

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

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In re:	:	Chapter 11
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ADVANTAGE HOLDCO, INC., <i>et al.</i> ,	:	Case No. 20-11259 (CTG)
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Debtors. <sup>1</sup>	:	(Jointly Administered)
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	X	

**DEBTORS’ REPLY IN SUPPORT OF MOTION FOR  
ENTRY OF AN ORDER CLARIFYING THE COURT’S VEHICLE  
SURRENDER ORDERS WITH RESPECT TO CONTINUING LIABILITIES**

Advantage Holdco, Inc. and certain of its affiliates, the debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), file this reply in support of their *Motion for Entry of an Order Clarifying the Court’s Vehicle Surrender Orders with Respect to Continuing Liabilities* (the “Motion”)<sup>2</sup> [Docket No. 895] and in response to the objections to the Motion filed by certain Vehicle Vendors (collectively, the “Objectors,” and with the Debtors, the “Parties”): The Bancorp Bank (“Bancorp”) [Docket No. 907]; HFC Acceptance, LLC and Westlake Flooring Company, LLC (collectively “HFC”) [Docket No. 908]; Element Fleet Corporation (“Element”) [Docket No. 909]; and Cox Automotive, Inc. and its affiliates, including NextGear Capital, Inc. (collectively, “Cox”) [Docket No. 911].

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Advantage Holdco, Inc. (4832); Advantage Opco, LLC (9101); Advantage Vehicles LLC (6217); E-Z Rent A Car, LLC (2538); Central Florida Paint & Body, LLC (1183); Advantage Vehicle Financing LLC (7263); and RAC Vehicle Financing, LLC (8375). The Debtors’ address is PO Box 2818, Windermere, FL, 34786.

<sup>2</sup> Capitalized terms used but not defined herein have the meaning provided in the Motion.

## REPLY

1. Pursuant to the Surrender Orders, the Debtors finalized their de-fleeting process that began prior to the Petition Date by surrendering control and possession<sup>3</sup> of their remaining Rental Fleet. As a result, the Debtors have ceased operating cars. However, the Debtors continue to receive charges related to cars and attendant license plates, registrations, and Transponders that are no longer in their possession or control.

2. The Motion seeks narrow relief: an order stating that, as of the date the Debtors no longer had possession or control of a car (whether by surrender, repossession, theft, or otherwise), the estates were no longer liable for ongoing charges related to the operation or disposition of such car. The Motion does not seek to determine the validity of ongoing charges. Nor do the Debtors seek to establish what party is liable for such charges. Moreover, as will be made explicit in their amended proposed order, the Debtors do not seek to establish the precise surrender date for each car. The Motion also does not impact contractual or other indirect claims any party may assert against the Debtors or estates related to the ongoing charges.<sup>4</sup> Each of the forgoing issues and rights, claims, and defenses are reserved for another day (and, in many cases, other parties).

3. The Motion seeks only to clarify the scope of the estates' direct liability so the Debtors can move forward with a plan process.

4. Further, the Motion does not improperly step on third parties' rights, defenses, or claims. The local and state agencies and contract companies, including tolling authorities, parking

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<sup>3</sup> In certain instances, the Surrender Orders also transferred title or directed the parties to take certain actions with respect to title. *See e.g.*, Docket No. 250 (Bancorp Surrender Stip.) ¶ 8 and *Power of Attorney* (authorizing Bancorp to transfer title to itself); Docket No. 321 (HFC Surrender Stip.) ¶ 4.

<sup>4</sup> At this time, the Debtors do not assert that any third party, including the Vehicle Vendors, are liable for post-Surrender Date Vehicle Charges or, to the extent a third party is liable, an admission that they may assert or apply post-Surrender Date Vehicle Charges against car proceeds or the Debtors or their estates. The Debtors expressly reserve all rights, claims, and defenses related to such claims.

and citations authorities, departments of motor vehicles, taxing agencies (collectively the “Vehicle Agencies”)—the holders of direct claims related to the post-Surrender Date Vehicle Charges that are the subject of the Motion—did not object, and have therefore consented with respect to their claims. And the rights of the Objectors are fully reserved.<sup>5</sup>

**A. The Surrender Orders Should Be Interpreted to Cut Off the Estates’ Liability for Post-Surrender Date Vehicle Charges**

5. The Surrender Orders do not expressly state whether the estates should be liable for post-Surrender Date Vehicle Charges. However, when read as a whole in the context of these cases, the “intent and effect” of each Surrender Order was that the estates’ benefits and burdens related to the Rental Fleet ended upon surrender of the cars.<sup>6</sup>

6. As discussed in the Motion, the Surrender Orders mark the end of the Debtors’ defleeting process. As a result of the Surrender Orders, the Debtors no longer operate the Rental Fleet to generate value for the estates. Instead, the Debtors surrendered possession and/or control of their Rental Fleet to third parties that were entitled to either dispose of or use the surrendered cars for their own benefit.

7. Further, cutting off the estates’ liability for ongoing costs is consistent with the specific terms in the Surrender Orders. Certain Surrender Orders address a limited number of costs that might arise after the Surrender Dates. In each such instance, the estates are not liable for such costs.<sup>7</sup>

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<sup>5</sup> Counsel for the United States Trustee resolved its informal responses through modifications to the proposed order that clarified the narrow scope of the relief sought in this Motion.

<sup>6</sup> The Court has broad discretion to interpret the “intent and effect” of its own orders. *See Casse v. Key Bank Nat’l Ass’n (In re Casse)*, 198 F.3d 327, 333 (2d Cir. 1999); *In re Shenango Grp. Inc.*, 501 F.3d 338, 346 (3d Cir. 2007). This broad discretion applies equally where a case has been reassigned after entry of the order. *In re One2One Commc’ns, LLC*, 627 B.R. 273, 281 n.43 (Bankr. D.N.J. 2021) (citing cases).

<sup>7</sup> *See e.g.*, Docket No. 321 (HFC Surrender Stipulation) ¶¶ 4, 7(b); Docket No. 449 (COX Surrender Stipulation) ¶ 14; Docket No. 250 (Bancorp Surrender Stipulation) ¶ 6.

8. The Debtors respectfully submit that the Surrender Orders are properly interpreted as cutting off the estates' liability for Vehicle Charges, including for costs associated with the ongoing disposition or operation of a car after it was surrendered.

9. This interpretation applies with equal force regardless of whether the Debtors technically held title to cars after the Surrender Dates.<sup>8</sup> The Debtors retained the right to recover proceeds of both leased and financed cars in excess of each Vehicle Vendor's claim. However, retaining rights to positive fleet equity did not change the result of the Surrender Orders—that third parties were permitted complete control over and the right to dispose of the cars for their own benefit. Further, the interpretation suggested by one Objector—that third parties can take possession and control *from* the estates but leave ongoing costs *with* the estates—finds no basis in the text of the Surrender Orders and would create an absurd result.<sup>9</sup>

#### **B. The Court Has Authority to Interpret and Clarify the Surrender Orders**

10. The Supreme Court has held that a bankruptcy court is clearly permitted to enter an order interpreting and clarifying its prior orders.<sup>10</sup> In 1986, the United States Bankruptcy Court for the Southern District of New York approved a reorganization plan and related settlement agreement (the "1986 Orders"), whereby the insurers of debtor Johns-Manville Corporation (an asbestos supplier and manufacturer of asbestos-containing products), including The Travelers Indemnity Company ("Travelers"), would contribute to the corpus of the Manville Personal Injury

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<sup>8</sup> Docket No. 907 (Bancorp Obj.) ¶¶ 24–25. In its objection, Bancorp incorrectly asserts that the Debtors misstated that each Surrender Order had the effect of transferring title. *Id.* ¶ 21. The Debtors do not make this statement. Rather, in certain instances, the Surrender Orders transferred title or permitted a Vehicle Vendor (including Bancorp) to transfer title. *See e.g.*, Docket No. 250 (Bancorp Surrender Stip.) ¶ 8 and *Power of Attorney* (authorizing Bancorp to transfer title to itself); Docket No. 321 (HFC Surrender Stip.) ¶ 4. However, as explained herein, the fact of title is irrelevant under the circumstances.

<sup>9</sup> *In re Zohar III, Corp.*, 2020 WL 3960820, at \*7 (D. Del. July 13, 2020) (court orders should be interpreted to avoid absurd results).

<sup>10</sup> *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009).

Settlement Trust (the “Trust”).<sup>11</sup> Per the plan and settlement agreement, Travelers and related insurers were to be released from any “Policy Claims,” which were channeled to the Trust.<sup>12</sup>

11. More than ten years post-confirmation, various plaintiffs began filing state court asbestos actions against Travelers (the “Direct Actions”), often seeking to recover for Travelers’ own alleged violations of state consumer-protection statutes or of common law duties, rather than seeking to recover from Travelers for Manville’s wrongdoing.<sup>13</sup> Invoking the 1986 Orders, Travelers filed a post-confirmation motion on a contested matter in the main bankruptcy court docket, seeking entry of an order clarifying the court’s original confirmation order, including insurance settlement order and channeling injunction enjoining the Direct Actions.<sup>14</sup> “Ultimately, a settlement was reached, in which Travelers agreed to make payments to compensate the Direct Action claimants, contingent on the court’s order clarifying that the Direct Actions were, and remained, prohibited by the 1986 Orders.”<sup>15</sup>

12. The bankruptcy court approved the post-confirmation settlement and entered a “Clarifying Order,” interpreting the Court’s 1986 Orders to bar the Direct Actions and various other claims.<sup>16</sup> Following an Appeals Process, the Supreme Court found that the Bankruptcy Court had jurisdiction to both interpret and enforce its prior 1986 Orders, despite that the Direct Actions sought to recover directly from Travelers for its own conduct, rather than to recover from Travelers for Manville’s conduct, as parties to the Manville bankruptcy apparently understood them to.<sup>17</sup>

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<sup>11</sup> *See id.* at 137.

<sup>12</sup> *Id.*

<sup>13</sup> *See id.*

<sup>14</sup> *See Travelers Motion to Approve the Statutory Direct Action Settlement Agreement* at 1, 5, In re Johns-Manville Corp., No. 82-11656 (Bankr. S.D.N.Y. Mar. 29, 2004).

<sup>15</sup> *See Travelers*, 557 U.S. at 137.

<sup>16</sup> *See id.*

<sup>17</sup> *See id.* at 137-38, 150-151.

After finding that the Clarifying Order properly interpreted the 1986 Orders, the Supreme Court paused to assess “whether the Bankruptcy Court had subject-matter jurisdiction to enter [it].”<sup>18</sup> The answer was “easy”—“the Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders.”<sup>19</sup> Notably, in doing so, the Supreme Court in *Travelers* also authorized the Bankruptcy Court to expand the scope of its prior order quite extensively.

13. Here, the Motion asks the Court to interpret the Surrender Orders to determine whether they cut off the estates’ liability for continuing Vehicle Charges. Like the movants in *Travelers*, the Debtors seek an order interpreting and clarifying the impact of prior orders on certain claims. But the Motion is narrower than the relief authorized in *Travelers*—here, the Debtors do not seek to fold a new agreement into the existing orders. Thus, the relief requested in the Motion fits within the authority recognized by the Supreme Court and is permissible.

14. However, the Objectors argue that the Court cannot grant the Motion because the Debtors did not point to specific provision in the Surrender Orders that are ambiguous.<sup>20</sup> However, as the Supreme Court explained in *Travelers*, the Court is permitted to enter an order clarifying the Surrender Orders even if it finds no ambiguity:

[W]here the plain terms of a court order unambiguously apply, as they do here, they are entitled to their effect. *See, e.g., Negron-Almeda v. Santiago*, 528 F.3d 15, 23 (CA1 2008) (“[A] court must carry out and enforce an order that is clear and unambiguous on its face”); *United States v. Spallone*, 399 F.3d 415, 421 (CA2 2005) (“[I]f a judgment is clear and unambiguous, a court must adopt, and give effect to, the plain meaning of the judgment” (internal quotation marks omitted)). If it is black-letter law that the terms of an unambiguous private contract must be

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<sup>18</sup> *Id.* at 151.

<sup>19</sup> *Id.*; *see also In re Somerset Reg’l Water Res. LLC*, 949 F.3d 837, 845 (3d Cir. 2020) (relying on *Travelers* to find bankruptcy court had jurisdiction to enforce prior orders); *In re Weiland Auto. Indus.*, 612 B.R. 824, 856 & n.203 (Bankr. D. Del. 2020) (“[C]aselaw generally supports a bankruptcy court’s jurisdiction to interpret and enforce its own orders.”) (citing *Travelers*); *Martillo v. Paladini (In re CD Liquidation Co.)*, 462 B.R. 124, 136 (Bankr. D. Del. 2011) (noting in enforcing injunction in confirmation order, that the authority to enforce prior orders is “the most basic and intrinsic authority of [the Bankruptcy Court] or any other court.”).

<sup>20</sup> Docket No. 907 (Bancorp Obj.) ¶¶ 7, 17; Docket No. 908 (HFC Obj.) ¶¶ 2, 8–10; Docket No. 909 (Element Obj.) ¶ 8; Docket No. 911 (Cox Obj.) ¶¶ 1, 8–13.

enforced irrespective of the parties' subjective intent, see 11 R. Lord, Williston on Contracts § 30:4 (4th ed. 1999), it is all the clearer that a court should enforce a court order, a public governmental act, according to its unambiguous terms. This is all the Bankruptcy Court did.<sup>21</sup>

15. Furthermore, with respect to post-Surrender Date Vehicle Charges, the Surrender Orders are not ambiguous. As a result of the Surrender Orders, the Debtors finalized their defuncting process. The corollary of that effort was to relieve the estates from the continued obligation to fund the cost of disposing or operating the Rental Fleet.

**C. Rules 9023 and 9024 Are Inapplicable Because the Debtors Do Not Seek to Alter, Amend, or Correct the Surrender Orders**

16. The argument that Rules 9023 and 9024 bar the Motion<sup>22</sup> fail because they mischaracterize the relief sought. The Objectors base much of their arguments on the fact that the Motion is styled as a motion to “clarify.” However, the caption does not define the substance of the Motion, which asks the Court to interpret and enter an order clarifying the impact of the Surrender Orders, not to change the terms of the orders. The relief the Debtors seek was authorized by the Supreme Court and does not fall within the scope of Rule 9023 or 9024.

17. As discussed above, in *Travelers*, the Supreme Court upheld a bankruptcy court’s entry of a post-confirmation order clarifying the scope of its prior order which had been entered more than ten years prior. The Supreme Court’s opinion in *Travelers* and other decisions from the Third Circuit<sup>23</sup> indicate that bankruptcy courts have continuing jurisdiction to interpret and enforce their own prior orders independent of Rules 9023 and 9024.

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<sup>21</sup> *Id.* at 150–51.

<sup>22</sup> Docket No. 907 (Bancorp Obj.) ¶¶ 9, 26–29; Docket No. 908 (HFC Obj.) ¶¶ 1, 5–7; Docket No. 911 (Cox Obj.) ¶¶ 1, 14–17.

<sup>23</sup> See also *LandSource Cmtys. Dev. LLC v. Citizens Against Corp. Crime, LLC*, 834 F. App’x 747, 751 (3d Cir. 2020) (affirming the district court’s holding “that the decision to reopen was fully within the Bankruptcy Court’s discretion because it was for the limited purpose of interpreting and enforcing its own Confirmation Order”); see also *In re Lazy Days’ RV Ctr. Inc.*, 724 F.3d 418, 423 (3d Cir. 2013) (holding that the bankruptcy court had subject matter jurisdiction to reopen a case to decide a dispute regarding the settlement agreement in the plan the court confirmed).

18. Moreover, a finding that the Motion is barred by Rule 9023 would contradict the rule's articulated purpose:

A motion for reconsideration is governed by Fed. R. Civ. P. 59(e) which is applicable in bankruptcy cases pursuant to Fed. R. Bankr. P. 9023. *Its purpose is to correct manifest errors of law or fact or to present newly discovered evidence.* Federal district courts should grant such motions sparingly because of their strong interest in finality of judgment. Accordingly, the scope of Fed. R. Civ. P. 59(e) is very narrow.<sup>24</sup>

19. Here, the Motion does not seek to change any term of the orders or correct any error of law. It merely asks the Court to interpret the impact of its prior orders.

20. Likewise, Rule 9024 is inapplicable because the Motion does not seek to correct a mistake in the Surrender Orders.

21. Therefore, the objections premised on Rules 9023 and 9024 lack merit.

**D. The Debtors Properly Brought the Motion as a Contested Matter**

22. The argument that the Debtors must have brought the Motion as an adversary proceeding misunderstands the relief sought and misinterprets Rule 7001.

23. Rule 7001 (1)–(10) requires an adversary proceeding for ten enumerated proceedings. Rule 7001(9) addresses declaratory judgments—specifically, it requires an adversary proceeding to “obtain declaratory judgment relating to any of the” proceedings listed in Rule 7001(1)–(8). Otherwise, a Court may enter a declaratory judgment through a contested matter.<sup>25</sup>

24. The Motion does not fall within any Rule 7001 subsection. Initially, sections 7001(3)–(6) and (10) are inapplicable on their face.

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<sup>24</sup> *In re Kuhar*, 2007 Bankr. LEXIS 2642, at \*6-7 (Bankr. E.D.P.A Aug. 1, 2007) (emphasis added).

<sup>25</sup> *In re Barner*, 597 F.3d 651, 654 (5th Cir. 2010) (motion to interpret prior order lifting the automatic stay); *In re Tempnology LLC*, 559 B.R. 809, 824 (B.A.P. 1st Cir. 2016) (motion to interpret prior rejection order); *In re Modanlo*, No. CIV.A. DKC 2006-1168, 2006 WL 4486537, at \*4 (D. Md. Oct. 11, 2006) (motion for authorization to call shareholder meeting).



25. The Motion also does not trigger Rule 7001(1), (2), or (8). The Debtors are not asking to alter or determine the validity and extent of any parties' rights or claims against property. Any change with respect to an interest in property occurred, if at all, at the time the Surrender Orders were initially entered. Likewise, the Debtors are not attempting to establish whether any third party, including any Vehicle Vendor, is liable for ongoing charges. Thus, sections (1), (2), and (8) are inapplicable.

26. Further, the Motion does not trigger Rule 7001(7) because the Debtors do not ask the Court to require or preclude any third-party action with respect to the surrendered cars or the post-Surrender Date Vehicle Charges and, therefore, the Debtors are not pursuing an "injunction or other equitable relief."

27. Likewise, Rule 7001(9) is inapplicable. Initially, it is questionable whether the Motion even seeks a declaratory judgment because the Debtors only ask the Court to interpret the impact of the Surrender Orders, not determine the validity of claims. However, because sections (1)–(8) are inapplicable, regardless of whether the Motion seeks a declaratory judgment, the Motion was properly brought as a contested matter.

WHEREFORE, the Debtors respectfully request the Court enter an order overruling the objections and granting the Motion.

Dated: August 31, 2021

**COLE SCHOTZ P.C.**

/s/ Andrew J. Roth-Moore

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