

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

In re:

FAH LIQUIDATING CORP. (f/k/a
FISKER AUTOMOTIVE HOLDINGS,
INC.), *et al.*,

Debtors.

Chapter 11

Case No. 13-13087 (KG)

(Jointly Administered)

EMERALD CAPITAL ADVISORS CORP., in
Its Capacity as Trustee for the FAH
Liquidating Trust,

Plaintiff,

v.

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT,

Defendants.

Adv. Pro. No. 15-51898 (KG)

Hearing Date: January 29, 2020 at 9:30 a.m. (ET)

Objection Deadline: January 6, 2020 at 4:00 p.m. (ET)

**MOTION OF TRUSTEE FOR AN ORDER PURSUANT TO RULE 9019 OF
THE FEDERAL RULES OF BANKRUPTCY PROCEDURE APPROVING
SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH
BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT**

Emerald Capital Advisors Corp., in its capacity as trustee (the “Trustee”) of the FAH Liquidating Trust (the “Liquidating Trust”) established in the chapter 11 cases of FAH Liquidating Corp. (f/k/a Fisker Automotive Holdings, Inc.) and FA Liquidating Corp. (f/k/a Fisker Automotive, Inc.) (together, the “Debtors”), hereby moves for this Honorable Court to enter an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) approving the Settlement Agreement and Mutual Release (the

“Settlement Agreement”) (a copy of which is attached hereto as **Exhibit A** and filed under seal)¹ with Bayerische Motoren Werke Aktiengesellschaft (“**BMW AG**” and, together with the Trustee and the Liquidating Trust, the “Parties”), and (ii) authorizing the Trustee to redact information reflecting or referring to the settlement amount from the Post-Confirmation Quarterly Operating Report for the quarter in which the settlement proceeds are received (the “Post-Confirmation Quarterly Operating Report”) with an appropriate footnote alerting the reader of the exclusion; provided, however, that a complete copy of such report (without the exclusion) shall be delivered to the Office of the United States Trustee. As discussed in greater detail herein, the Settlement Agreement resolves all claims that were or could have been asserted by the Trustee against BMW AG in the Action (as defined below). In support of this Motion, the Trustee respectfully represents as follows:

BACKGROUND

A. General Background

1. On November 22, 2013 (the “Petition Date”), the Debtors each filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in this Court.

2. On July 28, 2014, this Court entered an order confirming the *Debtors’ Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (with Technical Modifications)* (the “Plan”). The “Effective Date” of the Plan was August 13, 2014.

¹ Contemporaneously herewith, the Trustee is filing the *Motion of Trustee for Entry of an Order Pursuant to Section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d), Permitting Trustee to File Portions of a Settlement Agreement and Mutual Release Under Seal* (the “Seal Motion”). Through the Seal Motion, the Trustee seeks authority to file the unredacted Settlement Agreement under seal, and file as a publicly viewable document the Settlement Agreement with the settlement amount redacted.

3. Under the Plan, “the Debtors reserve[d] and, as of the Effective Date, assign[ed] to the Liquidating Trust, any and all [estate] Causes of Action, including without limitation any actions specifically enumerated in the Plan Supplement,” including “any actions . . . against Bayerische Motoren Werke Aktiengesellschaft or its affiliates and representatives.”

B. The Liquidating Trust’s Claims Against BMW AG

4. The Trustee, on behalf of the Liquidating Trust, filed various claims against BMW AG, as detailed in the adversary proceeding captioned: *Emerald Capital Advisors Corp. v. Bayerische Motoren Werke Aktiengesellschaft*, Adv. Pro. No. 15-51898 pending in United States Bankruptcy Court for the District of Delaware (the “Action”). Namely, prior to the Petition Date (as defined below), the Debtors had made certain transfers to BMW AG (the “Transfers”). The Trustee demanded return of the Transfers. BMW AG disputes that it is liable to the Liquidating Trust for the Transfers.

5. By memorandum opinion [Adv. Docket 39] and order [Adv. Docket 40] dated June 13, 2017, the Court dismissed Count IV of the Liquidating Trust’s complaint and Counts I, III and IV of the complaint, other than as to a claim for \$793,761.87 (the “Remaining Claims”). By memorandum opinion [Adv. Docket 145] and order [Adv. Docket 146] dated August 26, 2019, the Court entered summary judgment on Count V of the complaint.

6. The Parties agreed to mediate the Remaining Claims before the Honorable Joan N. Feeney (Ret.). At a mediation session with Judge Feeney on November 7, 2019, the Parties reached agreement on the terms of a settlement of the claims asserted in the Action, and later documented those terms in the Settlement Agreement.

C. Settlement Agreement

7. The Parties desire to effect a final settlement and resolution of the claims in the Action without the expense, delay, or uncertainty of further litigation.

8. As set forth in the Settlement Agreement,² BMW AG will pay a confidential settlement amount to the Liquidating Trust in full and final settlement of all claims that were or could have been asserted in the Action.

9. The Settlement Agreement also includes mutual general releases.

JURISDICTION AND VENUE

10. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Trustee consents pursuant to Local Rule 9013(f) to entry of a final order by the Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

11. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The statutory predicates for the relief requested by this Motion are Bankruptcy Rule 9019 and section 105(a) of the Bankruptcy Code.

RELIEF REQUESTED

13. By this Motion, the Trustee requests entry of an Order, substantially in the form attached hereto as **Exhibit B**, approving the Settlement Agreement pursuant to Bankruptcy Rule 9019(a). In addition, given the sensitive nature of the financial terms of the Settlement

² The description of the proposed Settlement Agreement in this Motion is only a summary. The Settlement Agreement controls in all instances to the extent the summary is incomplete, inaccurate, or conflicts with the Settlement Agreement.

Agreement, as more fully described in the Seal Motion filed contemporaneously herewith, the Trustee respectfully requests authority to redact information reflecting or referring to the settlement amount from the Post-Confirmation Quarterly Operating Report.

BASIS FOR RELIEF

14. Section 105(a) provides, in pertinent part, that “[t]he court may issue any order . . . necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” In turn, Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after a hearing, the Court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

15. Settlement of time-consuming and burdensome litigation, especially in the bankruptcy context, is encouraged. *See In re Penn Cent. Transp. Co.*, 596 F.2d 1127, 1146 (3d Cir. 1979); *In re Sassalos*, 160 B.R. 646, 653 (D. Or. 1993) (stating that “compromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove a compromise . . . rests in the sound discretion of the judge”). The Supreme Court has recognized that “in administering reorganization proceedings in an economical and practical manner, it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts.” *In re Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *see In re Penn Cent. Transp. Co.*, 596 F.2d at 1146. The district court, as the intermediate bankruptcy appellate court, “has described the ultimate inquiry to be whether ‘the compromise is fair, reasonable, and in the interest of the estate.’” *In re Marvel Entertainment Group, Inc.*, 222 B.R. 243, 249 (D. Del. 1998), *quoting In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997). Bankruptcy Rule 9019 thus empowers this Court to approve compromises and settlements if they are in the “best interest[s] of the estate.” *In re Marvel*

Entertainment Group, 222 B.R. at 249 (holding that proposed settlement was in the best interest of the estate); see *In the Matter of Energy Cooperative, Inc.*, 886 F.2d 921, 927 (7th Cir. 1989).

16. In determining whether to approve a motion or application to settle a controversy, a Bankruptcy Court must determine whether it is fair, reasonable, and adequate by examining the following four factors: (i) the probability of success in the litigation; (ii) the complexity, expense and likely duration of the litigation; (iii) all other factors relevant to making a full and fair assessment of the wisdom of the proposed compromise; and (iv) whether the proposed compromise is fair and equitable to the debtors, their creditors, and other parties in interest. See *TMT Trailer Ferry, Inc.*, 390 U.S. at 424; *In re Martin*, 91 F.3d at 393 (stating that “[t]o minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy” and citing the criteria set forth above in determination of reasonableness of particular settlements) (internal quotation marks and citation omitted); *In re Penn Cent. Transp. Co.*, 596 F.2d at 1114 (relevant factor is whether “[t]he settlement is well within the range of reasonably likely litigation possibilities”) (internal quotation marks and citation omitted).

17. Basic to the process of evaluating proposed settlements, then, is “the need to compare the terms of the compromise with the likely rewards of litigation.” *TMT Trailer Ferry, Inc.*, 390 U.S. at 425. However, “[t]he court need not decide the numerous questions of law or fact raised by litigation, but rather should canvas the issues to determine whether the settlement falls above the lowest point in the range of reasonableness.” *In re Capmark Fin. Grp. Inc.*, 438 B.R. 471, 515 (Bankr. D. Del. 2010); see also *In re World Health Alt., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (“[T]he court does not have to be convinced that the settlement is the best

possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.”) (internal citations and quotation marks omitted).

18. The Trustee submits that the proposed compromise embodied in the Settlement Agreement is fair and reasonable and should be approved. The Settlement Agreement is the product of extended and intensive arm’s-length negotiations, with the assistance of Judge Feeney, that resolves complex and difficult disputes with the end result that money will be paid to the Liquidating Trust that can be used to make distributions to holders of allowed unsecured claims.

19. The Settlement Agreement was informed by the fact that the Court dismissed or entered summary judgment on the majority of the Liquidating Trust’s claims against BMW AG and the Settlement Agreement takes into account the possibility of overturning such judgments on appeal.

20. Further, the Trustee asserts that the terms of the Settlement Agreement are fair and the settlement proceeds are appropriate, in light of the value of the Remaining Claims.

21. As a result of the Settlement Agreement and the other actions taken by the Trustee and the predecessor official committee in these Chapter 11 Cases, unsecured creditors stand to receive meaningful distributions on allowed claims. By contrast, initial projections by the Debtors at the start of the Chapter 11 Cases were to pay nothing to such creditors.

22. Finally, resolving the Action, the outcome of which is uncertain, allows the Trustee to avoid a trial, and appeals, and associated significant additional costs.

23. For all of the foregoing reasons, the Trustee asserts that the Settlement Agreement is fair, reasonable and in the best interest of the Debtors’ creditors.

NO PRIOR REQUEST

24. No previous request for the relief sought by this Motion has been made to this or any other Court.

NOTICE

25. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) counsel to BMW AG; and (c) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. The Trustee submits that, under the circumstances, no other or further notice is required.

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WHEREFORE, the Trustee respectfully requests the entry of an order, substantially in the form attached hereto as **Exhibit B**, (i) approving the Settlement Agreement, (ii) authorizing the Trustee to redact information reflecting or referring to the settlement amount from the Post-Confirmation Quarterly Operating Report with an appropriate footnote alerting the reader of the exclusion; provided, however, that a complete copy of such report (without the exclusion) shall be delivered to the Office of the United States Trustee, and (iii) granting such other relief as is just and proper.

Dated: December 23, 2019

SAUL EWING ARNSTEIN & LEHR LLP

/s/ Lucian B. Murley

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*Counsel to Emerald Capital Advisors Corp., as
Trustee for the FAH Liquidating Trust*

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

In re:

FAH LIQUIDATING CORP. (f/k/a
FISKER AUTOMOTIVE HOLDINGS,
INC.), *et al.*,

Debtors.

Chapter 11

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Its Capacity as Trustee for the FAH
Liquidating Trust,

Plaintiff,

v.

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT,

Defendants.

Adv. Pro. No. 15-51898 (KG)

Hearing Date: January 29, 2020 at 9:30 a.m. (ET)

Objection Deadline: January 6, 2020 at 4:00 p.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on December 23, 2019, Emerald Capital Advisors Corp., in its capacity as trustee (the “Trustee”) of the FAH Liquidating Trust filed the *Motion of Trustee for an Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving the Settlement Agreement and Mutual Release with Bayerische Motoren Werke Aktiengesellschaft* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the entry of an order approving the Motion must be (a) in writing and served on or before **January 6, 2020 at 4:00 p.m.** (prevailing Eastern Time) (the “Objection Deadline”); (b) filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801; and (c) served as to be received on or before the Objection Deadline by the undersigned attorneys for the Trustee.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON JANUARY 29, 2020 AT 9:30 A.M. (PREVAILING EASTERN TIME) BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY

COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6th FLOOR, COURTROOM #3, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE that only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: December 23, 2019

SAUL EWING ARNSTEIN & LEHR LLP

/s/ Lucian B. Murley

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*Counsel to Emerald Capital Advisors Corp., as
Trustee for the FAH Liquidating Trust*

EXHIBIT A

REDACTED SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This settlement agreement (the “Agreement”) dated as of December __, 2019, is entered into by and between, on the one hand, EMERALD CAPITAL ADVISORS CORP., in its capacity as trustee (the “Trustee”) of the FAH LIQUIDATING TRUST (the “Trust”) established in the chapter 11 cases of FAH Liquidating Corp. (f/k/a Fisker Automotive Holdings, Inc.) and FA Liquidating Corp. (f/k/a Fisker Automotive, Inc.) (together, the “Debtors”) and, on the other hand, BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT (“BMW AG,” and, together with the Trustee and the Trust, the “Parties”).

WHEREAS, on November 22, 2013 (the “Petition Date”), the Debtors each filed voluntary petitions (the “Bankruptcy Cases”) for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, prior to the Petition Date, the Debtors had made certain transfers to BMW AG (the “Transfers”);

WHEREAS, on July 28, 2014, the Bankruptcy Court entered an order confirming the *Debtors’ Second Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code (with Technical Modifications)* (the “Plan”);

WHEREAS, under the Plan, “the Debtors reserve[d] and, as of the Effective Date, assign[ed] to the Liquidating Trust, any and all [estate] Causes of Action, including without limitation any actions specifically enumerated in the Plan Supplement,” including “any actions . . . against Bayerische Motoren Werke Aktiengesellschaft or its affiliates and representatives.”

WHEREAS, the Trustee, on behalf of the Trust, has asserted various claims against BMW AG relating to the Transfers, which have resulted in the adversary proceeding captioned: *Emerald Capital Advisors Corp. v. Bayerische Motoren Werke Aktiengesellschaft*, Adv. Pro. No. 15-51898 pending in United States Bankruptcy Court for the District of Delaware (the “Action”);

WHEREAS, BMW AG disputes that it is liable to the Trust;

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WHEREAS, the Trustee, the Trust, and BMW AG desire to settle their disputes about the matters described above without the expense, delay, or uncertainty of further litigation;

NOW, THEREFORE, the Parties agree to be mutually bound and, in consideration of their mutual obligations, as set forth herein, agree as follows:

1. Consideration. [REDACTED] (the "Settlement Amount") to the Trustee, for the benefit of the Trust, on or before the later of: (a) January 31, 2020; or (b) the day that is fourteen (14) days after the entry of an order by the Bankruptcy Court approving the Approval Motion, as defined in Paragraph 2 (the "Effective Date"). Payment shall be made by wire transfer to the Trustee in accordance with the wiring instructions, which the Trustee will provide to BMW AG on or before the Effective Date.

2. The Approval Motion. Within ten Business Days of the execution of this Agreement, the Trustee shall file with the Bankruptcy Court a Motion for Order Approving the Settlement Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure substantially in the form attached hereto as **Exhibit A** (the "Approval Motion"). Contemporaneously therewith, the Trustee shall file with the Bankruptcy Court a motion authorizing it to file the Agreement under seal and permitting the Trustee to file a publically filed version of the Agreement redacting the Settlement Amount (the "Motion to Seal").

3. Withdrawal. Within five Business Days of the Effective Date, the Parties shall file with the Bankruptcy Court a stipulation dismissing the Action.

4. Mutual Releases. In consideration for the undertakings described in this Agreement, each Party, on behalf of itself and its personal representatives, shareholders, subsidiaries, affiliates, officers, directors, agents, employees, heirs, successors, executors, administrators, and assigns, hereby releases, remises, and forever discharges each other Party, along with such Party's respective personal representatives, shareholders, subsidiaries, affiliates, officers, directors, agents, employees, heirs, successors, executors, administrators, and assigns from any and all past and present claims, counterclaims, cross-claims, defenses, and causes of

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action (whether known or unknown) of any of them, including all such claims that were or could have been asserted in the Action. For the avoidance of doubt, except as provided herein, nothing in this Section 4 shall be construed to release any Party from any breach of this Agreement.

5. Confidentiality. (a) The Parties agree that the Settlement Amount shall be kept strictly confidential and shall not be disclosed to anyone except as specifically provided in subparts (i)-(v) below.

i. The Parties may disclose the Settlement Amount to their attorneys, accountants, beneficiaries, financial consultants, and regulators, to the extent necessary for ordinary business purposes. The Trustee may disclose the Settlement Amount to the representatives on the Trust's Oversight Committee. Any person given access to information regarding the Settlement Amount pursuant to this Section 5(a)(i) shall be advised by the Party providing such information that the information is confidential. In the event of the unauthorized disclosure by a recipient of information pursuant to this Section 5(a)(i), the Party providing such information shall be liable for, and shall pay, the reasonable legal fees, costs and expenses of each non-breaching party in enforcing this Agreement.

ii. The Parties may disclose the Settlement Amount to the Bankruptcy Court, provided that such disclosure shall be accompanied by the Motion to Seal.

iii. In connection with its reporting obligations under Sections 6.3 and 6.4 of the Liquidating Trust Agreement, filed August 4, 2014, by and among FAH Liquidating Corp. and FA Liquidating Corp., and Emerald Capital Advisors Corp. as trustee, the Trust will move the Bankruptcy Court for an order allowing it to redact from the public docket any information reflecting or referring to the Settlement Amount (provided, however, that it is not a condition to this Agreement or the Parties' performance that the Bankruptcy Court enter such order or grant any other relief as to the same).

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iv. The Trustee may disclose the Settlement Amount to the United States Trustee, provided that such disclosure shall be accompanied by a request to keep the Settlement Amount confidential to the fullest extent permitted by law or regulation.

v. In the event any Party receives a validly issued subpoena or document request, or an inquiry from a state or federal court, prosecutor, or regulator, seeking production of the Settlement Amount, such Party shall promptly advise the requesting person that the Settlement Amount is confidential and shall also promptly inform the other Parties to this Agreement of the subpoena, document request, or regulatory inquiry. Upon the request of any other Party to this Agreement, the Party receiving the subpoena, document request, or regulatory inquiry shall object to production of the Settlement Amount (the "Objection") in order to enable such other Party to take such actions as it may deem appropriate to protect the confidentiality of the Settlement Amount. The reasonable costs and expenses of preparing, filing and presenting the Objection shall be borne by the Party requesting the Objection.

(b) Each Party expressly represents that, other than as permitted in this Section 5, it has, as of the Effective Date, not disclosed the Settlement Amount to any other person or entity other than the other Party, Party employees or representatives, counsel, and the third-party mediator.

(c) The Parties acknowledge that Sections 5(a) and 5(b) of this Agreement were separately bargained for and are material terms of this Agreement. The Parties further acknowledge that a violation of Section 5(a) or 5(b) by any Party will cause irreparable harm to the other Parties and therefore, in the event of any such violation, each of the non-breaching Parties will be entitled to injunctive relief and specific performance.

(d) The Parties agree that the terms of the Agreed Protective Order, entered by the Court on November 9, 2017, in the Action shall survive this Agreement. Pursuant to Section 17 of the Agreed Protective Order, within 60 days after receiving notice of an order ending the Action, each Party shall make reasonable efforts to identify Confidential and/or Highly Confidential Information and either (a) return to the producing party all Confidential and/or

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Highly Confidential Information, as defined in the Agreed Protective Order, or (b) provide written confirmation to the producing party that all such material has been destroyed.

6. Waiver of Trial by Jury. **THE PARTIES EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT.**

7. Negotiated Agreement. This Agreement has been drafted through a joint effort of the Parties and, therefore, should not be construed in favor of or against either Party. The terms of this Agreement shall be deemed to have been jointly negotiated by the Parties.

8. Jurisdiction. The Parties consent to the jurisdiction of the Bankruptcy Court to adjudicate any and all disputes arising under or relating to this Agreement. If the Bankruptcy Court declines to exercise jurisdiction, the Parties agree and consent to the jurisdiction of the federal courts sitting in Wilmington, Delaware to adjudicate any dispute.

9. Consultation with Counsel. Each Party acknowledges that it has read all of the terms of this Agreement and has consulted with the counsel of its choice regarding the terms of this Agreement, and that it enters into this Agreement voluntarily and without duress.

10. Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof and may only be modified in a writing signed by the Parties.

11. No Admission. This Agreement is not to be construed, and is not intended, as an admission or suggestion that any valid claim or cause of action exists or that any valid defense exists to any such claim or cause of action.

12. Applicable Law. This Agreement and the rights and obligations of the Parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware, without reference to choice-of-law provisions.

13. Authority. Each person signing this Agreement covenants and warrants that he or she is fully authorized to sign the Agreement on behalf of the Party that he or she represents and is fully authorized to bind such Party by all of the terms of this Agreement.

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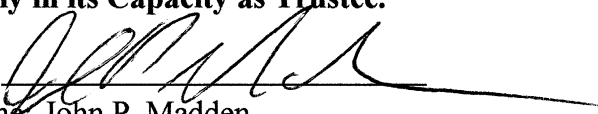
14. Successors Bound. This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives, and assigns of the Parties.

15. Counterparts; Electronic Copies of Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one agreement binding upon the Parties. Executed electronic copies shall be deemed and considered originals.

EXECUTION VERSION

IN WITNESS HEREOF, each party has executed this Agreement:

**FAH Liquidating Trust
by Emerald Capital Advisors Corp.,
solely in its Capacity as Trustee.**

By: 
Name: John P. Madden
Title: Senior Managing Director

Date: 12/3/19

Bayerische Motoren Werke Aktiengesellschaft

By: _____
Name:
Title:

Date: _____

By: _____
Name:
Title:

Date: _____

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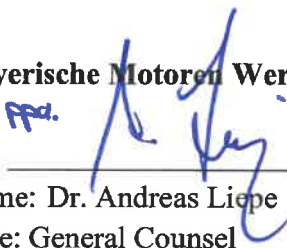
IN WITNESS HEREOF, each party has executed this Agreement:

FAH Liquidating Trust
by Emerald Capital Advisors Corp.,
solely in its Capacity as Trustee.


By: _____
Name: John P. Madden
Title: Senior Managing Director

Date: _____

Bayerische Motoren Werke Aktiengesellschaft

By: ^{Att.}  _____
Name: Dr. Andreas Liepe
Title: General Counsel

Date: 6/12/2019

By:  _____
Name: Uwe Breitweg
Title: Vice President Powertrain Systems Business Customers

Date: 13/12/2019

EXHIBIT B

PROPOSED ORDER

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

In re:

FAH LIQUIDATING CORP. (f/k/a
FISKER AUTOMOTIVE HOLDINGS,
INC.), *et al.*,

Debtors.

Chapter 11

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(Jointly Administered)

EMERALD CAPITAL ADVISORS CORP., in
Its Capacity as Trustee for the FAH
Liquidating Trust,

Plaintiff,

v.

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT,

Defendants.

Adv. Pro. No. 15-51898 (KG)

Re: Docket No. _____

**ORDER PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE APPROVING THE SETTLEMENT
AGREEMENT AND MUTUAL RELEASE WITH BAYERISCHE
MOTOREN WERKE AKTIENGESELLSCHAFT**

Upon the motion (the "Motion")¹ of the Trustee for entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and section 105(a) of the Bankruptcy Code, approving the Settlement Agreement between the Parties; and the Court having jurisdiction to consider the Motion and the relief requested therein; and due and sufficient notice of the Motion having been given; and upon the record herein and after due deliberation and sufficient cause appearing therefor;

¹ Any and all capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Settlement Agreement is hereby APPROVED.
3. The Trustee is authorized to exclude information reflecting or referring to the settlement amount from the Post-Confirmation Quarterly Operating Report with an appropriate footnote alerting the reader of the exclusion; provided, however, that a complete copy of such report (without the exclusion) shall be delivered to the Office of the United States Trustee. The Trust's bank statements shall not be filed with the Post-Confirmation Quarterly Operating Reports.
4. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this 9019 Order.