

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
F21 OPCO, LLC, et al. <sup>1</sup>	)	Case No. 25-10469 (MFW)
	)	Jointly Administered
Debtors.	)	
	)	Hearing Date: To Be Determined
	)	Objection Deadline: June 27, 2025 at 4:00 pm ET

**MOTION OF DELORIS HARDAWAY FOR RELIEF FROM THE AUTOMATIC  
STAY PURSUANT TO 11 U.S.C. § 362(d) OF THE BANKRUPTCY CODE**

Deloris Hardaway (“Movant”), by and through her undersigned counsel, hereby moves this court (“Motion”) pursuant to Section 362(d) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (“Bankruptcy Code”), Federal Rule of Bankruptcy Procedure 4001, and Local Rule 4001-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), for entry of an Order granting relief from the automatic stay imposed by Section 362(a) of the Bankruptcy Code in order to permit Movant to prosecute a personal injury action in Louisiana against debtors F21 OPCo, LLC, d/b/a Forever 21 Retail, Inc. and a/k/a Forever 21, together with its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) and to proceed to collection on any award against the Debtors’ and/or the Debtors’ applicable insurance policies and proceeds thereof. In support of this Motion, Movant respectfully states as follows:

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); and F21 GiftCo Management, LLC (6412). A complete list of the Debtors’ chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at [www.veritaglobal.net/forever21](http://www.veritaglobal.net/forever21). The Debtors’ address for purposes of service in these Chapter 11 Cases is 110 East 9<sup>th</sup> Street, Suite A500, Los Angeles, CA 90079.



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### **JURISDICTION AND VENUE**

1. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this judicial district is proper under 28 U.S.C. §1408 and 1409.
2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).
3. The statutory predicate for the relief requested herein is 11 U.S.C. § 362(d)(1) and § 365(d)(2), Bankruptcy Rule 4001, and Local Bankruptcy Rule 4001-1.

### **FACTS**

4. On March 16, 2025 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtors’ cases are being jointly administered.

5. Prior to the Petition Date, on or about May 13, 2023, Movant was seriously injured when she was a shopping at Forever 21 in the Lakeside Mall in Metairie, Louisiana due to the negligence of Debtor, Forever 21, and its employees.

6. As a result of the injuries sustained by Movant and the Debtors’ negligence, the Movant seeks relief to continue her litigation commenced in the 24<sup>th</sup> Judicial District Court for the Parish of Jefferson, State of Louisiana, Case No. 847693 against Debtors and non-debtor co-defendant National Union Fire Insurance Company of Pittsburgh, PA (the “State Court Action”).

7. The Movant’s ability to commence a claim in the State Court Action has been delayed as a consequence of the Debtors’ chapter 11 filings and the automatic stay provisions set forth in 11 U.S.C. §362(a).

8. Upon information and belief, at the time of the May 13, 2023 incident, Debtor,

Forever 21, was covered by a liability insurance policy with coverage limits sufficient to cover Movant's claims in the event Movant is successful in the State Court Action.

9. Movant wishes to pursue her claims only to the extent of the limit of Debtors' applicable insurance policies and the proceeds thereof. Movant, therefore, seeks an Order of this Court modifying the Stay and allowing her to pursue her claims against Debtors, only to the extent of the applicable limits of liability insurance policies available.

### **RELIEF REQUESTED**

10. Through this Motion, Movant seeks the entry of an Order pursuant to §362(d) of the Bankruptcy Code and 4001 of the Federal Rules of Bankruptcy Procedure, granting relief from the automatic stay so that she may prosecute her claims to judgment in the State Court Action and satisfy any award or other resolution she may obtain against the Debtors, the Debtors' applicable insurance policies and any other responsible individual or entity.

### **BASIS FOR RELIEF REQUESTED**

11. Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1). Section 362(d) of the Bankruptcy Code provides in relevant part:

On request of a party in interest and after notice and a hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay... (1) for cause, including the lack of adequate protection of an interest in property for such party interest.

11 U.S.C. § 362(d).

12. "Cause" is not defined in the Bankruptcy Code, it must be determined on a case-by-case basis. *Int'l Bus. Machines v. Fernstrom Storage and Van Co.*, 938 F.2d 731, 735 (7th Cir. 1991). Courts have found that cause for lifting or modifying the automatic stay exists in order to permit litigation in another forum to liquidate a claim. *See, e.g., In re Rexene*

*Products Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992) (noting that the legislative history of § 362(d) shows that cause may be established by a single factor such as “a desire to permit an action to proceed ... in another tribunal.”); *In re Drexel Burnham Lambert Group, Inc.*, 113 B.R. 830, 838 n.8 (Bankr. S.D.N.Y. 1990) (citing liquidation of a claim as “cause” for relief); *In re Holtkamp*, 669 F.2d 505 (7th Cir. 1982) (affirming the lifting of the automatic stay by the Bankruptcy Court to allow a personal injury suit against debtor to proceed to judgment).

13. At a hearing for relief from automatic stay under Section 362(d), the party opposing stay relief bears the burden of proof on all issues with the exception of the debtors’ equity in property. *See In re Domestic Fuel Corp.*, 70 B.R. 455, 462-463 (Bankr. S.D.N.Y. 1987); 11 U.S.C. §362(g). If a creditor seeking relief from the automatic stay makes a *prima facie* case of “cause” for lifting the stay, the burden going forward shifts to the debtor pursuant to Bankruptcy Code Section 362(g). *See In re 234-6 West 22nd Street Corp.*, 214 B.R. 751, 756 (Bankr. S.D.N.Y. 1997).

14. Courts often follow the logic of the intent behind §362(d) which is that it is often appropriate to allow litigation to proceed in a non-bankruptcy forum, if there is no prejudice to the estate, “in order to leave the parties to their chosen forum and to relieve the bankruptcy court from duties that may be handled elsewhere.” *In re Tribune Co.*, 418 B.R. 116, 126 (Bankr. D. Del. 2009) (quoting legislative history of §362(d)) (internal citations omitted).

15. Courts in this District rely upon a three-pronged balancing test in determining whether “cause” exists for granting relief from the automatic stay to continue litigation:

- (1) Whether prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit;
  - (2) Whether the hardship to the non-bankrupt party by maintenance of the stay outweighs the debtor’s hardship;
- and

- (3) The creditor's probability of success on the merits.

*See In re Tribune Co.*, 418 B.R. at 126.

16. Here, the facts weigh heavily in Movant's favor on each of these three prongs. First, the Debtors will not suffer prejudice should the stay be lifted because Movant's claims must eventually be liquidated before she can recover from the bankruptcy estate and/or any applicable insurance coverage maintained by the Debtors. Movant's claims against this Debtor are negligence and personal injury claims which do not present any factual or legal issues that will impact or distract the Debtors from their reorganization or liquidation process. Indeed, because Movant's claims involve personal injury, they must be liquidated in a forum outside the Bankruptcy Court. 11 U.S.C. §157(b)(5) ("personal injury tort...claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claims arose..."). Furthermore, Movant will demand a jury trial in the State Court Action and a jury trial is not available in this Court.

17. Upon information and belief, the Debtors' liability in this matter is covered by insurance. As such, any recovery by Movant will not affect the Debtors' estates, or to the extent the Debtors' applicable insurance policies contain any self-insured retention, any direct recovery against the Debtors by Movant would result in a prepetition claim, treated as any other prepetition claim in the Debtors' cases. Any liability over and above any self-insured retention would be borne by the Debtors' insurers. *See In re 15375 Memorial Corp.*, 382 B.R. 652, 687 (Bankr. D. Del. 2008), *rev'd on other grounds*, 400 B.R. 420 (D. Del. 2009) ("when a payment by an insurer cannot inure to the debtor's pecuniary interest, then that payment should neither enhance nor decrease the bankruptcy estate" (quoting *In re*

*Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993)); *see also In re Allied Digital Tech Corp.*, 306 B.R. 505, 510 (Bankr. D. Del 2004) (ownership by a bankruptcy estate is not necessarily determinative of the ownership of the proceeds of that policy. “[W]hen the debtor has no legally cognizable claim to the insurance proceeds, those proceeds are not property of the estate.” *In re Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993).

18. Movant agrees that she is not seeking immediate recovery against the Debtors’ or the Debtors’ estate for any amount owed to her that is not covered by Debtors’ primary, excess or umbrella insurance as a result of any settlement or judgment of the claims against the Debtors in the State Court Action. Upon information and belief, any settlement or judgment in the State Court action that results in liability of the Debtors not covered by applicable insurance would be limited in the amount of any self-insured retention, which would result in an allowed general unsecured claim against the Debtors estates, would be treated as any other allowed general unsecured claim in the Debtors’ bankruptcy cases and as prescribed in any order confirming the Debtors’ plan of reorganization or liquidation. Any liability over and above any self-insured retention would be borne by the Debtors’ insurers. As such, relief would not prejudice the Debtors and would permit the immediate enforcement of any judgment against the Debtors’ applicable insurance.

19. Second, Movant will face substantial hardship if the stay is not lifted. Movant’s injuries were caused as a result of the Debtors’ negligence and Movant will be prejudiced by the continued delay resulting from the automatic stay due to the possibility of witnesses moving to unknown locations or who may pass away and the memory of events becoming less clear. Any delay in permitting Movant to prosecute the State Court Action increases the likelihood that these witnesses will not be located.

20. Movant resides in the State of Louisiana and the events which form the basis of her claims occurred exclusively in Louisiana. If Movant is forced to litigate her claims in Delaware, she would incur the increased expense of bringing attorneys, witnesses, and physical evidence to Delaware. “[O]ne of the primary purposes in granting relief from the stay to permit claim liquidation is to conserve judicial resources.” *In re Peterson*, 116 B.R. 247, 250 (D. Colo. 1990). Judicial economy would be served by lifting the automatic stay and allowing Movant’s claim to be liquidated in the forum where she is presently postured to be filed and adjudicated quickly. In addition, Movant is entitled to a jury trial for her claims and damages and a jury trial is not available in this Court. A jury trial in Louisiana is best suited to try all issues raised in the State Court Action. Accordingly, as the court in *Rexene* suggests, “[i]t will often be more appropriate to permit proceedings to continue in their place of origin ....” *In re Rexene*, 141 B.R. at 576.

21. Lastly, the likelihood of success on the merits prong is satisfied by “even a slight probability of success on the merits may be sufficient to support lifting an automatic stay.” *In re Continental Airlines, Inc.*, 152 B.R. 420, 426 (D. Del. 1993). This prong also weighs in Movant’s favor. The facts regarding the Debtors’ serious negligence are known to the Debtors and speaks for itself. No defenses, much less strong defenses, appear to exist here. “Only strong defenses to state court proceedings can prevent a bankruptcy court from granting relief from the stay in cases where...the decision-making process should be relegated to bodies other than [the bankruptcy] court.” *In re Fonseca v. Philadelphia Housing Authority*, 110 B.R. 191, 196 (Bankr. E.D. Pa. 1990).

22. When weighing the above factors, the Court should lift the automatic stay to permit Movant to prosecute her claims against the Debtors and any other responsible

individual or entity to judgment in the State Court Action and satisfy any award or other resolution she may obtain against the Debtors from the Debtors' applicable insurance policies and any other individuals or entities that are responsible for the injuries sustained.

**NOTICE**

23. Pursuant to Local Rule 4001-(a), notice of this Motion has been provided to: (i) counsel for the Debtors; (ii) counsel for the Official Committee of Unsecured Creditors; (iii) counsel for the debtor-in-possession financing lenders, if any; (iv) the Office of the United States Trustee; and (v) all parties requesting notice pursuant to Bankruptcy Rule 2002. The Movant submits that no other or further notice need be provided.

WHEREFORE, Movant respectfully request the entry of an order: (a) lifting the automatic stay for cause to allow the State Court Action to commence and continue through to judgment or other resolution; (b) permitting Movant to liquidate and satisfy such judgment or other resolution granted, if any, from applicable insurance coverage available to the Debtors, to the extent insurance is available; (c) directing that relief from the automatic stay be effective immediately upon entry of an order granting this motion and that the 14 day stay provided in Bankruptcy Rule 4001(a)(3) not apply; and (d) granting such other and further relief as the Court deems appropriate.

**WEIR LLP**

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*Attorney for Movant, Deloris Hardaway*

Dated: June 13, 2025



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

In re:	)	Chapter 11
	)	
F21 OPCO, LLC, et al. <sup>3</sup>	)	Case No. 25-10469 (MFW)
	)	Jointly Administered
Debtors.	)	
	)	
	)	

**ORDER GRANTING MOTION OF DELORIS HARDAWAY  
FOR RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO SECTION 362(d) OF THE BANKRUPTCY CODE**

AND NOW, upon consideration of the Motion of Deloris Hardaway (“Movant”), for an Order granting relief from the automatic stay pursuant to Section 362(d) of the Bankruptcy Code in order to allow certain state court litigation to proceed in appropriate court of the State of Louisiana (the “Motion”), and any opposition thereto, and good cause to modify the stay having been found, and the Court having determined that granting the relief requested in the Motion is appropriate.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. The automatic stay is modified and lifted and the State Court Action, as that term is defined in the Motion, shall be permitted to proceed to adjudication against Debtors and non-debtor co-defendant.
3. That Movant shall be entitled to liquidate and satisfy any judgment or other resolution granted, if any, from applicable insurance coverage available to the

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<sup>3</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); and F21 GiftCo Management, LLC (6412). A complete list of the Debtors’ chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at [www.veritaglobal.net/forever21](http://www.veritaglobal.net/forever21). The Debtors’ address for purposes of service in these Chapter 11 Cases is 110 East 9<sup>th</sup> Street, Suite A500, Los Angeles, CA 90079.

Debtors.

4. To the extent that insurance proceeds are unavailable, or insufficient, Movant will return to this Court for disposition of her claim.
5. Relief from the automatic stay shall be effective immediately upon entry of this Order and the 14-day stay provided in Bankruptcy Rule 4001(a)(3) shall not apply.
6. This Court shall retain jurisdiction over any and all issues arising among or related to the implementation and interpretation of this Order.

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

In re:	)	Chapter 11
	)	
F21 OPCO, LLC, et al. <sup>2</sup>	)	Case No. 25-10469 (MFW)
	)	Jointly Administered
Debtors.	)	
	)	<b>Hearing Date: To Be Determined</b>
	)	<b>Objection Deadline: June 27, 2025 at 4:00 pm ET</b>

**NOTICE OF MOTION OF DELORIS HARDAWAY FOR  
RELIEF FROM THE AUTOMATIC STAY  
PURSUANT TO 11 U.S.C. § 362(d) OF THE BANKRUPTCY CODE**

**PLEASE TAKE NOTICE** that on June 13, 2025, Deloris Hardaway (“Movant”) has filed the attached Motion for Relief From Automatic Stay Pursuant to 11 U.S.C. § 362(d) of the Bankruptcy Code (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”) which seeks an order lifting the stay to allow certain state court litigation to proceed in Louisiana.

**PLEASE TAKE FURTHER NOTICE** that responses or objections, if any, to the Motion must (a) be in writing; (b) be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801, on or before June 27, 2025 at 4:00 p.m. (ET) (the “Objection Deadline”); and (c) be served so as to be received on or before the Objection Deadline by counsel to Movant at:

Jeffrey S. Cianciulli, Esquire  
Weir LLP  
1204 King Street  
Wilmington, DE 19801  
(302) 652-8181

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<sup>2</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); and F21 GiftCo Management, LLC (6412). A complete list of the Debtors’ chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at [www.veritaglobal.net/forever21](http://www.veritaglobal.net/forever21). The Debtors’ address for purposes of service in these Chapter 11 Cases is 110 East 9<sup>th</sup> Street, Suite A500, Los Angeles, CA 90079.

[jcianiulli@weirlawllp.com](mailto:jcianiulli@weirlawllp.com)

*Attorney for Movant, Deloris Hardaway*

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion will be held on **a date to be determined** before the Honorable Mary F. Walrath in the United States District Court for the District of Delaware, 824 N. Market Street, 5<sup>th</sup> Floor, Courtroom 4, Wilmington, Delaware 19801, if an objection is filed.

**PLEASE TAKE FURTHER NOTICE** that only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

The attorneys for the parties shall confer with respect to the issues raised by the Motion in advance of the purpose of determining whether a consent judgment may be entered and/or for the purpose of stipulating to relevant facts such as the value of the property, and the extent and validity of any security interest.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

**WEIR LLP**

/s/ Jeffrey S. Cianiulli

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*Attorney for Movant, Deloris Hardaway*

Dated: June 13, 2025

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In re:	)	Chapter 11
	)	
F21 OPCO, LLC, et al. <sup>2</sup>	)	Case No. 25-10469 (MFW)
	)	Jointly Administered
Debtors.	)	
	)	<b>Hearing Date: To Be Determined</b>
	)	<b>Objection Deadline: June 27, 2025 at 4:00 pm ET</b>

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies on June 13, 2025, a true and correct copy of the Motion for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code was electronically filed with the Clerk of the Court and served upon those parties registered to receive electronic notices via the Court's CM/ECF electronic noticing system and to the persons listed below via U.S. First Class Mail:

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<sup>2</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F21 OpCo, LLC (8773); F21 Puerto Rico, LLC (5906); and F21 GiftCo Management, LLC (6412). A complete list of the Debtors' chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at [www.veritaglobal.net/forever21](http://www.veritaglobal.net/forever21). The Debtors' address for purposes of service in these Chapter 11 Cases is 110 East 9<sup>th</sup> Street, Suite A500, Los Angeles, CA 90079.

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