

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

In re:	:	Chapter 11
	:	
PES HOLDINGS, LLC., <i>et al.</i> ¹	:	Case No. 19-11626 (LSS)
	:	
Debtors.	:	(Jointly Administered)
	:	

**CERTIFICATION OF COUNSEL REGARDING STIPULATION BETWEEN
THE GUC CLAIMS ADMINISTRATOR AND ARI LEASING, LLC
RELATED TO THE ALLOWANCE OF ITS GENERAL UNSECURED CLAIM**

1. On July 21, 2019, the above-captioned debtors and debtors in possession (the “Debtors”) filed voluntary petitions for relief under title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). These Chapter 11 cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.
2. On October 18, 2019, ARI Leasing, LLC (“ARI Leasing”) filed a proof of claim against Philadelphia Energy Solutions Refining and Marketing LLC (“PERSM”) [Claim No. 225] seeking the payment of an unliquidated unsecured general claim.
3. On February 13, 2020, the Court entered the *Order Confirming the Fourth Amended Joint Chapter 11 Plan of PES Holdings, LLC and Its Debtor Affiliates* [D.I. 1004]. The Plan, approved by the Confirmation Order, established a “GUC Claims Administrator” to administer the “GUG Settlement Reserve,” a cash reserve to pay allowed general unsecured claims. *See* Plan, Article I.A.74 and Article VIII.I.1.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PES Holdings, LLC (8157); North Yard GP, LLC (5458); North Yard Logistics, L.P. (5952); PES Administrative Services, LLC (3022); PES Energy Inc. (0661); PES Intermediate, LLC (0074); PES Ultimate Holdings, LLC (6061); and Philadelphia Energy Solutions Refining and Marketing LLC (9574). The Debtors’ service address is: 1735 Market Street, Philadelphia, Pennsylvania 19103.

4. Pursuant to the Confirmation Order, “the GUC Claims Administrator [has] the authority to file and prosecute objections to General Unsecured Claims and to: (1) settle, compromise, withdraw, litigate to judgement, or otherwise resolve objections to any and all General Unsecured Claims” Plan, Article IX.B and Confirmation Order, ¶ 135.

5. Pursuant to the Plan, and as of the Plan’s Effective Date, Rafael X. Zahralddin LLC, the GUC Administrator was selected by the Committee to administer the general unsecured claims and make distributions on allowed general unsecured claims. *See* Plan, Article I.A.74. The GUC Administrator is able to and has taken responsibility to file, prosecute objections, and settle proofs of claim related to the general unsecured claim pool (collectively, the “Claims”).

6. On June 26, 2020, the Effective Date of the Plan occurred and the Debtors emerged from their chapter 11 cases [D.I. 1376].

7. The GUC Administrator certifies that he has entered into a stipulation (the “Stipulation”) with ARI Leasing, attached as Exhibit 1 to the proposed form of order (the “Order”) approving the Stipulation, which is attached heretoto as Exhibit A. The Stipulation, by its terms, shall not be effective until entry of the Order.

8. The GUC Administrator respectfully requests entry of the Order authorizing entry into the Stipulation.

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Dated: December 15, 2021
Wilmington, Delaware

ARMSTRONG TEASDALE LLP

/s/ Shelley A. Kinsella

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EXHIBIT A

(Proposed Order)

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

In re: : Chapter 11
PES HOLDINGS, LLC., *et al.*,¹ : Case No. 19-11626 (LSS)
Debtors. : (Jointly Administered)

**ORDER AUTHORIZING STIPULATION REGARDING THE
ALLOWANCE OF GENERAL UNSECURED CLAIM FILED BY ARI LEASING, LLC**

Upon the *Certification of Counsel Regarding Stipulation between the GUC Claims Administrator and ARI Leasing, LLC related to the Allowance of its General Unsecured Claim* (the “Certification of Counsel”) and the *Stipulation Regarding the Allowance of ARI Leasing, LLC’s General Unsecured Claim* (the “Stipulation”)² by and between the GUC Claims Administrator (the “GUC Administrator”) and ARI Leasing, LLC (“ARI Leasing” and, together with the GUC Administrator, the “Parties”) attached hereto as Exhibit 1; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that venue of this proceeding and the Stipulation in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Stipulation and opportunity for a hearing (if any) on the Stipulation were appropriate under the circumstances and no other notice need be provided; and this Court having

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

reviewed the Stipulation; and this Court having determined that the legal and factual bases set forth in the Stipulation establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. The Stipulation is incorporated into this Order as if restated verbatim herein, and is hereby approved and entered as a final judgment.
2. The Stipulation shall be effective immediately upon entry of this Order.
3. The Parties are authorized to take all actions necessary to effectuate the relief granted in this Order and to consummate the Stipulation.
4. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order and the Stipulation.

EXHIBIT 1

(Stipulation)

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

In re: : Chapter 11
PES HOLDINGS, LLC., *et al.*,¹ : Case No. 19-11626 (LSS)
Debtors. : (Jointly Administered)

**STIPULATION REGARDING THE
ALLOWANCE OF ARI LEASING, LLC'S GENERAL UNSECURED CLAIM**

The GUC Claims Administrator (the “GUC Administrator”) and ARI Leasing, LLC (“ARI Leasing” and, together with the GUC Administrator, the “Parties”) hereby stipulate and agree, subject to Bankruptcy Court (as defined below) approval, as follows:

WHEREAS, on December 17, 2014, American Railcar Leasing LLC (“ARL Leasing”) and Philadelphia Energy Solutions Refining and Marketing LLC (“PERSM”) entered into that certain Master Service Contract (as amended, the “MSC”), whereby ARL Leasing agreed to lease certain railcars (the “ARI Railcars”) to PERSM in exchange for good and valuable consideration.

WHEREAS, effective October 30, 2015, ARL Leasing and PERSM agreed to amend the MSC with respect to the railcar rental rate. All other terms and conditions of the MSC remained unchanged.

WHEREAS, on June 1, 2017, ARL Leasing and ARI Leasing entered into that certain Assignment and Assumption Agreement, whereby ARL Leasing, among other things, transferred

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and assigned all of its rights, title, and interest in and to the MSC, with respect to the ARI Railcars, to ARI Leasing.

WHEREAS, on January 21, 2018 (the “2018 Petition Date”), the above-captioned debtors (the “Debtors”) filed for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court (the “Bankruptcy Court”) for the District of Delaware (the “2018 Bankruptcy”).

WHEREAS, on April 2, 2018, the Bankruptcy Court confirmed the Debtors’ second amended joint plan of reorganization. *See Corrected Order Approving the Debtors’ Disclosure Statement for and Confirming the Second Amended Joint Prepackaged Chapter 11 Plan of Reorganization of PES Holdings, LLC and its Debtor Affiliates*, Case No. 18-10122 (KG) [D.I. 357] (the “Confirmation Order”). Thereafter, the Debtors emerged from the 2018 Bankruptcy as reorganized entities.

WHEREAS, under and pursuant to the Confirmation Order, the reorganized Debtors assumed the MSC as of the effective date of the Confirmation Order. Moreover, pursuant to the express terms of the Confirmation Order, ARI Leasing was authorized to draw on certain letters of credit delivered under the MSC. ARI Leasing was further authorized to retain the proceeds of such letters of credit and irrevocably apply such pre-payment by PERSM of “the most distant future scheduled monthly rental payments under Section (3) of the [MSC], in reverse chronological order” *See Confirmation Order at ¶ 116(a).*

WHEREAS, on July 21, 2019 (the “2019 Petition Date”), the Debtors commenced these chapter 11 cases (the “2019 Bankruptcy”) by filing voluntary petitions for relief in the Bankruptcy Court under chapter 11 the Bankruptcy Code.

WHEREAS, on August 23, 2019, the Bankruptcy Court entered that certain *Amended Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment under Section 503(b)(9), (II) Setting a Bar Date for Filing of Proofs of Claim by Governmental Units, (III) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (IV) Approving the Form of and Manner of Filing Proofs of Claim, (V) Approving Notice of Bar Dates, and (VI) Granting Related Relief* (the “Bar Date Order”) [D.I. 255]. Pursuant to the Bar Date Order, the following deadlines were established to file proofs of claim in the Debtors’ Bankruptcy Cases: (i) 45 days from the date the Debtors filed their schedules of assets and liabilities for persons or entities not including Governmental Units (as defined in section 101(27) of the Bankruptcy Code), and (ii) January 17, 2020 at 5:00 p.m. prevailing Eastern Time for Governmental Units.

WHEREAS, on September 19, 2019, the Bankruptcy Court entered the *Order (A) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Nunc Pro Tunc to the Dates Specified Herein and (B) Granting Related Relief* [D.I. 416] (the “Rejection Order”), thereby authorizing the Debtors’ rejection of the MSC.

WHEREAS, on October 18, 2019, ARI Leasing filed a proof of claim against PERSM [Claim No. 225] seeking the allowance and payment of an unliquidated unsecured general claim (the “ARI Leasing Claim”);

WHEREAS, the ARI Leasing Claim is based on the MSC (and the rejection thereof). Specifically, the MSC provides that PERSM shall pay, or reimburse ARI Leasing upon a demand of ARI Leasing, all costs, charges, and expenses relating to, among other things, freight and switching charges during the term of the MSC in connection with the final return of the ARI Railcars. Additionally, the MSC mandates that PERSM shall preserve the ARI Railcars in good condition and will not in any way alter the physical structure of the ARI Railcars. *See id.*, at ¶ 7.

Upon the termination of the MSC, such agreement sets forth that PERSM will, at its sole expense, return all of the leased ARI Railcars to the ARI Leasing “empty, clean, free from residue, safe for human entry, and in the same good order and condition as the cars were in when they were delivered to [PERSM] . . . ordinary wear and tear excepted . . .” Finally, pursuant to the MSC, PERSM is required to indemnify ARI Leasing against any loss or damage to the ARI Railcars. Thus, the ARI Leasing Claim seeks the allowance of all costs, charges and expenses incurred by ARI Leasing in connection with or related to the above.

WHEREAS, on February 13, 2020, the Bankruptcy Court entered that certain *Order Confirming the Fourth Amended Joint Chapter 11 Plan of PES Holdings, LLC and Its Debtor Affiliates* [D.I. 1004] (the “2020 Confirmation Order”) confirming the Fourth Amended Joint Chapter 11 Plan of PES Holdings, LLC and Its Debtor Affiliates (the “Plan”).

WHEREAS, pursuant to the Plan, each Holder² of an Allowed General Unsecured Claim will receive, on account of all of its Allowed General Unsecured Claims, its Pro Rata share of the GUC Settlement Proceeds as provided in Article VIII.I of the Plan, and shall be deemed to have assigned its General Unsecured Claims to the Holders of Term Loan Claims (on a ratable basis); provided that any Holder of an Allowed General Unsecured Claim, on account of all of its Allowed General Unsecured Claims, may elect to receive instead its Pro Rata share of the Distribution Proceeds in accordance with Article VIII.I of the Plan, in which case it shall not be deemed to have assigned its General Unsecured Claims to the Holders of Term Loan Claims; provided, further, that any Holder of an Allowed General Unsecured Claim who does not make the Distribution Proceeds Election shall be deemed to grant the GUC Settlement Release in accordance with the

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

terms of Article VIII.I of the Plan; provided, further, that any Holder of an Allowed General Unsecured Claim who does not make the Distribution Proceeds Election shall not be entitled to receive any other Liquidating Trust Assets (including any Distribution Proceeds, Liquidating Trust Units or proceeds of Intermediation Priority Collateral or proceeds of the SOA Separate Assets and Collateral) on account of such General Unsecured Claims. *See* Plan at Article III.B.5.b;

WHEREAS, the Plan, approved by the 2020 Confirmation Order, established a “GUC Claims Administrator” to administer the “GUG Settlement Reserve,” a cash reserve to pay allowed general unsecured claims. *See* Plan, Article I.A.74 and Article VIII.I.1;

WHEREAS, pursuant to the Confirmation Order, “the GUC Claims Administrator ... have the authority to file and prosecute objections to General Unsecured Claims and to: (1) settle, compromise, withdraw, litigate to judgement, or otherwise resolve objections to any and all General Unsecured Claims” Plan, Article IX.B and 2020 Confirmation Order, ¶ 135;

WHEREAS, pursuant to the Plan, and as of the Plan’s Effective Date, the GUC Administrator was selected by the Committee to administer the general unsecured claims and make distributions on allowed general unsecured claims. *See* Plan, Article I.A.74. The GUC Administrator is able to and has taken responsibility to file, prosecute objections, and settle proofs of claim related to the general unsecured claim pool (collectively, the “Claims”);

WHEREAS, on June 26, 2020, the Effective Date of the Plan occurred and the Debtors emerged from their chapter 11 cases [D.I. 1376];

WHEREAS, the Parties have engaged in good faith settlement negotiations to resolve and definitively liquidate the amount of the ARI Leasing Claim, and the Parties desire to memorialize the understandings and agreements they have reached with respect thereto; and

WHEREAS, the GUC Administrator, has determined that this Stipulation is fair, reasonable, and in the best interest of the Debtors, the Debtors' estates, and their creditors, and the terms and conditions set forth herein are fair, reasonable, and consistent with the Bankruptcy Code.

NOW, THEREFORE, for good and valuable consideration, and subject to the Court's approval, the Parties hereby stipulate and agree as follows:

1. The foregoing recitals are hereby incorporated by reference into this Stipulation.
2. ARI Leasing shall have an allowed general unsecured claim in the amount of \$687,965.02 (the "ARI Leasing Allowed General Unsecured Claim"), which the Liquidating Trust on behalf of PESRM shall pay to the ARI Leasing following Court approval of this Stipulation, and in accordance with the Plan.
3. This Stipulation fully resolves the ARI Leasing Claim. In addition, this Stipulation shall also resolve any civil liability of the Debtors and any other claims against the Debtors, the Liquidating Trust on behalf of PESRM and the Debtors' and Liquidating Trust's, the GUC Administrator, and all successors and assigns, officers, directors, employees, advisors and trustees. This Stipulation does not pertain to any matters other than those expressly specified herein.
4. This Stipulation is subject to the approval of the Court. The Parties further acknowledge and agree that if this Stipulation is not approved in the form executed by the Parties: (a) the arrangement contemplated herein shall be null and void and of no effect; (b) nothing contained in this Stipulation shall be deemed an admission of liability or culpability on behalf of any Party; and (c) this Stipulation shall not be construed to support the validity of any claim, defense or contention made or asserted by or against any Party.

5. Upon approval of this Stipulation by the Court, Omni Management Group, Inc. is hereby authorized and directed to update the official claims register to reflect the relief granted by this Stipulation and the Order.

6. This Stipulation contains the entire agreement between the Parties with respect to the ARI Leasing Claim and represents the Parties' mutual understandings, and supersedes all prior written arrangements, whether in oral or written form, with respect to the ARI Leasing Claim, but this Stipulation does not in any manner modify the Plan or the 2020 Confirmation Order.

7. This Stipulation shall be binding on and inure to the benefit of the Parties and the respective heirs, executors, administrators, successors, and permitted assigns including, for the avoidance of doubt, with respect to PESRM, the GUC Administrator and the Liquidating Trust (as defined in the Plan).

8. The Parties are authorized to take all actions necessary to effectuate the relief set forth in this Stipulation. Furthermore, the signatories for the Parties each certify that he or she is authorized to enter into the terms and conditions of this Stipulation, and to execute and bind such party to this Stipulation. The Court shall have exclusive jurisdiction to resolve any and all disputes arising from or related to this Stipulation. Each of the Parties irrevocably consents for all purposes of this Stipulation to the jurisdiction of the Court and agrees that venue is proper in the Court.

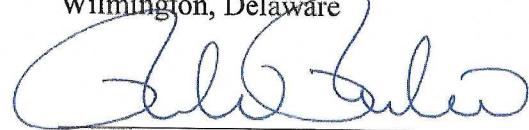
9. This Stipulation shall be effective and enforceable for all purposes immediately upon the Court's entry of the Order.

10. The Parties each represent to the other that they have taken all actions necessary and have full authority to enter into this Stipulation.

11. This Stipulation may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF and in agreement herewith, by and through their undersigned counsel, the Parties have executed this Stipulation as of the date set forth below.

Dated: December 13, 2021
Wilmington, Delaware



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