

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

DPH Holdings, Corp., *et al.*,

Debtors.

Chapter 11

Case No. 05-44481 (RDD)

(Jointly Administered)

**THE CARQUEST CORPORATION'S RESPONSE TO THE
REORGANIZED DEBTORS' FORTY-THIRD OMNIBUS OBJECTION
PURSUANT TO 11 U.S.C. § 503(B) AND FED. R. BANKR. P. 3007 TO (I)
EXPUNGE CERTAIN ADMINISTRATIVE EXPENSE (A) SEVERANCE
CLAIMS, (B) BOOKS AND RECORDS CLAIMS, (C) DUPLICATE CLAIMS, (D)
EQUITY INTERESTS, (E) PREPETITION CLAIMS, (F) INSUFFICIENTLY
DOCUMENTED CLAIMS, (G) PENSION, BENEFIT, AND OPEB CLAIMS, (H)
WORKERS' COMPENSATION CLAIMS, (II) MODIFY AND ALLOW
CERTAIN ADMINISTRATIVE EXPENSE SEVERANCE CLAIMS, AND (III)
ALLOW CERTAIN ADMINISTRATIVE EXPENSE SEVERANCE CLAIMS**

The CARQUEST Corporation ("CARQUEST"), by and through their undersigned counsel, hereby submits this response to the Reorganized Debtors' Forty-Third Omnibus Objection Pursuant to 11 U.S.C. § 503(b) and Fed. R. Bankr. P. 3007 to (I) Expunge Certain Administrative Expense (A) Severance Claims, (B) Books and Records Claims, (C) Duplicate Claims, (D) Equity Interests, (E) Prepetition Claims, (F) Insufficiently Documented Claims, (G) Pension, Benefit, and OPEB Claims, (H) Workers' Compensation Claims, (II) Modify and Allow Certain Administrative Expense Severance Claims, and (III) Allow Certain Administrative Expense Severance Claims (the "Claims Objection"), and respectfully state as follows:



BACKGROUND

1. On October 8 and 14, 2005 (the “Petition Dates”), the Debtors filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court” or the “Bankruptcy Court”).

2. On or about January 5, 2007, subsequent to the Debtor’s bankruptcy filing, CARQUEST and Debtor, Delphi Automotive Systems LLC, entered into an agreement, as subsequently amended, whereby CARQUEST granted the Debtor a nontransferable, non-sublicenseable, non-exclusive, revocable license and right to use one or more of the CARQUEST marks on fuel pumps to be manufactured and sold by the Debtor to CARQUEST (the “Agreement”). In connection with the Agreement, CARQUEST transferred its fuel pump inventory that remained on hand prior to entering into the Agreement to the Debtor and named the Debtor as its “Vendor of Record” for fuel pumps for a period of five (5) years. In connection therewith, among other things, the Debtor is required to support CARQUEST with a credit of up to \$5,000,000 payable on a quarterly basis at the rate of 7.5% on net fuel pump purchases (the “Earnback”). CARQUEST has received quarterly payments on account of the Earnback lowering the Earnback as of December 31, 2009 to approximately \$1.7 million, to which CARQUEST is entitled under the Agreement. CARQUEST is entitled to approximately \$250,000 on account of the Earnback for the quarter ending December 31, 2009¹, which, to date, remains unpaid (the “Unpaid Earnback Payment”).

3. CARQUEST is also entitled to additional rebates and credits through its participation in various programs by which it purchases goods from the Debtor (the “Other Rebates”).

¹ Accounts payable are typically owing to the Debtor from CARQUEST, net of credits to which CARQUEST is entitled (the “AP Balance”).

4. On July 15, 2009, CARQUEST filed unliquidated administrative expense claim no. 19132 estimated at no less than \$2,210,000 against Delphi Automotive Systems LLC based on the above Agreement, the Earnback and the Other Rebates (the “CARQUEST Administrative Expense Claim”).

5. On January 22, 2010, the Debtors filed the Claims Objection in which they seek to disallow and expunge, among other things, the CARQUEST Administrative Expense Claim on the basis that the Debtors’ books and records do not reflect the amounts owed.

OBJECTION

6. CARQUEST objects to the relief sought in the Claims Objection to the extent that the Debtors are seeking to disallow and expunge the CARQUEST Administrative Expense Claim. The Debtors agreed to pay the amounts reflected in the CARQUEST Administrative Expense Claim, and have suggested that such payments were made in the ordinary course between the parties, though CARQUEST to date still has an administrative expense claim pursuant to section 503(b)(1)(A) for the Earnback, the Unpaid Earnback Payment, and the Other Rebates.

7. The Debtors have failed to meet their burden of submitting any credible factual or legal support for the disallowance and expungement of the CARQUEST Administrative Expense Claim.

8. Debtors' counsel and CARQUEST's counsel have had settlement discussions in an attempt to resolve the Claims Objection. To the extent the parties cannot reach a resolution, CARQUEST reserves its right to supplement this Objection with case law and documentation substantiating the CARQUEST Administrative Expense Claim.

9. To the extent the Earnback, the Unpaid Earnback Payment, and the Other Rebates remain unpaid, CARQUEST reserves its right to recoup and/or set-off these claims against amounts owing by CARQUEST to the Debtor, including the AP Balance, in accordance with the

general right of set-off granted to CARQUEST under Section 4.8 of the Agreement and in accordance with applicable law. CARQUEST reserves all of its other rights under the Agreement.

WHEREFORE, for the reasons stated above, CARQUEST objects to the relief requested in the Claims Objection and respectfully requests that it be denied, and that the Court grant such other and further relief as deemed just and proper.

Dated: February 23, 2010

Respectfully submitted,

LOWENSTEIN SANDLER PC

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