

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

In re:

AFH AIR PROS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 25-10356 (PMB)

(Jointly Administered)

**RESPONSE AND RESERVATION OF RIGHTS OF CONTINENTAL CASUALTY
COMPANY AND NATIONAL FIRE INSURANCE COMPANY OF HARTFORD,
AND THEIR APPLICABLE AFFILIATES, TO (I) DEBTORS' MOTION FOR FINAL
DECREE AND (II) VALLEY NATIONAL BANK, N.A.'S OBJECTION THERETO**

Continental Casualty Company and National Fire Insurance Company of Hartford (together, with their North American insurance affiliates, collectively, “CNA” or the “Claimant”), by their undersigned counsel, submit this response and reservation of rights (the “Response”) to (I) the *Wind Down Debtors' Motion for (A) Entry of a Final Decree Closing Certain of the Chapter 11 Cases; (B) Order Directing that the Administration of All Remaining Matters in Respect of Affiliate Cases Take Place in the Remaining Case; (C) Amendment of the Order Directing Joint Administration of the Chapter 11 Cases; and (D) Granting Related Relief* [Docket No. 755] (the “Motion for Final Decree”) and to (II) Valley National Bank, N.A.’s (“Valley National”) Objection thereto [Docket No. 788] (the “Valley National Objection” or “Objection”). In support of this Response, CNA respectfully states the following.

Preliminary Statement

1. CNA has no objection to the Debtors’ Motion for Final Decree. However, CNA does take issue with the “equitable” relief sought by Valley National in connection with such

¹ The last four digits of AFH Air Pros, LLC’s tax identification number are 1228. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtor entities 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 claims and noticing agent at <https://www.veritaglobal.net/AirPros>. The mailing address for the debtor entities for purposes of these chapter 11 cases is: 150 S. Pine Island Road, Suite 200, Plantation, Florida 33324.



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motion. It appears that Valley National is seeking this relief in connection with CNA’s lawful drawing of its letter of credit (CNA’s collateral and non-estate property). Valley National’s Objection should be denied and its requests for “equitable” relief (and/or the establishment of a “claims process”) be rejected.

2. It is well settled that letters of credit and their proceeds are not property of the debtor’s bankruptcy estate and as such, beneficiaries may draw on letters of credit in the ordinary course and in accordance with applicable nonbankruptcy law, notwithstanding a related pending chapter 11 case. Valley National (*not* the Debtors) is seeking relief in connection with the proceeds of the letter of credit draw. This is a classic nondebtor dispute that can only be adjudicated (if necessary) in a proper nonbankruptcy forum. Valley National has no basis for the relief it requests from *this* Court in these chapter 11 cases.

Background

A. Background

3. On March 16, 2025 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia (“Bankruptcy Court”).

4. On September 4, 2025, the Court entered an order [Docket No. 691] (the “Confirmation Order”) confirming the *Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtor Affiliates* (the “Plan”) [Docket No. 478] and approving on a final basis the *Second Amended Disclosure Statement for the Second Amended Chapter 11 Plan of Liquidation of AFH Air Pros, LLC and its Debtor Affiliates* (the “Disclosure Statement”) [Docket No. 479]. Pursuant to the Plan, the Debtors’ Estates are substantively consolidated for voting, confirmation, and distribution purposes (Plan, Art. IV.J.).

5. The Effective Date of the Plan occurred on October 10, 2025 [Docket No. 753], and the Wind Down Debtors² substantially consummated the Plan.

6. The Wind Down Debtors filed the Motion for Final Decree on October 14, 2025 [Docket No. 755].

7. Valley National filed its Objection thereto on October 22, 2025 [Docket No. 788].

B. Nature of CNA's Claims

8. Both prior and subsequent to the commencement of the case, CNA provided Debtor AFH Air Pros, LLC with insurance coverage under various insurance policies, including but not limited to those listed on the attached Schedule A hereto, incorporated herein by reference (collectively, and as may have been amended from time to time, the "Policies"). Pursuant to the Policies, the Debtors' obligations thereunder are secured, in part, by a letter of credit in the amount of \$3,449,000, subject to annual adjustments (the "Letter of Credit³" or the "Collateral") as collateral.

9. On April 30, 2025, the Debtors filed their *Motion of the Debtors for Entry of an Order Authorizing the Debtors to Enter into a Stipulation with the CNA Insurance Companies and Assume Related Insurance Policies and Agreements* [Docket No. 288], seeking authority to enter into a stipulation (the "Stipulation") with CNA. Pursuant to the Stipulation, the parties agreed that (i) the Policies would be extended through and including July 9, 2025; (ii) the Policies, as extended, would be deemed assumed pursuant to 11 U.S.C. § 365(a); (iii) the Debtors would make payments totaling \$1,748,382 to cure amounts owing under the Policies (the "CNA Cure Payments"); (iv) the Debtors would make payments of \$344,744 in additional premiums and deposit an additional \$360,000 in the Collateral; and (v) the Debtors would acknowledge CNA's first-priority liens in the Collateral.

² Terms used as defined terms herein and not otherwise defined shall have the meanings ascribed to them in the Plan or in the CNA Proof of Claim (defined herein).

³ The Policies and related agreements are collectively referred to herein as the "Program".

10. The Court entered an Order approving the Stipulation on May 9, 2025 [Docket No. 327] (the “Stipulation Order”). The Debtors made payment in accordance with the Stipulation Order on May 9, 2025.

11. CNA timely filed a proof of claim setting forth in more detail the foregoing rights and claims. Claim No. 162 against Debtor AFH Air Pros, LLC (as amended, the “CNA Proof of Claim⁴”). The CNA Proof of Claim is fully incorporated herein by reference.

12. In addition to the foregoing, the CNA Proof of Claim described unliquidated amounts that are potentially due and owing to CNA by the Debtors. As losses experienced under the Policies and related agreements continue to develop, such amounts may become liquidated. CNA reserved the right to amend and/or supplement each of its proofs of claim.

13. In addition, the CNA Proof of Claim asserted rights of setoff, recoupment, and other equitable rights to the full extent applicable. The CNA Proof of Claim reserves all of CNA’s rights and preserves all defenses in connection therewith.

C. Valley National Objection

14. In its Objection, Valley National states that, on September 25, 2025, CNA drew against its full Letter of Credit in the amount of \$3,448,000.00 (the “LC Draw”). Valley National Objection, ¶ 8.

15. Valley National objects to the Motion for Final Decree, in part, in order to request “that the Court invoke its equitable powers to stay the draw request by CNA against the Pledged Account” and establish a “claims process to determine what, if any, un-filed workers compensation claims may exist.” Valley National Objection, ¶ 19.

16. Valley National has honored the LC Draw, and CNA is presently holding the proceeds of that draw.

⁴ The CNA Proof of Claim was amended on November 10, 2025 to expressly preserve all rights in connection with post-petition amounts accruing that have not yet become due, and are entitled to administrative expense priority pursuant to 11 U.S.C. § 507(a)(2).

CNA's Response and Reservation of Rights

17. Valley National's Objection should be overruled and its requests for "equitable" relief (and/or the establishment of a "claims process") be rejected. CNA's Letter of Credit—its Collateral—is not property of the Debtors' Estates. Moreover, bankruptcy jurisdiction does not, and cannot, govern a dispute between two nondebtor parties (CNA and Valley National) concerning nondebtor property (CNA's collateral, the Letter of Credit)—particularly on a post-confirmation basis. While CNA has engaged in discussions with Valley National relating to CNA's LC Draw (Docket No. 788, ¶ 8), those discussions, and any resolution of disputes between Valley National and CNA do not belong in this forum.

18. *First*, bankruptcy courts "have recognized the 'well-established' rule of bankruptcy law that 'a letter of credit and the proceeds therefrom are not property of the debtor's estate.'" *In re S-Tran Holdings, Inc.*, 414 B.R. 28, 33 (Bankr. D. Del. 2009) (citing cases). Among them, the Eleventh Circuit has held that "neither a letter of credit nor its proceeds are property of the debtor's estate." *In re Air Conditioning, Inc. of Stuart*, 845 F.2d 293, 296 (11th Cir. 1988); *see also In re Builders Transport, Inc.*, 471 F.3d 1178, 1193, n. 2 (11th Cir. 2006) (noting *Air Conditioning* applicability in a case involving claims of creditor); *see also ACE American Ins. Co. v. Bank of the Ozarks*, No. 11 Civ. 3146 (PGG), 2012 U.S. Dist. LEXIS 110891, at *16-17 (S.D.N.Y. Aug. 3, 2012) ("It is well settled that a letter of credit and the proceeds therefrom are not property of the debtor's bankruptcy estate.") (collecting cases).⁵

⁵ The Letter of Credit appears to be governed by Illinois law. *See* Docket No. 788 (exhibits thereto). In any case, Illinois bankruptcy courts follow the common principle that letters of credit are not part of the debtor's estate. *See In re Kmart Corp.*, 297 B.R. 525, 529 (N.D. Ill. 2003) (noting "letters of credit are not considered property of a debtor's estate" because issuer honors letters of credit under its own assets and not from debtor's assets); *In re Duplitronics, Inc.*, 183 B.R. 1010, 1015 (Bankr. N.D. Ill. 1995) ("[I]t is settled law that the letter of credit is not property of the estate and that the § 362 automatic stay is inapplicable."); *In re North Shore & Central Illinois Freight Co.*, 30 B.R. 377, 379 (Bankr. N.D. Ill. 1983). Illinois courts have further noted that the proceeds of letters of credit do not constitute estate property. *See In re Green*, 210 B.R. 556, 559 (Bankr. N.D. Ill. 1997) ("[N]either the letter of credit nor its proceeds are debtor's property even if the letter of credit is secured by the debtor's property.").

19. As a result, a beneficiary may draw on a letter of credit in the ordinary course and in accordance with governing nonbankruptcy law. “The letter of credit represents an obligation of the issuer, not the debtor. Therefore, a creditor may draw on a letter of credit free of any automatic stay restriction. As with guaranties, the draw under a letter of credit is not stayed even if the issuer’s right of reimbursement from the debtor is secured by property of the debtor or property of the estate.” 3 COLLIER ON BANKR. ¶ 362.03 (16th 2020) (citing *Duplitronics*, 183 B.R. at 1015); *see also Kmart*, 297 B.R. at 529 (“Thus, when the account party is in bankruptcy, a beneficiary is not prevented from drawing on his letter of credit.”); *see also ACE Am. Ins. Co.*, 2012 U.S. Dist. LEXIS 110891, at *19-21 (bankruptcy automatic stay does not preclude a beneficiary from drawing on a letter of credit) (collecting cases).

20. Because letters of credit and their proceeds are not property of a debtor’s estate, bankruptcy courts ordinarily lack jurisdiction to adjudicate disputes over a beneficiary’s draw. *See Green*, 210 B.R. at 559 (“Related jurisdiction may lie here only if resolution of the dispute [involving the letter of credit] would eventually affect the amount of property or cash in the debtor’s estate However, no effect of this action on the bankruptcy estate has been shown.”). Even if the debtor *might* have an eventual reversionary interest in excess funds, a beneficiary may still draw on the letter of credit and hold the proceeds during a dispute or litigation, pending the liquidation of its claim. *See Builders Transport*, 471 F.3d at 1186 (“[T]he letter of credit serves, among other things, to shift the burden of litigation [The] beneficiary of the letter of credit holds the stake during the litigation.”); *see also S-Tran Holdings, Inc.*, 414 B.R. at 35 (“Thus, the Debtors may have a claim for excess LOC Proceeds (the ‘Excess LOC Proceeds’), which would become part of the Debtors’ estate. However, for the reasons stated by Judge Walsh in *Oakwood Homes* and *Hechinger*, the Debtors may not obtain those excess

proceeds through a § 542 turnover action before the amount of the claim is liquidated.”) (citations omitted).⁶

21. To summarize the foregoing principles: (a) letters of credit and their proceeds are not property of the debtor’s bankruptcy estate; (b) as such, beneficiaries may draw on letters of credit in the ordinary course and in accordance with applicable nonbankruptcy law, notwithstanding the automatic stay; (c) generally, there is no bankruptcy jurisdiction over disputes between nondebtor parties concerning letters of credit and their proceeds (which is nondebtor property) (e.g., collateral securing an LOC); and (d) these principles flow naturally from the “independence principle” governing letters of credit, *i.e.*, that an issuer’s obligation to pay the beneficiary is independent of the performance of the underlying contract.

22. CNA drew on its Letter of Credit—its collateral—in accordance with applicable nonbankruptcy law. The Letter of Credit and its proceeds are not property of the Debtors’ Estates. Moreover, this Court is not the proper forum to adjudicate disputes (if any) between CNA and Valley National (two nondebtor parties) relating to the Letter of Credit proceeds (nondebtor property). Indeed, the Debtors have not even asserted such rights or claims, but rather Valley National—a nondebtor party—has done so in their place, asking this Court to intervene in its opposition to CNA’s LC Draw. This is a classic nondebtor dispute. If necessary, it can only be adjudicated in a proper nonbankruptcy forum. Valley National’s request for “equitable” relief to halt CNA’s LC Draw, or subject such draw to an additional bankruptcy “claims process,” should thus be rejected.⁷

⁶ The foregoing principles flow, in part, from the “the well-established independence principle, which provides that the obligation to make payment to the beneficiary of a letter of credit is independent of any party’s performance on the underlying contract.” *Jaffe v. Bank of Am., N.A.*, 395 Fed. Appx. 583, 591 (11th Cir. 2010); *see also ACE Am. Ins. Co.*, 2012 U.S. Dist. LEXIS 110891, at *11-22 (explaining the independence principle in the bankruptcy context).

⁷ And for the record, CNA disputes that a letter of credit issuer like Valley National has standing to raise issues or arguments under the Program, or to seek a reconciliation or return on amounts owing under such Program.

Reservation of Rights

CNA reserves the right to amend or supplement this Response and/or the CNA Proof of Claim, based upon any facts or arguments that come to light prior to the hearing on the Motion for Final Decree or otherwise.

WHEREFORE, CNA respectfully requests that this Court (i) deny Valley National's Objection and the requests for relief therein and (ii) grant such other and further relief as may be just and fitting under the circumstances.

Dated: November 14, 2025
Atlanta, Georgia

/s/ Gary W. Marsh
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CERTIFICATE OF SERVICE

I, Gary W. Marsh, an attorney, certify that on November 14, 2025, I caused the foregoing to be served by electronic notice through the CM/ECF system of the United States Bankruptcy Court for the Northern District of Georgia on those parties entitled to electronic service.

/s/ Gary W. Marsh

Schedule A

Policy Number	Source Policy Year	Report Policy Term	Resource Policy Term	Line of Business
7037129042	2023	05/2023	05/2023	Work Comp
7037129056	2023	05/2023	05/2023	Liability
7037129073	2023	05/2023	05/2023	Auto
7092115796	2023	05/2023	05/2023	Work Comp (CA)
7039516591	2023	05/2023	05/2023	Auto (PD)
7037129042	2024	05/2024	05/2024	Work Comp
7037129056	2024	05/2024	05/2024	Liability
7037129073	2024	05/2024	05/2024	Auto
7092115796	2024	05/2024	05/2024	Work Comp (CA)
7039516591	2024	05/2024	05/2024	Auto (PD)