

**UNITED STATES BANKRUPTCY COURT for the
WESTERN DISTRICT OF OKLAHOMA**

**In re:
Hospital for Special Surgery, LLC**

Case No. 2024-12862

**CREDITOR EMMA BASE'S AMENDED MOTION TO LIFT STAY,
WITH SUPPORTING BRIEF
AND NOTICE OF OPPORTUNITY FOR HEARING**

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this Document carefully and consult your attorney about your rights and the effect of this Document. If you do not want the Court to grant the motion, or you wish to have your views considered, you must file a written response to the motion with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean McGee Avenue, Oklahoma City, OK 73102 no later than 14 days from the date of filing of the motion. You should also serve a file-stamped copy of the response to the undersigned and others who are required to be served and file a certificate or affidavit of service with the Court.

**MOTION TO LIFT STAY TO ALLOW PURSUIT OF
LIABILITY INSURANCE PROCEEDS**

Emma Base ("Base") moves the Court to lift the Stay to permit Emma Base to access OneCore's insurance proceeds that are answerable for her injuries under 11 U.S.C. 524(e).

As one court has explained:

"Under § 362(d)(1), bankruptcy courts have routinely granted relief to permit personal injury plaintiffs to prosecute their claims in state court and to limit their collection efforts to the available insurance benefits. The rationale for granting relief from the automatic stay for this purpose is that the prejudice to the debtor, who may suffer modest or even no adverse financial consequences but may only have to expend some time and effort in cooperating with his insurer in the defense of the litigation, is outweighed by the prejudice to the creditor whose ability to prosecute the action and reach the insurance benefits may be



undermined by the ‘aging of evidence, loss of witnesses, and crowded court dockets.’” *In re Gluck*, 342 B.R. 717 at Headnote 19.

Background Facts

1. This is a core proceeding pursuant to 28 U.S.C. Section 157.
2. This Court has authority to hear and decide this matter pursuant to 28 U.S.C. Section 1334.
3. OneCore filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code on October 7, 2024.
4. Base is a young woman, in her 20’s. Following a surgery at OneCore’s hospital to repair her labrum (the ring of tissue and cartilage that holds the hip ball in the hip socket), OneCore’s untrained staff dropped her 4 feet to a concrete floor while removing her from the operating table and transferring her to a hospital bed. She was concussed; she suffered injury to her neck, and the ball of her hip socket (which had just been operated on) was shattered.
5. On March 10, 2022, Emma Base filed a lawsuit for damages resulting from medical malpractice claims against OneCore in the District Court in and for Oklahoma County, State of Oklahoma, styled *Emma Base v. OneCore Health, a tradename for Hospital for Specialty Surgery, LLC et al*, Case No. CJ-2022-1096 (the "State Court Litigation").
6. A six-day trial concluded on September 3, 2024, wherein the jury in the State Court Litigation entered its verdict awarding Emma Base judgment in the amount of \$15,215,541.30 (inclusive of prejudgment interest) and \$50,000 in punitive damages, based on

the jury's finding that OneCore had acted willfully.

7. On September 26, 2024, a Journal Entry of Judgment in the amount of \$15,215,541.30 plus post-judgment interest and \$50,000 in punitive damages was entered in the State Court Litigation in favor of Emma Base.

8. On October 7, 2024 – the Monday when the automatic 10 day Stay after Judgment in state court (12 Okla. Stat. Sec. 990.3) expired, OneCore simultaneously filed its appeal of the state court case, and filed this bankruptcy.

9. Relevant here, OneCore never sought a Supersedeas Bond in the state court to stay collection of the Judgment, and OneCore specifically did not invoke its right under 12 Okla. Stat. Sec. 990.4 to seek a reduction in the Supersedeas Bond amount to a level OneCore could “afford.”

10. In the state court action, as required by Oklahoma law, OneCore revealed that it had liability insurance which covered Base's injury. Those insurance proceeds are not property of the OneCore bankruptcy estate, but are owed by the insurer to Base, as a covered party under the insurance policy.

ARGUMENT AND AUTHORITIES

The Bankruptcy Stay should be lifted to permit Ms. Base to access OneCore's insurance proceeds due from the third-party liability insurer that are now payable from that insurer to Ms. Base.¹

¹ To the extent OneCore's bankruptcy is not dismissed (pursuant to another motion filed by Base), Base anticipates seeking further relief, either on her own, or through the efforts of a Trustee in this matter. Such relief will include alter ego relief and, potentially, relief concerning the discharge of Base's Judgment that resulted from OneCore's purely willful conduct.

OneCore's medical malpractice insurer is not the "debtor" here, rather, OneCore's liability insurer is a third-party who, because of the existing final Judgment of Ms. Base against OneCore, has a duty to pay the Judgment, up to the extent of the insurance proceeds. Similarly, the liability insurance proceeds are not property of OneCore and are not payable to OneCore; they are payable to Ms. Base.

Under 11 U.S.C. 524(e):

"(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt."

As the court explained in *In re Glunk*, 342 B.R. 717 (Bankruptcy Court, E.D. Pa. 2006), bankruptcy courts routinely lift the stay to allow personal injury plaintiffs to pursue the tortfeasor's liability insurer, but only to the limit of the insurance coverage:

"Under §362(d)(1), bankruptcy courts have routinely granted relief to permit personal injury plaintiffs to prosecute their claims in state court and to limit their collection efforts to the available insurance benefits. The rationale for granting relief from the automatic stay for this purpose is that the prejudice to the debtor, who may suffer modest or even no adverse financial consequences but may only have to expend some time and effort in cooperating with his insurer in the defense of the litigation, is outweighed by the prejudice to the creditor whose ability to prosecute the action and reach the insurance benefits may be undermined by the 'aging of evidence, loss of witnesses, and crowded court dockets.'" *In re Gluck*, 342 B.R. 717 at Headnote 19.

In the case of *In re Gluck*, the court allowed the creditor to pursue the insurer before the defendant doctor's liability claim had been established, but here, the liability of OneCore has already been established, Judgment has been entered; there is no need for the debtor's involvement at all. All that remains is collecting payment, up to the policy limits from the insurer. No meaningful hardship happens to OneCore, but Ms. Base, who has not yet collected one penny of her damages, not even the costs to prosecute her claim, is greatly

harmled by not getting access to these insurance proceeds.

We also see the other side of this rule of law in the Oklahoma state court decisions. Thus, in *Taff v. Baker*, 1993 OK CIV APP 130, the plaintiff sued the defendant doctor for malpractice, but the defendant filed for bankruptcy and was discharged. However, the plaintiff then proceeded against the defendant doctor's liability insurance carrier, but with the doctor as a nominal defendant, just to establish the liability under the insurance policy. The trial court dismissed the claim, as barred by the doctor's bankruptcy, but the Oklahoma Court of Appeals reversed, explaining:

"We find the clear language of section 524 permits an action, such as this one, to continue against a discharged debtor where the action will not result in the personal liability of the debtor. Here, Plaintiffs are merely attempting to establish Defendant's negligence in order to proceed against his liability insurance carrier. If Plaintiffs secure a judgment they can proceed to collect it from Defendant's insurer, not from Defendant personally." *Taff, supra*, at Par. 8.

The Court of Appeals for the Tenth Circuit has reached the same conclusion in *In re Walker*, 927 F.2d 1138 (10th Cir. 1991). There, the appellant creditors had sought to recover their claim, putatively against the debtor, from a third party, the Utah Real Estate Recovery Fund. The creditors sought to lift the stay but were denied. On appeal, the Court of Appeals for the Tenth Circuit reversed, explaining, with regard to Section 542(a)(2)

"Thus, this section enjoins the Higleys from commencing or continuing any action or other process to hold Walker personally liable on their discharged claim against him. [citation omitted]. The intent of this post-discharge injunction is to protect debtors like Walker in their financial 'fresh start' following discharge. [citations omitted].

"Section 524 further provides, however, that 'discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.' 11 U.S.C. § 524(e). It is well established that this provision permits a creditor to bring or continue an action directly against the debtor for the purpose of establishing the debtor's liability when, as here, establishment of that liability is a prerequisite to recovery from another entity." *In re Walker, supra*, 927 F.2d at Headnote 2.

Here, OneCore's liability to Ms. Base has already been liquidated and reduced to Judgment. There is no need for OneCore's to even been involved in Ms. Base's action to collect from OneCore. An order lifting the stay, solely for the purpose of recovering the liability insurance proceeds of OneCore is appropriate, and addresses the great harm to Ms. Base, without causing any harm to OneCore.

CONCLUSION

The Bankruptcy Stay should be lifted to permit Emma Base to proceed as against insurance proceeds answerable to her claim.

Respectfully submitted,

/s/ Geren T. Steiner
Anton J. Rupert, OBA No. 7827
Geren T. Steiner, OBA No. 18845
RUPERT & STEINER, PC
14001 Quail Springs Parkway
Oklahoma City, OK 73134
Telephone: (405) 607-1494
Facsimile: (405) 607-1450
geren@rs-okc.com
Attorney for Emma Base

Certificate of Service by U.S. Mail or by email

The undersigned certifies that on this 25th day of October, 2024, this motion was served on all parties on the Approved Distribution List (Docket Item no. 9) as well as on all persons who have filed a Notice of Appearance and Request for Service. Persons with their email listed below were served by email; all others were served by regular U.S. mail:

Robert J. Troester U.S. Atty for the Western District of OK 210 Park Ave. Ste. 400	Internal Revenue Service Centralized Insolvency Oper. 2970 Market Street Philadelphia, PA 19104	Compr. Diagnostic Imaging 5800 N. Portland OKC, OK 73134
Flospine, LLC 3889 Fau Blvd. Ste. 300 Boca Raton, FL 33431	Glaukos Corp. P.O. Box 741074 Los Angeles, CA 90074	Medicare Novitas P.O. Box 3105 Mechanicsburg, PA 17055
Medline Industries, Inc. Dept. 1080 P.O. Box 121080 Dallas, TX 75312-1080	Medtronic P.O. Box 848086 Dallas, TX 75284-8086	Midtown Orthopedics & Sports 400 N.W. 13 th OKC, OK 73103
Nevro Corp 501 Allendale Rd. #101B King of Prussia, PA 19406	Olsen Orthopedics 1140 S. Douglas Blvd. OKC, OK 73130	Relievent Medsystems P.O. Box 675413 Detroit, MI 48267-5413
Smith & Nephew, Inc. P.O. Box 842935 Dallas, TX 75284-2935	Solara Surgical Partners, LLC 2325 Dean Way, Ste 100 Southlake, TX 76092	

Mark Craige
Mark.craige@crowedunlevy.com
 Kaleigh Ewing
Kaleigh.ewing@crowedunlevy.com
 Lisbeth L. George
liz@georgelawok.com
 William H. Hoch
Will.hoch@crowedunlevy.com
 Craig R. Regens
Craig.regens@crowedunlevy.com
 Jeffrey E. Tate (DOJ- UST)
Jeff.tate@usdoj.gov

Lorena M. Massey
bankruptcy@tax.ok.gov

Samuel S. Ory
sory@fdlaw.com

/S Geren T. Steiner
Geren T. Steiner