

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

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|-------------------------------------|---|------------------------|
| IN RE: | § | CHAPTER 11 |
| | § | |
| INVACARE CORPORATION, <i>et al.</i> | § | CASE NO. 23-90068(CML) |
| | § | |
| Debtors. | § | JOINTLY ADMINISTERED |

**LIMITED OBJECTION TO DEBTORS' FIRST AMENDED PLAN AND
RESERVATION OF RIGHTS OF RAFAELA LEAL MUNOZ, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE AND/OR ADMINISTRATOR OF THE ESTATE
OF LUIS FLORES LEAL, JOE LEAL, AND ELVIRA LEAL**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Rafaela Leal Munoz, individually and as personal representative and/or administrator of the estate of Luis Flores Leal, Joe Leal, and Elvira Leal (collectively, “Leal” or “Movants”) file this Limited Objection regarding Debtor’s First Amended Plan and Reservation of Rights (the “Plan”), in the above-captioned bankruptcy case (the “Bankruptcy Case”), and in support, respectfully states as follows:

I. BACKGROUND

1. Movants are personal injury claimants of Invacare Corporation. In 2015, Invacare manufactured and sold a new wheelchair which was issued to Mr. Luis Flores Leal. On August 17, 2015, Mr. Leal reported to Invacare that the wheelchair had malfunctioned – namely that it was moving with the seat in the elevated position. On or about October 31, 2015, Mr. Leal was ejected from the wheelchair and as a result suffered severe personal injuries and ultimately death (the “Incident”).

2. Movants filed suit against Debtor and other defendants on October 9, 2017. Debtor filed its Original Answer on November 17, 2017. The lawsuit is currently pending in the Nueces County, County Court at Law No. 2; styled Case No. 2016-PR-00274-3, Rafaela Leal Munoz, individually and as personal representative and/or administrator of the estate of *Luis Flores Leal, Joe Leal, and Elvira Leal*, Plaintiffs v. *Invacare Corporation*, et al., Defendants (the “State Court Lawsuit”). On February 3, 2023, Movants’ counsel received notification from Nueces County’s E-filing service that Debtor had filed a proceeding under the bankruptcy code and the automatic stay was in effect.

3. Movants have filed a motion for relief from stay seeking relief to proceed in the State Court Lawsuit and to subsequently take any and all steps and actions to enforce their claims against any assets which are available, including any applicable insurance policies. Regardless of whether such policies exist, Movants seek relief to liquidate their claims against Debtor through the State Court Lawsuit. A final hearing on Movants’ motion for relief from stay will be set after the confirmation hearing on the Plan.

4. The Plan includes a discharge injunction and discharge of claims in Article VIII. The injunction and discharge is broad and appears to encompass Movants’ pre-petition claims asserted in the State Court Lawsuit. These provisions of the Plan appear to affect Movants’ ability to liquidate their claims in the State Court Lawsuit following entry of an order confirming the Plan.

II. LIMITED OBJECTION

5. Movants object to the Plan to the extent that it extinguishes their rights to proceed with seeking relief from the stay to liquidate their claims against the Debtor in the State Court Lawsuit and to the extent that the Plan extinguishes their ability to liquidate their claim in the State Court Lawsuit.

6. In her motion seeking relief from the automatic stay, Movants have argued that this Court lacks jurisdiction to hear and determine the amount of their personal injury tort claims. Movants should not have to liquidate their claim through the bankruptcy claims resolution process for the same jurisdictional reasons as identified above. The only appropriate forum for Movants to liquidate their claims against the Debtor, regardless of whether the Debtor has available insurance coverage or not, is through the State Court Lawsuit in Texas.

7. The Plan should be modified to clearly except Movants' claims from the scope of the discharge and discharge injunction provisions so that she may liquidate their claims against the Debtor in the proper forum.

III. RESERVATION OF RIGHTS

8. Movant reserves their rights to raise additional grounds for relief requested in this limited objection and to supplement and/or amend this limited objection. Furthermore, Movant reserves their rights as to their motion for relief from stay to raise additional grounds for relief requested in that motion and to supplement and/or amend that motion for relief from stay.

9. The filing of this limited objection is not to be construed as a waiver of any of Movants' rights and/or defenses in connection with any claim asserted by or against Debtor in connection with these Chapter 11 Cases.

10. Wherefore, Rafaela Leal Munoz, individually and as personal representative and/or administrator of the estate of Luis Flores Leal, Joe Leal, and Elvira Leal respectfully request that the Court: (a) sustain their limited objection to the extent set forth herein; and (b) grant them all other and further relief to which they are entitled at law or equity.

Respectfully Submitted,

MORROW & SHEPPARD LLP

/s/ Daniel E. Sheppard

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COUNSEL FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2023 a true and correct copy of the foregoing instrument was served by electronic mail through the Court's ECF system to all parties who have registered an appearance in this case.

/s/ Daniel E. Sheppard

Daniel E. Sheppard