-Related Reserve Accounts and the Dealers’ rights, if any, in those accounts, are complex financial matters which will, at the very least, require extensive hearings and evidentiary presentation by all parties. Moreover, given the complicated nature of the claims, any litigation resulting from these claims would be intricate and require extensive expert discovery and testimony.

40. Additionally, the Trustee submits that in view of the numerous potential disputes resolved by the Agreement and the limitation of certain of Travelers' rights against the Debtor and the Trustee, the Trustee and the Debtor's estate will avoid costly and time-consuming litigation with Travelers, while assuring (i) payment of consumer claims of all Travelers-Backed Consumers (other than GPR claims); (ii) more than \$1,050,000 in cash becoming available to the estate; and (iii) in excess of \$15 million being made available for distribution to the Dealers.

WHEREFORE, the Trustee respectfully requests entry of an order:

- (i) granting this Motion;
- (ii) approving the Agreement;
- (iii) finding the sale, assignment and transfer of the Policies to Travelers is in good faith and satisfies the requirements of section 363(m) of the Bankruptcy Code in that the sale is the result of an arm's-length transaction for value;
- (iv) finding the Policies are being sold, assigned, or transferred to Travelers free and clear of the interests of the Dealers and the Travelers-Backed Consumers and any other party-in-interest, if any, pursuant to section 363(f) of the Bankruptcy Code, because: (a) such interests are in *bona fide* dispute; (b) the holders of any such interests could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest; and (c) the holders of any such interests that fail to object to the Motion are deemed to have consented to the sale;
- (v) holding the Trustee may sell the interests of the estate, the Dealers and the Travelers-Backed Consumers and all other parties claiming an interest in the Policies under section 363(h) of the Bankruptcy Code because: (a) partition of the Policies is impracticable; (b) the sale of the estate's undivided interest in the Policies would realize significantly less for the estate than would the sale of the Policies free of the interest of the Dealers, Travelers-Backed

Consumers, and all other parties claiming an interest in the Policies; (c) the benefit to the estate of a sale of the Policies free of the interests of the Dealers, Travelers-Backed Consumers, and all other parties claiming an interest in the Policies outweighs the detriment, if any, to them;

(vi) finding the sale of the Policies free and clear of any right, title or interest, including any right of direct action against Travelers, is permitted under sections 363(f) and (h) of the Bankruptcy Code;

(vii) finding the Agreement is fair and equitable, in the best interests of the estate and its creditors after consideration of (a) the probability of success in any litigation involving the Policies, and the estate's interest in the Travelers-Related Reserve Account and CCR Account, with due consideration for the uncertainty in fact and law; (b) the complexity and likely duration of any such litigation and any attendant expense, inconvenience and delay; (c) the paramount interest of creditors; and (d) the extent to which the Agreement is the product of arm's-length bargaining and not the product of fraud or collusion;

(viii) enjoining all Dealers, the Travelers-Backed Consumers and all other parties in interest from asserting any claims against the Travelers Parties with respect to the Policies or the Travelers-Related Reserve Accounts, and enjoining any party-in-interest from asserting any GPR Claims against the Travelers Parties;

(ix) finding that as to all Dealers, Travelers-Backed Consumers and all parties in interest, notice of the sale free and clear of interests was sufficient, and the requirements of Fed. R. Bankr. P. 6004(c) were satisfied;

(x) ruling that the stay of such order provided for under Fed. R. Bankr. P. 6004(h) is waived; and

(xi) granting such other and further relief as the Court may deem appropriate under the circumstances.

Dated: October 3, 2007

Respectfully submitted.

FRANCES GECKER, not individually but as
Chapter 11 Trustee of the estate of
AUTOMOTIVE PROFESSIONALS, INC.

By: /s/ Micah R. Krohn
One of her attorneys

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