

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

	X	
	:	Chapter 11
In re:	:	
	:	Case No.: 20-11218 (MFW)
The Hertz Corporation, <i>et al.</i> ,	:	
	:	(Jointly Administered)
	:	
	:	Obj. Deadline: June 24, 2020 at 4:00 p.m.
Debtors. ¹	:	ET
	X	Hr'g Date: July 6, 2020 at 11:30 a.m. ET

**CORRECTED EXHIBIT A TO
MOTION OF PROPOSED *AMICUS CURIAE* STRUCTURED FINANCE ASSOCIATION
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PRELIMINARY
OBJECTION OF DEUTSCHE BANK AG, NEW YORK BRANCH, THE MTN
STEERING COMMITTEE AND THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A. TO DEBTORS' MOTION FOR ORDER REJECTING CERTAIN
UNEXPIRED VEHICLE LEASES EFFECTIVE *NUNC PRO TUNC* TO JUNE 11, 2020
PURSUANT TO SECTIONS 105 AND 365(A) OF THE BANKRUPTCY CODE**

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¹ The last four digits of The Hertz Corporation's tax identification number are 8568. The location of the debtors' service address is 8501 Williams Road, Estero, FL 33928. Due to the large number of debtors in these chapter 11 cases, for which joint administration for procedural purposes has been requested, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the debtors' proposed claims and noticing agent at <https://restructuring.primeclerk.com/hertz>. Moreover for the Court's convenience, documents not publicly available are included in the attached Appendix.

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INTERESTS OF AMICUS CURIAE

The Structured Finance Association (“SFA”) is a member-based trade industry advocacy group focused on improving and strengthening the structured finance and securitization market. With over 360 members, SFA represents all sectors of the securitization market, including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. SFA was established with the core mission of supporting a robust and liquid securitization market, recognizing that securitization is an essential financing source for businesses around the world. As part of that core mission, SFA is dedicated to furthering public understanding among members, legislators, regulators and other constituencies about structured finance, securitization, and related capital markets.

While SFA’s members play diverse roles and have varying economic interests in the securitization market, SFA’s members share the common goal of administering securitizations in accordance with settled industry expectations, which includes ensuring that securitization agreements are interpreted in accordance with their terms. SFA and its members thus have a strong interest in this action, not just the terms of the agreements at issue but because Plaintiffs’ arguments and requested relief seek to contradict and undermine basic, foundational principles that underlie the fundamental structure of securitizations, thereby threatening to substantially disrupt the multi-trillion dollar U.S. securitization market. SFA thus respectfully submits this *amicus* brief in support of Preliminary Objection of Deutsche Bank AG, New York Branch, the MTN Steering Committee and the Bank of New York Mellon Trust Company, N.A. to Debtors’ Motion for Order Rejecting Certain Unexpired Vehicle Leases Effective *Nunc Pro Tunc* to June 11, 2020 Pursuant to Sections 105 And 365(A) of the Bankruptcy Code.¹

¹ Pursuant to Fed. R. Bankr. P. 8017(a)(4)(D): (a) No party's counsel authored this *amicus curiae* brief in whole or in part; (b) No party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and (c) No person, other than the *amicus curiae*, its members, or its counsel, contributed money that was intended to fund preparing or submitting the brief.

PRELIMINARY STATEMENT

Debtors' Motion for Order Rejecting Certain Unexpired Vehicle Leases Effective *Nunc Pro Tunc* to June 11, 2020 Pursuant to Sections 105 And 365(A) of the Bankruptcy Code (the "Master Lease Motion") raises critical legal and policy issues. These issues impact not only the creditors of Hertz whose claims are at stake here, but market participants in securitizations across the automotive rental and other industries.

The funding provided by the ABS investors in a car rental securitization is based on an evaluation by such investors of the overall value of the dynamic pool of vehicles. SFA submits that Hertz' position on the divisibility of master leases related to these types of securitizations is contrary to the intent and expectations of the parties in typical rental car ABS transactions and risks establishing precedent that will ripple across the economy as lenders and credit agencies reassess the risk profile of such transactions. In turn, companies like Hertz will lose access to more affordable forms of credit than their credit ratings would likely attract, as severing the master lease in this type of ABS transaction would undermine the fundamental premise that if there is a default on the lease payments, the noteholders may cause the liquidation of the *entire* pool of leased vehicles to the extent necessary to pay back the noteholders in full, not some percentage of the cars that the operating company has deemed to discard.

Investors decide whether to buy into these ABS structures based on the risk profile, and valuations of the portfolio of underlying motor vehicles, the composition of which at any given time is governed by the terms of a unitary master lease. The overall risk profile created by the diversified pool of revolving assets backing these structures only works if all of the vehicle leases subject to the master lease remain in place except as permitted by the terms of the master lease. This provides contractual certainty that if a liquidation event were to occur, a sale of the collateral would yield sufficient proceeds to meet the claims of all noteholders. As a result, the unitary

master lease that underlies any typical rental car company securitization enables non-investment grade companies like Hertz to obtain financing at far more favorable terms than their corporate credit ratings would typically permit. Thus, the unitary nature of the Master Lease is the very foundation of Hertz's ability to access cheaper credit through an ABS transaction. The same is true across many other similarly structured ABS transactions, which will also be negatively impacted if the Master Lease Motion is granted.

If Hertz is able to treat the Master Lease in a manner contrary to its terms, it will not only impact the noteholders under this specific ABS transaction, but the risk profile of *all* current rental car ABS transactions, which represent over \$25 billion issued to medium-term note ("MTN") noteholders and additional billions issued to variable funding note ("VFN") noteholders predominantly in the bank market. Credit rating agencies will be forced to reassess the risk associated with these structures, long thought to be relatively low risk, and will likely downgrade the ratings of similarly structured transactions as a result of treating a master lease as divisible. There are many leased-asset classes that have been securitized on the premise that the numerous assets within them will be treated on a portfolio basis subject to the terms of a foundational document or lease that could be impacted by such a result. Further, the outcome of this case will likely impact the willingness of rating agencies to rate rental car/leased-asset backed securitizations, as currently structured, as well as the willingness of investors to participate in such securitizations at current pricing levels, or at all. In turn, companies like Hertz may find that they no longer have access to an affordable source of financing for operations, thereby hindering their ability to operate. Indeed, as explained further below, Hertz itself, as well as other major players in the rental car market, have recognized the risks to their operations if ABS disappeared as a source of financing. And higher costs of financing for rental car companies will translate into higher prices for consumers.

A debtor should not be permitted to undermine the contractual certainty of noteholders and misappropriate value by acting contrary to the intent and negotiated expectations of the parties of the applicable master lease (and the funding sources that rely on such intent and expectations). Such actions create universal disincentives and discourage investors from buying structured finance notes, thereby eroding the core of the securitization structure and threatening the issuance of a wide range of structured finance securities. In turn, Hertz and similarly situated companies in the rental car and other leased-asset industries would see substantial increases in the costs of financing that could impact their ability to continue operations.

SFA submits that granting Hertz's Motion would disrupt access to the capital markets for entire industries that depend on favorable financing terms provided via ABS structures—and thus the national economy. If the Master Lease is divided in bankruptcy into multiple leases, when the Master Lease was intended to be unitary, it will chill the entire rental car ABS market and rental car industry as a whole. SFA respectfully requests that the Court deny the Master Lease Motion on the basis that the Master Lease is not a severable agreement under governing New York law and thus Hertz must assume or reject the entire Master Lease and may not cherry-pick the vehicles subject to it, while continuing to use the rest of the leased fleet. The leasing by Hertz of the vehicles under the Master Lease is economically interdependent with respect to each vehicle in the pool under the terms of the Master Lease and such pool-wide integrated treatment is an indispensable and economically interdependent part of the entire series of agreements in the ABS structure. To hold otherwise would endanger the car rental market generally as investors and rating agencies would reevaluate the risk of currently available automobile-backed securitizations and likely would not be willing to participate in future automobile-backed securitizations on as favorable terms, or at all.

ARGUMENT

The Court should deny Hertz's attempt to divide the Master Lease into hundreds of thousands of leases that Hertz may individually reject for two reasons: (1) the intent of the parties to the lease must be viewed in light of the overall ABS transaction, which depends upon a unitary master lease of a pool of vehicles, and the economic effect of such a ruling would be devastating on the rental car industry—not only would the credit ratings of tens of billions of dollars in current rental car ABS structures be adversely impacted, but also future investor appetite to engage in such transactions on as favorable of terms (or at all) and thus a substantial source of affordable financing to the car rental and other leased-asset based industries would be impaired (*see infra* Section I); and (2) the function of a master lease in the overall ABS structure necessarily means that all of the vehicle leases subject to the master lease are economically interrelated and thus cannot be severable as a matter of law (*see infra* Section II).

I. IF GRANTED, HERTZ'S MOTION WOULD BE CONTRARY TO THE INTENT OF THE PARTIES AND THEREBY UNDERMINE THE RISK PROFILES OF SIMILAR ABS TRANSACTIONS AND, MORE BROADLY, THE AVAILABILITY OF CREDIT TO COMPANIES IN THE RENTAL CAR AND OTHER INDUSTRIES.

Because the intent of the parties to a rental fleet ABS transaction is to have one integrated master lease, a successful effort by Hertz to treat the Master Lease as divisible would have rippling effects across the more than \$25 billion of current rental car-backed ABS, the willingness of investors to participate in future ABS transactions, and, ultimately, on the ability of the car rental and other leased-asset based industries to access affordable financing necessary for continuing operations.

A. Master Leases Are the Lynchpin of ABS Structures in the Rental Car Industry as Are Lease Pools in Other Leased-Asset Based Industries.

The master lease structure in the Hertz ABS is typical of rental car ABS transactions generally, which contain a lease between a special-purpose subsidiary (that owns the vehicles), as

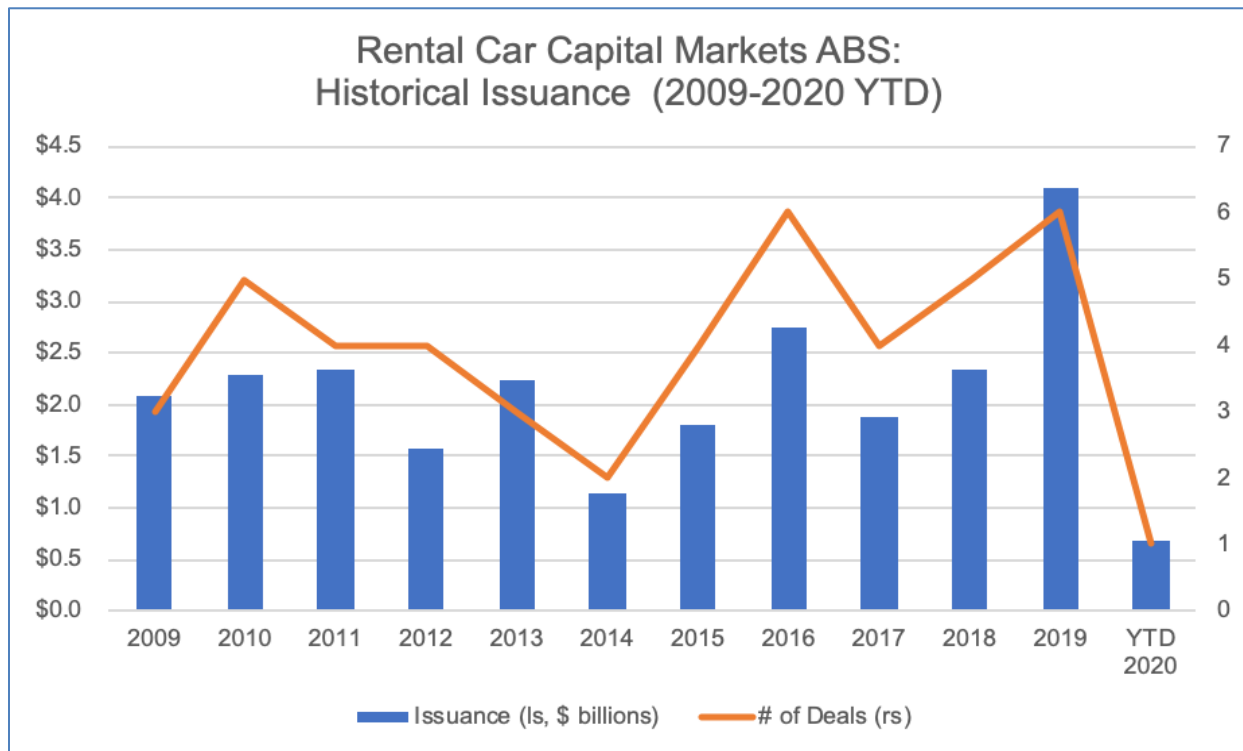
lessor, and the operating company that leases the vehicles from its special-purpose subsidiary. The indenture trustee or collateral agent for the ABS noteholders is typically named as lienholder on the certificates of title for the leased vehicles in order to “facilitate an orderly fleet liquidation in the event of an operating company bankruptcy by minimizing the probability that competing creditors would make a claim on the fleet assets.” DBRS, *Rating U.S. Rental Car Securitizations*, at 6 (Oct. 2018) (*see* Appendix, Tab C). All of the vehicles in the fleet are collateral that secure the notes, and thus all of the leases subject to a master lease are economically interrelated. If the operating company can opt to treat the master lease as divisible and put back only the less attractive cars to the SPE, the fundamental premise underlying the master lease and the entire risk analysis of rental car ABS transactions by investors and credit agencies would be undermined.

B. Allowing Companies Like Hertz to Cherry-Pick the Leases Subject to the Master Lease Would Undermine the Risk Profile of Existing ABS Transactions.

Notably, the Master Lease Motion has implications well beyond the specific ABS transactions in this case, and, further, well beyond just rental car ABS structures. As of 2011, over \$6 billion of new term rental securitizations came to market, according to Hertz itself. Letter from Elyse Douglas, Exec. V.P. & CFO, Hertz Corp. to Elizabeth M. Murphy, Securities & Exchange Commission Sec’y, at 9-10 (Aug. 1, 2011) (“Hertz 2011 SEC Letter”) (*see* Appendix, Tab K). Since 2009, that number has ballooned to more than \$25 billion of debt issued pursuant to rental car ABS.² All of the major players in the rental car market have used ABS financing to finance their operations over the past decade. *See* Hertz 2011 SEC Letter at 10 (noting “between \$4 billion and \$5 billion of committed securitized revolving credit facilities (in the form of variable funding notes) to securitization vehicles sponsored by Hertz, Avis/Budget and Dollar Thrifty”). ABS

² *See* p. 7 n.4, *infra*.

participants have included Enterprise, National, Alamo, Hertz, Avis, Sixt, Budget, Dollar and Thrifty, based on rating agency and industry reports. The past decade has seen billions of dollars in rental car ABS issued annually solely to MTN noteholders (not to mention the billions more issued to VFN noteholders predominantly in the bank market):³



In fact, Hertz and Avis alone have issued outstanding rental car ABS of approximately \$15 billion as of year-end 2019. *See* The Hertz Corporation, Annual Report (Form 10-K), at 106 (Feb. 25, 2020); Avis Budget Group, Annual Report (Form 10-K), at F-35 (Feb. 20, 2020).

These ABS structures, in general, depend upon a unitary master lease of a revolving pool of vehicles (and not multiple leases of individual vehicles). It is on that basis that credit rating agencies assess the risks of rental car ABS. *See, e.g.,* Moody's Investors Service Rating Methodology, *Moody's Global Approach to Rating Rental Fleet Securitizations*, at 4 (Mar. 7,

³ *See* ABS Esoteric: Rental Car, <https://finsight.com/sector/Esoteric/RentalCar?products=ABS®ions=USOA>

2019) (*see* Appendix, Tab G) (in assessing probability “that [the] sponsor will default on its lease payments, we take into account . . . the likelihood of accepting or rejecting the operating lease in [a reorganization or liquidation]” and using “the probability of bankruptcy” as proxy for lease default “if we believe there is a higher likelihood that the sponsor . . . will reject the operating lease in a reorganization”); S & P Global Ratings, *Criteria/ Structured Finance/ ABS: Updated General Methodology And Assumptions For Ratings U. S. Rental Fleet Securitizations*, at 3, 10 (Aug. 1, 2011) (*see* Appendix, Tab I) (basing ratings in part on rental car company’s ability to pay lease payments under stress scenarios, including “default by the rental car company under its operating lease, followed by its bankruptcy, and the eventual sale of vehicles in a stressed environment after the automatic stay is lifted”); *see also* Fitch Ratings, *Global Rental Fleet ABS Rating Criteria*, at 12 (July 30, 2019) (*see* Appendix, Tab E) (assuming that in a bankruptcy scenario, “the fleet of vehicles will be liquidated”). Accordingly, the leases under a master lease are viewed as economically interrelated because the risks associated with the pool of assets is assessed by rating agencies and investors on a portfolio basis, the composition of which is limited by the agreed-upon terms of the master lease.

Indeed, the ratings agencies appropriately based their assessments of the Hertz ABS at issue on the assumption of *a single lease* that may be rejected or accepted during a bankruptcy proceeding. *See, e.g.,* DBRS, *Pre-Sale Report: Hertz Vehicle Financing II LP, Series 2019-3*, at 3 (Nov. 14, 2019) (*see* Appendix, Tab D) (basing the “rating rationale” of ABS in part on “legal structure . . . and the presence of legal opinions (to be provided) that address the treatment of the operating lease as a true lease”); Fitch Ratings, *Hertz Vehicle Financing II LP, Series 2019-3 Presale Report*, at 22 (Nov. 14, 2019) (*see* Appendix, Tab F) (determining the legal maturity date as after “the bankruptcy stay period to affirm or reject the master lease”); Moody’s Investors Service, *Moody’s Credit Opinion: Hertz Vehicle Financing II LP, Series 2019-3*, at 7 (Nov. 14,

2019) (*see* Appendix, Tab H) (“In assessing the probability that a bankrupt sponsor will default on its lease payments, we took into account the likelihood of a reorganization relative to liquidation, and the likelihood of accepting or rejecting the operating lease in those events”). Investors, in turn, base their own risk assessments on the premise that if an operating company commences a bankruptcy proceeding, it may assume or reject the master lease in its entirety and it is this risk, among others, that is priced into the costs of financing.

If that assumption is undermined, then ratings downgrades of rental car ABS and potentially other asset classes will likely follow as ratings analysts reassess the risks of ABS structures to account for the new possibility that the underlying pool of assets could change dramatically not as a result of any agreed-upon terms in a master lease, but on the assessment of the operating company devoid of any limiting parameters that preserve the overall value of the collateral. Indeed, if the typical master lease in a rental car ABS structure were intended to be divisible in the way that the Hertz motion proposes, one would expect detailed provisions within it outlining the process for rejecting leases with reasonable safeguards for investors’ interests.

Furthermore, the impact is not limited to rental car ABS structures. If a lease of multiple assets under a typical master lease (such as the Master Lease) is not considered a unitary agreement, then new risks would be introduced to any lease securitization, including leases of office equipment, computers, medical and dental equipment, video equipment, trucks, cell towers, construction and agricultural equipment, shipping containers, passenger and industrial railcars, and aircraft engines. Like the Hertz lease, the leases in these transactions typically do not have a schedule that purports to be a separate lease that incorporates master terms (rather than simply a schedule identifying property that becomes subject to the unitary master lease). Rather, the master lease is a contract that governs the entire revolving pool of assets. For example, in the context of leased shipping containers, each lease will cover thousands of containers. The portfolio of

containers subject to each lease is evaluated by rating agencies on a pool-wide basis. *See* DBRS, *Rating Marine Container Securitizations*, at 12-13 (Feb. 2018) (*see* Appendix, Tab B). If a lessee of the containers could treat its lease as divisible and pick and choose which of the thousands of deemed individual leases to accept or reject, the result of a lessee bankruptcy would be less predictable, likely leading to higher cost and less certain execution.

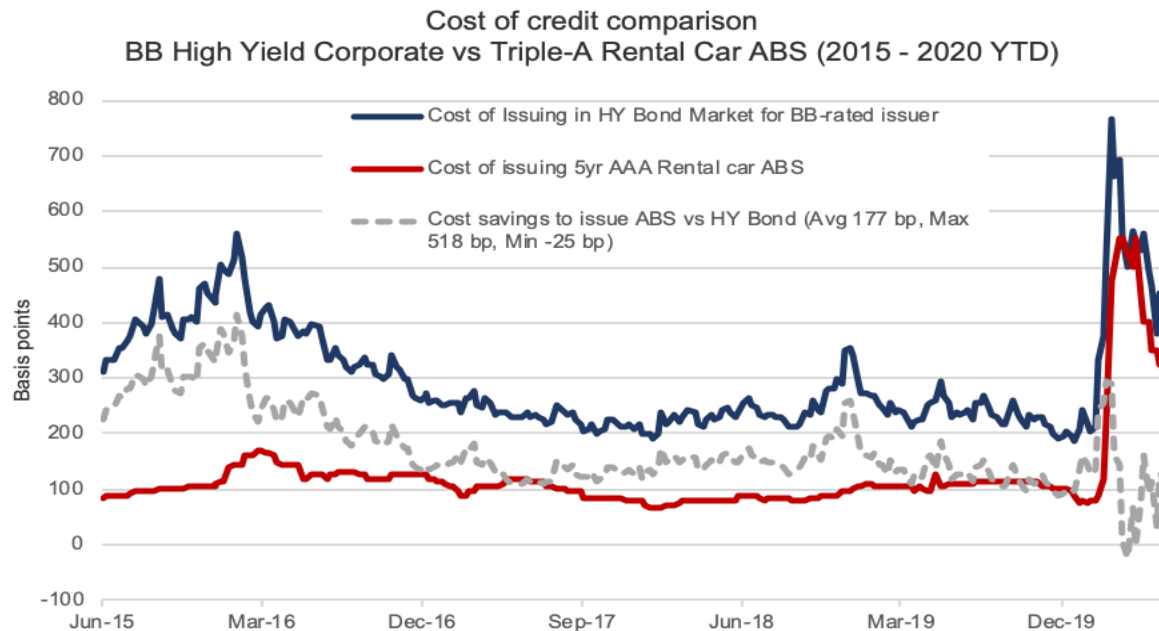
The primary determination of whether a master lease is one lease or multiple leases with master terms depends in large part on the intent of the parties. The intent of the parties to the Master Lease must be viewed in the context of the overall transaction. Clearly the parties to the lease understood that the ABS investors that ultimately funded the purchase of the leased vehicles were viewing the leased property as a pool of assets and not individual assets being evaluated and funded separately. The fact that each asset in the pool must meet certain eligibility criteria is inherent in defining the pool, but does not change the economic interdependence of the assets in the pool being financed under the securitization.

C. If the Motion Is Granted, Rental Car Companies Like Hertz May Lose Access to Better Credit Terms Under ABS.

If the Master Lease Motion is granted, then noteholders will be unlikely to participate in future auto rental securitizations given the change in the risk profile. At the very least, the terms of such ABS would likely be far less favorable to borrowers like Hertz than the current risk profile dictates.

If this source of financing were to evaporate because of the broader economic impact if the Master Lease Motion were granted, it would significantly increase the costs of financing for companies in leased-asset based industries like the car rental market. Indeed, a comparison of the average interest rates for corporate bonds issued by companies with credit ratings similar to Hertz to the interest rates for auto rental securitizations demonstrates the importance of these ABS

transactions to below-investment grade companies:⁴



The availability of automobile securitization is critical to the car rental industry, including Hertz. In Hertz's own words:

"If the domestic securitization markets become unavailable to Hertz, the increased costs that Hertz would bear as a result of seeking alternative sources of capital to replace its securitization financing could adversely impact Hertz's ability to continue its operations in their current scale and form. The likely funding alternative for Hertz would be to issue secured corporate bonds, coupled with secured bank lines and additional unsecured bonds, though it is unknown whether a suitable market, in form and size, would exist when needed. Given Hertz's current corporate credit ratings, any financing alternative to the securitization markets would come at a higher cost to Hertz, which in turn is likely to result in higher prices borne by Hertz's car rental customers and/or a reduction in services provided to them . . . Continued access to the securitization markets therefore is critically important to Hertz and the other non-investment-grade car rental operators who rely upon securitization financing as a primary means of raising capital to finance domestic rental car operations." Elyse Douglas Exec. V.P. & CFO, Hertz Corp. to Elizabeth M. Murphy, Securities & Exchange Commission, Sec'y,

⁴ Research conducted by SFA using market compilation.

at 8 (Dec. 22, 2010) (“Hertz 2010 SEC Letter”) (*see* Appendix, Tab J).

Indeed, in Hertz’s most recent Form 10-K, it discloses as a risk factor that if Hertz is “unable to . . . continue to finance new car acquisitions through asset-backed or asset-based financing on favorable terms, on a timely basis, or at all, then our costs of financing could increase significantly.” The Hertz Corporation, Annual Report (Form 10-K), at 31 (Feb. 25, 2020). Hertz further disclosed that an inability to access the ABS market would “have a material adverse effect on our liquidity, interest costs, financial condition, cash flows and results of operations.” *Id.* Avis, another major player in the car rental industry, has disclosed similar risks: “If the asset-backed financing and/or credit markets were to be disrupted for any reason, we may be unable to obtain refinancing for our operations or vehicle fleet purchases at current levels, or at all Likewise, any disruption of the asset-backed financing or credit markets could also increase our borrowing costs.” Avis Budget Group, Annual Report (Form 10-K), at 29 (Feb. 20, 2020).

Analysts have already started to note these potential outcomes: “we should worry that any victory by Hertz in punching holes in the ABS structure will call into question what comes after the 60-day stay and what sort of fleet funding market depth there will be in the aftermath for Hertz—or for Avis. . . . Setbacks in ABS structure would most likely damage the economics of the traditional ABS structure and the ability to reach the AAA buyer.” CreditSights, *Hertz: Disorganized Reorganizing*, at 30 (June 16, 2020) (*see* Appendix, Tab A). Accordingly, any decision that treats a master lease typical of the rental car ABS structure as divisible would not only create losses for ABS investors that relied on there being one integrated master lease, but also threatens the overall ability of companies within the rental car industry to access an affordable source of financing that is so admittedly critical to their operations.

II. THE MASTER LEASE SHOULD NOT BE TREATED AS SEVERABLE UNDER THIS COURT’S DECISION IN *IN RE BUFFETS*.

The function of a master lease in a rental car ABS structure is such that all of the underlying vehicles are economically interdependent. The diversified pool of revolving assets backing these structures works only if all of the vehicles subject to the master lease are treated as a solitary group of assets, except as permitted by the terms of the master lease.

In the seminal decision *In re Buffets Holdings, Inc.*, this Court concluded that individual leases that were bundled into a master lease for monetization purposes were economically interdependent. 387 B.R. 115, 124 (Bankr. D. Del. 2008). In *In re Buffets*, the lessee had the right to divide and consolidate individual leases (subject to existing master leases) to create new master leases, sell specific underlying property subject to one of the master leases and thereby remove it from the master lease, and substitute property for any condemned property. On motions before this Court, debtors sought permission to assume or reject each of the individual leases for specific properties that were part of one of the master leases as if they were separate leases on the grounds that the Master Lease was intended to be severable. *Id.* at 117-18.

This Court dismissed those motions holding, among other things, that it was the intent of the parties to have an integrated agreement that is not severable into individual leases. *Id.* at 128. Notably, this Court held that “the purpose of the Master Lease was not simply to consolidate several agreements. . . . Instead, the purpose of the agreement was to assure [the lessor] that it would be repaid for the money given to Debtors.” *Id.* at 127. In other words, “the primary goal was to assure that [the lessor] would recover its investment,” or the benefit of its bargain. *Id.* Leases are consolidated “to permit the Debtors to ‘monetize’ those leases and assure . . . [repayment].” *Id.* Where there was “no real interest in the specific lease [but] in the total package

. . . to allow [Debtors] to reject one of the leases without continuing to pay the total rent would be to destroy the essence of . . . the bargain” *Id.* at 124.⁵

When examining the intent of the parties to this particular rental car ABS, the Court will see that, by its express terms, the Master Lease is indivisible so that the lessor and the other parties within the ABS structure, can recover their investments in the event of a default. *See In re Buffets*, 387 B.R. at 127. Under the ABS transaction, the securitization value to support the ABS notes is based on the total value of the leased vehicles at any given time in the pool of revolving assets subject to the lease. This aggregate value is relied upon by various parties within the ABS structure in subsequent agreements and the ratings agencies when they assess such transactions. The rental car ABS structure therefore demonstrates an intent by the parties that the underlying vehicles be interrelated, and the master lease unseverable.

It is worth noting that the purpose of a master lease in a rental car ABS structure is not merely to consolidate several agreements. Instead, it sets out the parameters by which the operating company can add to or subtract from a diversified pool of revolving assets that secure the notes. Because the risk of the “total package” of vehicles is what matters to rental car ABS participants, the risk profile of the ABS arrangement is analyzed based on what actions the operating company may or may not take under the master lease. Thus, the leases subject to a master lease agreement in a rental car ABS must be economically interdependent—like *In re*

⁵ Whether a contract or lease is an individual or severable agreement is governed by state law. *In re Buffets*, 387 B.R. at 120. This Court in *In re Buffets* analyzed the test for severability under Illinois law, which requires a review of the intent of the parties. *Id.* Although the Master Lease is governed by New York law, not Illinois law, “whether . . . contracts are severable” under New York law also “depends largely on intent of the parties.” *Huron Grp. v. Pataki*, 785 N.Y.S.2d 827, 856 (Sup. Ct. Erie Cty. 2004), *aff’d*, 803 N.Y.S.2d 465 (4th Dep’t 2005) citing *In re Wilson*, 405 N.E.2d 220 (N.Y. 1980).

Buffets, there is no specific interest in any particular vehicle or its value, but the aggregate value across hundreds of thousands of vehicles.

In fact, Hertz itself has admitted that a rental car securitization is structured such that the underlying vehicles are economically interdependent:

“A rental car securitization is an ‘operating asset’ securitization in which the principal asset of the car rental company, its car rental fleet, comprises the primary collateral security . . . HVF acts like a master trust in that the notes issued by HVF are typically backed by a shared, revolving collateral pool consisting primarily of vehicles. . . . *The primary collateral securing each series of notes includes, among other items, the vehicles owned by HVF, the related vehicle manufacturer programs, if any, and the lease entered into by HVF with Hertz under which such vehicles are leased by Hertz from HVF. HVF’s collateral pool is revolving in nature, meaning that HVF may sell vehicles from the collateral pool securing HVF’s notes and use the proceeds to purchase additional vehicles that will be added to such collateral pool.*” Hertz 2011 SEC Letter at 3-5 (emphasis added).

Hertz has also acknowledged that “the fundamental credit analysis in a rental car ‘operating asset’ securitization primarily hinges upon the liquidation value of the vehicles.” Hertz 2010 SEC Letter at 5. That is why under the Hertz structure, investors “receive a monthly noteholders statement that provides information regarding HVP’s collateral pool . . . [that] includes information relating to the *overall* composition of the vehicle fleet.” *Id.* at 9 (emphasis added). Thus, the primary purpose and function of the master lease in the overall ABS structure is to “assure” a noteholder that the total value of collateral provides sufficient security to “recover its investment” should a liquidation occur. *See In re Buffets*, 387 B.R. at 127.

As Hertz itself admits, the risk associated with a rental car ABS is based on a portfolio of assets the changing characteristics of which are defined by the terms of a master lease. Rental car ABS transactions therefore require certainty that leasing each of the vehicles subject to the master lease will be considered economically interdependent or the security afforded by the collateral

would be undermined. This is why courts like this one carefully analyze such contracts to determine whether they are truly divisible or so economically interdependent that separation would deprive the parties of the benefit of the bargain. If the master lease is divided into multiple separate leases, when the master lease was intended to be unitary, it would cause a chilling effect on the entire rental car ABS market and the rental car industry as a whole.

CONCLUSION

Enforcing the Master Lease in the Hertz ABS pursuant to its terms is fundamental to the interests of SFA's broad and diverse members who participate in securitization transactions. Allowing Hertz to utilize the right to reject leases that it deems "individual" in order to cherry-pick the assets in the underlying pool would not only undermine these structures, but likely cut off a significant source of affordable credit for below-investment grade companies like Hertz. Granting the Master Lease Motion would upend the bargained for rights of noteholders in this and other securitization transactions. SFA submits that permitting this case to proceed would work a significant disruption of the capital markets for such industries—and thus the national economy.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. Bankr. P. 8015(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. Bankr. P. 8015(g), this document contains 5,172 words.

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