

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

IN RE:)	CHAPTER 11
)	
LAVIE CARE CENTERS, LLC, <i>et al.</i> ¹)	CASE NO. 24-55507-pmb
)	
)	Cases Jointly Administered
Debtors)	
_____)	Hearing Date: August 13, 2024 at 9:30 a.m.
)	
WATSON SIMILIEN OCCILIEN, AS)	
PERSONAL REPRESENTATIVE OF)	
THE ESTATE OF SAVOIR SIMILIEN,)	
DECEASED AND BERGILISE)	
OCCILIEN, SAVOIR SIMILIEN’S WIFE,)	
)	CONTESTED MATTER
Movants,)	
)	
v.)	
)	
4200 WASHINGTON STREET)	
OPERATIONS, LLC)	
)	
Respondent)	
_____)	

MOTION TO MODIFY ATOMATIC STAY TO (1) LIQUIDATE PERSONAL INJURY TORT CLAIM IN PENDING LITIGATION, (2) PURSUE RECOVERY TO THE EXTENT OF INSURANCE COVERAGE, AND (3) GRANT RELATED RELIEF

COMES NOW Watson Similien Occilien, as Personal Representative of the Estate of Savoир Similien, Deceased and Bergilise Occilien, Savoир Similien’s wife (“Movants”), and hereby seek a modification of the automatic stay allow Movants to liquidate personal injury tort claims against 4200 Washington Street Operations, LLC (“Respondent”) in a pending state court

¹ The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.



proceeding and, among other things, pursue recovery to the extent of insurance coverage. In support, Movants show as follows:

Background

1. Respondent 4200 Washington Street Operations, LLC d/b/a Hillcrest Healthcare and Rehabilitation Center (“4200 Washington”), is a Florida limited liability company authorized and licensed to do business as a nursing home for the rendering of custodial or personal care to aged or disabled persons in Broward County, Florida.

2. On or about August 7, 2019, Savior Similien was admitted to 4200 Washington and remained there until his discharge on September 3, 2019.

3. While a resident at 4200 Washington, Savior Similien suffered worsening and infected pressure ulcerations, necrotic tissue, and gangrene, resulting in the development of altered mental status, disorientation, and sepsis and ultimately requiring extended hospitalization at Memorial Regional Hospital.

4. Savoie Similien died at Memorial Regional Hospital on February 7, 2021.

5. Movant Watson Similien Occilien is the surviving son and putative Personal Representative of the Estate of Savoie Similien.

6. Movant Bergilise Occilien is the surviving spouse of Savoie Similien.

7. On December 31, 2021, Movants commenced litigation against 4200 Washington and others in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, General Jurisdiction Division, Case No. CACE-22-000088(02), styled *Watson Similien Occilien, as Personal Representative of the Estate of Savoie Similien, Deceased and Bergilise Occilien, Savoie Similien’s wife v. 4200 Washington Street Operations, LLC d/b/a Hillcrest Healthcare and*

Rehabilitation Center, CMC II, LLC, Francis Cadogan, MD, Francis Cadogan, LLC, and Geriatric Care Specialists, Inc. (the “Litigation”).

8. Movants filed an *Amended Complaint for Damages* (the “Amended Complaint”) in the Litigation on June 28, 2022. The Amended Complaint included claims for (i) violation of nursing home rights and negligence against 4200 Washington that resulted in injury and damages, (ii) survival damages against 4200 Washington, and (iii) loss of consortium against 4200 Washington.

9. 4200 Washington filed its *Answer and Affirmative Defenses of Defendant to Plaintiff’s Amended Complaint* on August 5, 2022. Substantial discovery has occurred in the Litigation.

10. 4200 Washington has provided proof of insurance coverage on Movants’ claims through Future Care Risk Retention Group, Inc. (the “Insurer”), which has assumed defense of the case.

11. 4200 Washington filed a voluntary Chapter 11 petition, Case No. 24-55680-pmb, on June 2, 2024, which case is jointly administered under the above captioned case. 4200 Washington filed a *Suggestion of Bankruptcy* in the Litigation on June 12, 2024.

Relief Requested

12. By this Motion, Movants request that the stay be modified to allow Movants to (i) liquidate their claim in the Litigation, (ii) pursue recovery from the Insurer to the extent of coverage, and (iii) assert claims against 4200 Washington to the extent their claims exceed any insurance coverage.

Basis for Relief

13. “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....” 11 U.S.C. § 362(d)(1).

14. "Cause" is not defined in the Bankruptcy Code. "Therefore, it is up to the judiciary to ascribe meaning to the term. What constitutes 'cause' is based on the 'totality of the circumstances in the particular case.'" *Egwineke v. Robertson (In re Robertson)*, 244 B.R. 880, 882 (Bankr. N. D. Ga. 2000). *See also, e.g., In re Brown*, 311 B.R. 409, 412 (E. D. Pa. 2004) ("cause" for relief from stay is broad and flexible concept that must be determined on a case-by-case basis).

15. “The Bankruptcy Code does not define "cause" for lifting the stay. However, it is well-established that the existence of pending litigation against the debtor in a nonbankruptcy forum may constitute cause.” *In re Coachworks Holdings, Inc.*, 418 B.R. 490, 492 (Bankr. M.D. Ga. 2009) (citing *Smith v. Tricare Rehab. Sys., Inc. (In re Tricare Rehab. Sys., Inc)*, 181 B.R. 569, 572 n.7 (Bankr. N.D. Ala. 1994)).

16. Courts focus on three factors: (i) whether any great prejudice to either the bankruptcy estate or the debtor will result from prosecution of the lawsuit; (ii) whether the hardship to the non-debtor party by continuation of the automatic stay considerably outweighs the hardship to the debtor; and (iii) whether the creditor has a probability of success on the merits of his case. *Schuler v. Sandalwood Nursing Ctr., Inc. (In re Sandalwood Nursing Ctr., Inc.)*, 2018 Bankr. LEXIS 2526 (Bankr. N. D. GA 2018)(citing *In re Robertson*, 244 B.R. at 882). The last factor has little applicability, here, however. The Litigation is not “entirely and unquestionably frivolous (as

in a suit brought against the wrong party or beyond the statute of limitation)” and therefore the likelihood of success on the merits is not a relevant factor. *Groover v. R. J. Groover Constr., L.L.C.* (*In re R. J. Groover Constr.*), 411 B.R. 460, 466 (Bankr. S. D. GA 2008).

17. Courts also look to other factors: (1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms. *Sonnax Industries, Inc. v. Tri Components Products Corp.* (*In re Sonnax Industries, Inc.*), 907 F.2d 1280, 1286 (2d Cir. 1990).

18. The decision to lift the stay is committed to the court's discretion. *In re Sonnax Industries, Inc.*, 907 F.2d at 1286. Not all of the factors are relevant in every case. *Mazzeo v. Lenhart* (*In re Mazzeo*), 167 F.3d 139, 142 (2d Cir. 1999); see *In re Touloumis*, 170 B.R. 825, 828 (Bankr. S.D.N.Y. 1994), and the court need not assign equal weight to each factor. *In re Keene Corp.*, 171 B.R. 180, 183 (S.D.N.Y. 1994); *In re Touloumis*, 170 B.R. at 828.

19. The factors favor relief from the stay in this case. (i) the Insurer has assumed responsibility for defending the claim, (ii) there are other defendants, so the state court is the only

forum that can award complete relief to all parties. *In re Coachworks Holdings, Inc.* 418 B.R. at 493 (existence of other defendants heavily favors stay relief because “a lawsuit should only be tried once, if one forum with jurisdiction over all parties involved is available to fully dispose of all issues relating to the lawsuit.” (quoting *In re Tricare Rehab. Sys., Inc* 181 B.R. at 574), (iii) litigation in another forum will not prejudice other creditors, even if the outcome affects the distribution to creditors. *In re N.Y. Med. Group, P.C.*, 265 B.R. 408 (Bankr. S. D. N. Y. 2001)(rejecting any dilution argument because the same “can be said about every other claim”), and (iv) the Litigation has been pending for almost two (2) years and the parties have engaged in substantial discovery, so judicial economy and the expeditious and economical resolution of the claim favors relief from the stay.

20. Further, the claim cannot be adjudicated in the bankruptcy court, but instead it would have to be heard, if heard here at all, in the District Court. See 28 U.S.C. § 157(b)(5). This fact, when considered with the interests of judicial economy and expeditious resolution of the claim, favors lifting the stay. *In re Sandalwood Nursing Ctr., Inc.*, 2018 Bankr.LEXIS at *13 (“Significant time and resources have likely been expended on litigating the Claim. This fact, coupled with the fact that the Claim cannot be liquidated here, cuts in favor of lifting the automatic stay.”).

21. Proceeding against the Insurer will not deplete the estate. The proceeds of liability insurance policies payable to the injured parties are not property of the estate because the debtor or its estate has no right to retain the funds. *In re Scott Wetzel Servs.*, 243 B.R. 802 (Bankr. M. D. FL 1999)(“[A] debtor will not have a cognizable interest in the proceeds of the typical liability policy because the proceeds will normally be payable only for the benefit of those harmed by the

debtor under the terms of the insurance contract.”)(citing *Matter of Edgeworth*, 993 F.2d 51, 55 - 56 (5th Cir. 1993)).

WHEREFORE, Movants request that the Court modify the stay to allow Movants to (i) liquidate their claims in the Litigation, (ii) recover from the Insurer to the extent of coverage, and (iii) assert claims against 4200 Washington to the extent their award exceeds the insurance coverage. Movants further request that the Court grant such other relief as is appropriate.

Dated: July 26, 2024

LAMBERTH, CIFELLI,
ELLIS & NASON, P.A.
Counsel for Movants

By: /s/ G. Frank Nason, IV
G. Frank Nason, IV
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Certificate of Service

This is to certify that on this date a true and correct copy of the forgoing *Motion to Modify Automatic Stay to (1) Liquidate Personal Injury Tort Claim in Pending Litigation, (2) Pursue Recovery to the Extent of Insurance Coverage, and (3) Grant Other Relief* was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 cases through CM/ECF.

A separate certificate will reflect service on additional parties.

Dated: July 26, 2024

/s/ G. Frank Nason, IV
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Georgia Bar No. 535160

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4200 WASHINGTON STREET)	
OPERATIONS, LLC)	
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NOTICE OF HEARING ON MOTION TO MODIFY STAY

PLEASE TAKE NOTICE that Watson Similien Occilien, as Personal Representative of the Estate of Savoir Similien, Deceased and Bergilise Occilien, Savoir Similien’s wife (“Movants”), filed their *Motion to Modify Automatic Stay to (1) Liquidate Personal Injury Tort Claim in Pending Litigation, (2) Pursue Recovery to the Extent of Insurance Coverage, and (3) Grant Other Relief* (the “Motion”) on July 26, 2024. In the Motion, Movants seek an order modifying the automatic stay to liquidate personal injury tort claims in pending litigation, seek recovery to the extent of insurance coverage, and assert claims for any amounts in excess of insurance coverage.

¹ The last four digits of LaVie Care Centers, LLC’s federal tax identification number are 5592. There are 282 Debtors in these chapter 11 cases, which are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.kccllc.net/LaVie>. The location of LaVie Care Centers, LLC’s corporate headquarters and the Debtors’ service address is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on **August 13, 2024, at 9:30 a.m.** in Courtroom **1202**, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303, which may be attended in person or via the Court's Virtual Hearing Room. You may join the Virtual Hearing Room through the "Dial-In and Virtual Bankruptcy Hearing Information" link at the top of the homepage of the Court's website, www.ganb.uscourts.gov, or the link on the judge's webpage, which can also be found on the Court's website. Please also review the "Hearing Information" tab on the judge's webpage for further information about the hearing. You should be prepared to appear at the hearing via video, but you may leave your camera in the off position until the Court instructs otherwise. Unrepresented persons who do not have video capability may use the telephone dial-in information on the judge's webpage.

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleadings with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the hearing. The address of the Clerk's Office is: Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, SW, Atlanta Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the Motion cannot be held within thirty (30) days, Movants waive the requirement for holding a preliminary hearing within thirty days of filing the Motion and agree to a hearing on the earliest possible date. Movants consent to the automatic stay remaining in effect until the Court orders otherwise.

Dated: July 26, 2024

LAMBERTH, CIFELLI,
ELLIS & NASON, P.A.
Attorneys for Movants

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Certificate of Service

This is to certify that on this date a true and correct copy of the forgoing *Notice of Hearing on Motion to Modify Stay* was served by the Court's CM/ECF system on all counsel of record registered in these Chapter 11 cases through CM/ECF.

A separate certificate will reflect service on additional parties.

Dated: July 26, 2024

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