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| www.law360.com

Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Hertz Gets \$756M Vehicle Lease Deal OK'd In Ch. 11

By **Dorothy Atkins**

Law360 (January 20, 2021, 10:04 PM EST) -- A Delaware bankruptcy judge on Wednesday approved a second interim settlement allowing Hertz to dispose of roughly 120,000 lease vehicles in exchange for paying noteholders \$756 million over the next nine months, resolving for now a hotly contested legal battle over whether Hertz can sever vehicle leases subject to a master lease.

In a 26-page order, U.S. Bankruptcy Judge Mary F. Walrath signed off on a settlement under which Hertz disposed of at least 121,510 lease vehicles and paid a total of \$756 million to the vehicle noteholders through Sept. 30.

The interim settlement is the latest page in a Chapter 11 bankruptcy proceeding that Hertz Corp. **filed in May** with about \$20 billion of debt, citing a major downturn in business as the COVID-19 pandemic ravaged the travel industry. The company said its business declined by 75% almost immediately after widespread business and travel restrictions were implemented in March.

In June, Hertz asked the judge to allow it to get out of paying leases on a fleet of 144,372 vehicles, which are owned by Hertz Vehicle Financing II LP and subject to a master lease, arguing that that would save the company \$80.3 million monthly.

The debtors explained that monthly lease payments on those vehicles are tied to the depreciation in their market value and how much they will be worth once the leases expire. But the pandemic has caused the anticipated end-of-lease value of the vehicles to drop, making Hertz's monthly payments jump, even though there aren't any travelers to lease the cars, the debtors said.

But days later, the lenders — made up of HVF's agent Deutsche Bank AG, its trustee, Bank of New York Mellon Trust Company NA and the MTN steering committee — urged the judge to reject Hertz's request, arguing that the company is seeking "extraordinary relief disguised as a routine motion to reject unexpired leases."

The lenders argued that Hertz is asking the court to sever a group of vehicles governed by an 18-year-old, multibillion-dollar master lease, but that's contrary to the plain terms of the agreement, which the lenders said control 500,000 cars and can't be divvied up piecemeal.

The lenders also noted that investors have bought notes, which obtained a AAA high-creditworthiness rating, based on the representation that all the vehicles were subject to the same agreement.

The industry trade group Structured Finance Association backed the lenders' objections, arguing in an amicus curiae brief that Hertz's request raises critical policy issues that if granted will "ripple across the economy" as lenders and credit agencies reassess the risks associated with asset-backed security transactions funding rental fleets.

The SFA also argued that under the Delaware court's 2008 decision in *In re Buffets Holdings Inc.*, which held that individual leases that were bundled into a master lease were "economically interdependent," such master leases can't be severed.

But in separate replies, Hertz and the unsecured creditors committee argued that the debtors have the right to add or remove vehicles from the master lease "unilaterally and at any time as the needs of their business dictate."

In July, the judge signed off on an **interim settlement** under which Hertz was allowed to dispose of at least 182,521 lease vehicles in exchange for paying the HVF trustee \$650 million over six months.

On Wednesday, the judge greenlighted a second interim settlement disposing of 121,510 lease vehicles in exchange for Hertz paying a total of \$756 million in nine separate payments to the HVF trustee.

Counsel for the debtors and lenders didn't immediately respond Wednesday to requests for comment.

Hertz and its affiliates are represented by Thomas E. Lauria, Matthew C. Brown, J. Christopher Shore, David M. Turetsky, Andrew T. Zatz, Andrea Amulic, Jason N. Zakia, Ronald K. Gorsich, Aaron Colodny, Andrew Mackintosh and Doah Kim of White & Case LLP and Mark D. Collins, John H. Knight, Brett M. Haywood, Christopher M. De Lillo and J. Zachary Noble of Richards Layton & Finger PA.

HVF's administrative agent, Deutsche Bank AG, New York Branch, is represented by Kerri K. Mumford and Matthew R. Pierce of Landis Rath & Cobb LLP, Marshall S. Huebner, Elliot Moskowitz and Darren S. Klein of Davis Polk & Wardwell LLP.

The MTN Steering Committee is represented by Patrick A. Jackson of Faegre Drinker Biddle & Reath LLP and Richard G. Mason, Amy R. Wolf, Michael S. Benn, Angela K. Herring and Michael H. Cassel of Wachtell Lipton Rosen & Katz.

HVF's trustee, the Bank of New York Mellon Trust Company NA, is represented by Stanley B. Tarr of Blank Rome LLP and Edward P. Zujkowski, Thomas A. Pitta and Elizabeth Taraila of Emmet Marvin & Martin LLP.

SFA is represented by Elizabeth Wilburn Joyce of Pinckney Weidinger Urban & Joyce LLC and Jason M. Halper, Neil Weidner, Gregory Petrick and Charles A. Munn of Cadwalader Wickersham & Taft LLP.

The unsecured creditors committee is represented by Jennifer R. Hoover, Kevin M. Capuzzi, John C. Gentile of Benesch Friedlander Coplan & Aronoff and Thomas Moers Mayer, Amy Caton, Daniel M. Eggermann and Alice J. Byowitz of Kramer Levin Naftalis & Frankel LLP.

The case is In re: The Hertz Corp. et al., case number 20-11218, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Vince Sullivan. Editing by Michael Watanabe