

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

	X	
In re	:	
	:	Chapter 11
HOSPITAL FOR SPECIAL SURGERY, LLC	:	
Db a ONECORE HEALTH,	:	Case No. 24-12862-JDL
	:	
Debtor.	:	
	X	

**DEBTOR'S OBJECTION TO ALLIED WORLD INSURANCE COMPANY'S
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

William H. Hoch, OBA #15788
Craig M. Regens, OBA #22894
Mark A. Craige, OBA #1992
Kaleigh Ewing, OBA #35598
-Of the Firm-
CROWE & DUNLEVY
A Professional Corporation
Braniff Building
324 N. Robinson Ave., Suite 100
Oklahoma City, OK 73102-8273
(405) 235-7700
will.hoch@crowedunlevy.com
craig.regens@crowedunlevy.com
mark.craige@crowedunlevy.com
kaleigh.ewing@crowedunlevy.com

Counsel to Debtor

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241286225012100000000005

TABLE OF CONTENTS

PRELIMINARY STATEMENT	2
STATEMENT OF FACTS	4
A. OneCore and This Chapter 11 Case.....	4
B. The Base Claim and the Base Litigation.....	5
C. Debtor’s Liability Insurance Policy	5
D. Competing Claims to the Proceeds of the Base Policy.....	6
ARGUMENT	7
I. The Policies and Their Proceeds Are Property of the Bankruptcy Estate Protected by the Automatic Stay.....	7
II. It Is AWIC’s Burden to Establish Cause for Stay Relief Due to the Importance of the Stay	11
III. Cause Does Not Exist to Lift the Automatic Stay	14
CONCLUSION	18

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>A.H. Robins Co., Inc. v. Piccinin</i> , 788 F.2d 994 (4 th Cir.), <i>cert. denied</i> , 479 U.S. 876 (1986).....	8
<i>BDA Design Grp., Inc. v. Off. Unsecured Creditors’ Comm.</i> , No. 3:13-CV-01568-O, 2013 WL 12100467 (N.D. Tex. Sept. 2, 2013), <i>aff’d sub nom. In re Hearthwood N. I Ass’n</i> , 576 F. App’x 369 (5 th Cir. 2014).....	10, 16
<i>In re Busch</i> , 294 B.R. 137 (10 th Cir. B.A.P. 2003).....	12, 13
<i>In re Calder</i> , 907 F.2d 953 (10 th Cir. 1990).....	12
<i>In re Curtis</i> , 40 B.R. 795 (Bankr. D. Utah 1984).....	<i>passim</i>
<i>In re Dampier</i> , 2015 WL 6756446 (10 th Cir. B.A.P. Nov. 5, 2015)	13
<i>In re Davis</i> , 730 F.2d 176 (5 th Cir. 1984).....	8-9
<i>Matter of Edgeworth</i> , 993 F.2d 51 (5 th Cir. 1993)	9
<i>In re Equine Oxygen Therapy Res., Inc.</i> , No. 14-51611, 2015 WL 1331540 (Bankr. E.D. Ky. Mar. 20, 2015)	9
<i>In re GNI Group, Inc.</i> , 402 B.R. 195 (S.D. Tex. 2008)	9
<i>Holland Am. Ins. Co. v. Succession of Roy</i> , 777 F.2d 992 (5 th Cir. 1985).....	9
<i>In re Jim’s Maintenance & Sons, Inc.</i> , 2010 WL 432251 (W.D. Okla. Jan. 28, 2010).....	13
<i>In re Jim’s Maintenance & Sons Inc.</i> , 418 F. App’x 726 (10 th Cir. 2011).....	12

<i>In re Louisiana World Exposition, Inc.</i> , 832 F.2d 1391 (5th Cir. 1987)	9
<i>MacArthur Co. v. Johns-Manville Corp.</i> , 837 F.2d 89 (2d Cir.), <i>cert. denied</i> , 488 U.S. 868 (1988)	8
<i>Midlantic Nat’l Bank v. New Jersey Dep’t of Env’tl. Protection</i> , 474 U.S. 494 (1986)	12
<i>In re Minoco Group of Companies, Ltd.</i> , 799 F.2d 517 (9th Cir. 1986)	8
<i>Pursifull v. Eakin</i> , 814 F.2d 1501 (10th Cir. 1987)	12
<i>Santa Rosa Mall, LLC v. Sears Holdings Corp.</i> , No. 20-CV-03923 (PMH), 2021 WL 4429507 (S.D.N.Y. Sept. 27, 2021)	16
<i>In re Soriano</i> , 587 B.R. 371 (Bankr. W.D. Okla. 2018) (Loyd, J.)	8
<i>Sosebee v. Steadfast Ins. Co.</i> , 701 F.3d 1012 (5th Cir. 2012)	9
<i>In re St. Clare’s Hosp. & Health Ctr.</i> , 934 F.2d 15 (2nd Cir. 1991)	9
<i>In re Sunland, Inc.</i> , 508 B.R. 739 (D.N.M. 2014)	18
<i>In re Tapia</i> , 2000 WL 1707254 (10th Cir. B.A.P. Nov. 15, 2000)	14
<i>Timothy W. Fox v. Hospital for Special Surgery, LLC et al.</i> , Case No. CJ-2023-3620 (Okla. County D.C.)	2
<i>In re Titan Energy, Inc.</i> , 837 F.2d 325 (8th Cir. 1988)	8, 11
<i>Tringali v. Hathaway Mach. Co., Inc.</i> , 796 F.2d 553 (1st Cir. 1986)	8

Statutes

11 U.S.C. § 362	1, 11, 13
11 U.S.C. § 510	14

11 U.S.C. § 522.....	14
11 U.S.C. § 541.....	1, 11
11 U.S.C. § 1102.....	4
11 U.S.C. § 1107.....	4
11 U.S.C. § 1108.....	4
11 U.S.C. § 1121.....	4

Other Authorities

Bankruptcy Rule 9019	7
COLLIER ON BANKRUPTCY (Alan R. Resnick & Henry J. Sommer eds., 16 th ed.)	8
Lam, <i>Cancellation of Insurance: Bankruptcy Automatic Stay Implications</i> , 59 Am. Bankr. L.J. 267 (1985)	8

Hospital for Special Surgery, LLC *dba* OneCore Health (“OneCore” or the “Debtor”) hereby submits this objection (the “Objection”) to *Allied World Insurance Company’s Motion for Relief from the Automatic Stay to the Extent Applicable* [Dkt. No. 150] (the “Motion”). While the Motion references two insurance policies (the “Policies”), in truth as revealed in the Motion, Allied World Insurance Company (“AWIC”) is concerned solely with the “wasting” insurance policy providing coverage for the claim that was asserted by Emma Base and reduced to judgment (the “Base Policy” and the “Base Claim”, respectively). The Motion (i) confesses that the insurance policies that are the subject of the Motion are property of Debtor’s estate, *id.* at 5; and (ii) concedes that many courts hold that proceeds of liability insurance policies are also property of the estate, *id.* at 6-7. AWIC is correct; the Base Policy and its proceeds are property of Debtor’s estate under section 541 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect and hereafter amended (the “Bankruptcy Code”).

Since section 362(a)(3) prohibits “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate,” 11 U.S.C. § 362(a)(3), AWIC seeks an order of this Court (a) precluding Debtor from distributing the proceeds of the Base Policy pursuant to a chapter 11 plan of reorganization for the benefit of the estate and its creditors and (b) permitting AWIC to pay such funds to a defense counsel against whom Debtor has scheduled a claim for professional malpractice which Debtor reasonably believes exceeds in amount the asserted defense costs under the Base Policy. In support of its request, AWIC conspicuously fails to grapple with applicable *Curtis* factors and arrives at mistaken conclusions with respect to the two *Curtis* factors it does acknowledge. AWIC’s attempt to utilize proceeds of the Base Policy to compensate attorneys against whom Debtor holds a malpractice claim will, if countenanced by this Court, prevent Debtor from settling the Base Claim utilizing proceeds of the

Base Policy and, in so doing, could materially prejudice Debtor's efforts to propose a confirmable plan of reorganization.

The Motion presents a second problem that is equally problematic. AWIC asks this Court to grant it relief from the automatic stay so that it can pay defense costs it apparently intends to direct defense counsel to incur in three other lawsuits.¹ With respect to *Timothy W. Fox v. Hospital for Special Surgery, LLC et al.*, Case No. CJ-2023-3620 (Okla. County D.C.) (the "Fox Litigation"), no such motion has been filed by plaintiff. AWIC has not demonstrated that any defense costs have been incurred in relation to the Fox Litigation, which is stayed. Accordingly, it is difficult to understand - particularly in the absence of any explanation by AWIC - why AWIC wishes to expend scarce estate resources directing counsel it imposes on Debtor, and against whom Debtor holds a claim, to undertake undescribed tasks in a state court suit that is stayed.

Debtor respectfully requests that this Court deny the Motion for these reasons, as more fully set forth herein.

Preliminary Statement

1. OneCore filed its Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on October 7, 2024 ("Petition Date").

2. As has been set forth extensively on the record, Debtor seeks to reorganize and is earnestly working towards proposing and obtaining confirmation of a chapter 11 plan of reorganization.

3. Setting aside Debtor's entitlement to seek an extension of the exclusive period, such period, within which only Debtor may file a plan does not expire until Tuesday, February 4, 2025.

¹ With respect to two of those lawsuits, the automatic stay has already been modified to permit the plaintiff to pursue insurance proceeds only (in exchange for plaintiffs' waivers of claims against Debtor in this Chapter 11 Case), thus, such request is moot.

4. On December 14, 2024, Debtor filed its *Application for Entry of an Order (i) Setting Bar Dates for Filing Proofs of Claim; (ii) Approving Form and Manner for Filing Proofs of Claim; and (iii) Approving the Form and Manner of Notice of Bar Dates* [Dkt. No. 137] (the “Bar Date Application”).

5. On December 18, 2024, this Court entered its *Order (i) Setting Bar Dates for Filing Proofs of Claim; (ii) Approving Form and Manner for Filing Proofs of Claim; and (iii) Approving the Form and Manner of Notice of Bar Dates* [Dkt. No. 140] (the “Bar Date Order”). The Bar Date Order establishes a general claims bar date expiring on January 22, 2025.

6. In anticipation of the expiration of the general claims bar date and of filing a plan of reorganization thereafter, Debtor has worked with key stakeholders, including Base, in furtherance of its goal of proposing a consensual plan of reorganization.

7. The Base Policy is property of Debtor’s estate.

8. Base filed *Creditor Emma Base’s Amended Motion to Lift Stay* [Dkt. No. 83] (the “Base Motion”) on October 25, 2024. The Base Motion and the instant Motion filed by AWIC seek contrary dispensations of the proceeds of the Base Policy.

9. Debtor anticipates that the proceeds of the Base Policy will be distributed through Debtor’s plan. Such dispensation of contested proceeds that are property of the estate through a confirmed plan of reorganization is in the best interest of the estate and its creditors.

10. Permitting AWIC (or Base) to cannibalize estate assets that enhance the value of Debtor’s estate and will be distributed through a confirmed plan of reorganization places in jeopardy Debtor’s ability to propose a confirmable plan of reorganization; therefore, the Motion should be denied.

Statement of Facts

A. OneCore and This Chapter 11 Case.

11. OneCore is a duly licensed hospital that has been specializing in orthopedic and specialty surgeries in the community of central Oklahoma for more than a decade. In late 2021, OneCore completed the construction of its present leased facility in northeast Oklahoma City and has been operating at such location since January 2022.

12. OneCore has focused on a culture of excellence in the delivery of surgical and other health care services such as radiology and orthopedic care with the goal of being one of the top performing surgical hospitals in Oklahoma. In the past four (4) years, OneCore has received many accolades for its excellence and patient care, including the following:

- Healthgrades: Knee Replacement 5-star recipient, 2023 and 2024;
- Healthgrades: Spinal Fusion Surgery 5-star recipient 2021 – 2024;
- Healthgrades: Outstanding Patient Experience 2024; and
- Press Ganey: Guardian of Excellence Award for Outstanding Patient Experience.²

13. On October 7, 2024, OneCore filed its *Voluntary Petition* [Dkt. No. 1].

14. Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No committee has been appointed pursuant to section 1102 of the Bankruptcy Code.

15. Debtor remains within its statutory exclusivity period provided by section 1121 of the Bankruptcy Code and has not yet filed a plan. Debtor has already commenced certain vital discussions necessary to the formulation of a plan.

² The Press Ganey Guardian of Excellence Award® honors organizations that perform in the top 5% of healthcare providers and health plans for patient experience, employee engagement, physician experience, clinical quality performance or consumer experience in one year. Only 501 hospitals and health systems achieved this recognition out of over 10,000.

B. The Base Claim and the Base Litigation.

16. On November 5, 2024, Base filed a proof of claim (the “Base Claim”) as claim no. 4-1 against OneCore in this Chapter 11 Case.

17. The Base Claim asserts that Debtor owes Base the amount of \$15,265,541.26 in satisfaction of her judgment against Debtor. The Base Claim includes post-judgment interest and punitive damages.

18. Base obtained her judgment in the case styled *Emma Base v. OneCore Health, a tradename for Hospital for Special Surgery, LLC, Kyle Jones, APRN-CRNA, and Kyle Jones, APRN-CRNA, PC*, Case No. CJ-2022-1096 (Dist. Ct. for Okla. County, Okla.) (the “Base Litigation”).

19. Debtor timely appealed the judgment entered in the Base Litigation prior to filing its Voluntary Petition.

C. Debtor’s Liability Insurance Policy.

20. Debtor maintains a variety of insurance policies relating to the operation of its business and the management of its properties. Germane to the Motion is the Base Policy: Healthcare Organizations Professional and General Liability Insurance Policy No. 0312-6808, in effect for 2021, a copy of which is attached to the Motion as Exhibit 1.

21. The Policy identifies one named insured: Hospital for Special Surgery, LLC d.b.a. OneCore Health. *Id.*

22. Base is not expressly identified as a loss payee under the Policy; therefore, she lacks any direct interest in the Policy.

23. Coverage for the Base Claim is provided, subject to the Policy’s terms and conditions, under Insuring Agreement I.A. which covers “Claims Made Professional Liability.”

24. Under the Policy, expenses of prosecuting an appeal constitute authorized “Defense Expenses” which the insurer shall pay. Policy, at p. 24, ¶ F.

25. The Declarations page of the Policy clearly states that **“THIS POLICY PROVIDES COVERAGE ON A DEFENSE WITHIN THE LIMITS BASIS FOR INSURING AGREEMENTS I.A., I.C., AND ADDITIONAL COVERAGE II.A. THE APPLICABLE LIMIT OF LIABILITY TO PAY DAMAGES, SETTLEMENTS OR JUDGMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES.”** Policy, at 1 (emphasis orig.).

26. The Policy has a provision providing for “Exhaustion of Limits,” which provides that:

In the event that an aggregate Limit of Liability for Insuring Agreements I.A. or I.C., or Additional Coverage II.A. is reduced and exhausted in full by the payment of **Loss** and **Defense Expenses** by the **Insurer**, the **Insurer** shall have no further obligation to pay or reimburse **Loss** or **Defense Expenses**, or to defend or continue to defend any **Claim** under the respective Insuring Agreement or Additional Coverage to which such Limit of Liability applied, and the premium for such Insuring Agreement will be deemed fully earned.

Policy, at p. 8, ¶ 6(a) (emphasis orig.).

D. Competing Claims to the Proceeds of the Base Policy.

27. Debtor is the sole insured under the Base Policy. None of the parties who have filed motions seeking relief from the automatic stay are loss payees under the Base Policy.

28. Debtor is entitled to continue to exhaust proceeds of the Base Policy in furtherance of its defense, through appeal of the Base Litigation. Likewise, Debtor is entitled to request that the Court direct payment of the proceeds of the Base Policy to one or more creditors or to otherwise

dispense the Base Policy's proceeds through a confirmed plan of reorganization because, among other reasons, such a plan may include relief in a form permissible under Bankruptcy Rule 9019.

29. Base claims she is entitled to the proceeds of the Base Policy in satisfaction of the Base Claim.

30. AWIC does not claim entitlement to the proceeds of the Base Policy. Instead, it claims that it is entitled to sole control of the proceeds of the Base Policy and that it may distribute such proceeds to Hoisington - a law firm against whom Debtor asserts a professional malpractice claim - and an expert, both of whom incurred fees and costs (the "Defense Costs") providing a defense in the Base Litigation, and neither of whom, upon information and belief, submitted their invoices relating to the Defense Costs prior to the Petition Date. Strangely, neither Hoisington nor the expert have filed a motion seeking relief from the automatic stay in this Court. Instead, AWIC has decided to favor its selected professionals at the expense of its insured's efforts to settle the Base Claim and notwithstanding Debtor's right to setoff against the Defense Costs its professional malpractice claim against Hoisington.

31. Although Hoisington has not filed a motion seeking relief from the automatic stay, he has made postpetition demands for payment of the Defense Costs with full knowledge of the filing of this Chapter 11 Case and the stay imposed thereby.

32. The Base Policy's proceeds constitute the only unencumbered cash owned by Debtor and its estate.

Argument

I. The Policies and Their Proceeds Are Property of the Bankruptcy Estate Protected by the Automatic Stay.

33. The fundamental premise of the Motion is that, since the Defense Costs were incurred prepetition, even if not actually billed until postpetition, AWIC should be authorized to

deplete the Base Policy at the expense of the estate and its creditors. As to the remaining Policy providing coverage for the Fox Claim, little attention is paid by AWIC to justifying the depletion of such Policy.

34. Lifting the stay now to permit AWIC to (i) exercise control over the Policies, which are property of Debtor's estate, and (ii) deplete their proceeds would effectively vitiate one of the "fundamental purposes of the Bankruptcy Code" and of the automatic stay to "provid[e] breathing space necessary to permit the debtor to focus on rehabilitation and reorganization." COLLIER ON BANKRUPTCY ¶¶ 362.03, 541.01 (Alan R. Resnick & Henry J. Sommer eds., 16th ed.); *see In re Soriano*, 587 B.R. 371, 388 (Bankr. W.D. Okla. 2018) (Lloyd, J.) (noting that "the automatic stay is designed to afford debtors 'breathing room' from creditor 'harassment'").

35. Granting relief in favor of AWIC for Hoisington's benefit would be particularly inappropriate because Debtor asserts an affirmative claim against Hoisington. Hoisington's payment from any proceeds of the Base Policy is subject to this Court's exclusive jurisdiction for purposes of claim administration. Permitting AWIC to pay Hoisington outside the claims administration process would entirely circumvent Debtor's setoff rights and interests.

36. AWIC does not, and cannot, dispute that the Policies are property of Debtor's estate. *See, e.g.*, COLLIER ON BANKRUPTCY ¶ 362.03 (Alan R. Resnick & Henry J. Sommer eds., 16th ed.) (citing *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, (2d Cir.), *cert. denied*, 488 U.S. 868 (1988); *In re Titan Energy, Inc.*, 837 F.2d 325 (8th Cir. 1988); *Tringali v. Hathaway Mach. Co., Inc.*, 796 F.2d 553 (1st Cir. 1986); *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994 (4th Cir.), *cert. denied*, 479 U.S. 876 (1986); *In re Minoco Group of Companies, Ltd.*, 799 F.2d 517 (9th Cir. 1986)). *See generally* Lam, *Cancellation of Insurance: Bankruptcy Automatic Stay Implications*, 59 Am. Bankr. L.J. 267 (1985). *See, also, In re Davis*, 730 F.2d 176, 184 (5th Cir.

1984); *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 996 (5th Cir. 1985); *In re St. Clare's Hosp. & Health Ctr.*, 934 F.2d 15, 18 (2nd Cir. 1991); *In re GNI Group, Inc.*, 402 B.R. 195, 202 (S.D. Tex. 2008) (holding that the debtor's contractual rights under a liability policy are property of the estate).

37. Certainly, bankruptcy courts may draw a distinction between ownership of an insurance policy and ownership of the proceeds of an insurance policy. *See, e.g., In re Louisiana World Exposition, Inc.*, 832 F.2d 1391, 1399 (5th Cir. 1987) (stating that when determining if an insurance policy is property of the estate “the question is not who owns the policies, but who owns the liability proceeds....”); *see also Sosebee v. Steadfast Ins. Co.*, 701 F.3d 1012, 1023 (5th Cir. 2012). When this distinction is drawn, the “overriding question” in determining whether the proceeds of an insurance policy constitute property of the estate is “whether the debtor would have a right to receive and keep those proceeds when the insurer paid on a claim.” *Matter of Edgeworth*, 993 F.2d 51, 55–56 (5th Cir. 1993).

38. Here, it is quite easy to answer the “overriding question” raised by the *Edgeworth* court: as shown above, Debtor has every right to receive and keep the proceeds of the Policy. In fact, Debtor has already made a claim against the Policy to utilize its proceeds in its defense of the Base Litigation and has received payments pursuant to its claim that have been applied to the costs of such defense. The Policy in question is a “wasting” policy, meaning that Debtor may continue to draw on the Policy in the defense of any claims, including the Base Claim, made thereunder. Liability policies with wasting provisions are estate property. *See, e.g., In re Equine Oxygen Therapy Res., Inc.*, No. 14-51611, 2015 WL 1331540, at *5 (Bankr. E.D. Ky. Mar. 20, 2015) (finding a liability insurance policy with a wasting provision reimbursing debtor for its costs in defending a liability suit was property of the estate).

39. If Debtor determines, in the reasonable exercise of its sound business judgment, that it is in the best interest of the estate, including in furtherance of its broader claims resolution and administration efforts, to lift the stay to prosecute its appeal in the Base Litigation, then Debtor may draw on the Policy's proceeds. Debtor's right to draw on the proceeds of the Policy conclusively demonstrates that the Policy's proceeds are estate property. This point is illustrated by *BDA Design Grp., Inc. v. Off. Unsecured Creditors' Comm.*, No. 3:13-CV-01568-O, 2013 WL 12100467 (N.D. Tex. Sept. 2, 2013), *aff'd sub nom. In re Hearthwood N. I Ass'n*, 576 F. App'x 369 (5th Cir. 2014). In *BDA Design Group*, the district court held that insurance proceeds were property of a bankruptcy estate where the debtor had an interest in the proceeds alongside other creditors. The district court also held that relief from the automatic stay for a creditor to pursue the proceeds was improper due to the estate's interest in the proceeds. *Id.*

40. AWIC suggests that Debtor's arguments against granting stay relief to Base – namely, that the Base Policy is a wasting policy and that Debtor may draw on proceeds to advance its appeal of the Base Litigation - favor modifying the automatic stay to permit AWIC to expend existing proceeds to pay Defense Costs allegedly already incurred. AWIC is incorrect. Debtor has asserted affirmative claims against Hoisington directly relating to the incurrence of such Defense Costs and is entitled to set off its damages for Hoisington's professional malpractice against any Defense Costs purportedly incurred. To skirt this problem for Hoisington, AWIC seeks to pay him outside the Chapter 11 Case using estate property. AWIC's requested relief would vitiate the claims administration process which must be conducted within this Chapter 11 Case. For this reason, the Motion should be denied.

41. While Debtor has not asserted an affirmative claim against the expert, such expert is merely one of multiple parties laying claim to the Base Policy's proceeds. Accordingly, the

expert's claim to the Base Policy's proceeds may only be administered within the broader claims administration process that shall occur in this Chapter 11 Case.

42. Finally, if this Court holds that the proceeds of the Base Policy cover the Base Claim, including through an order confirming a plan of reorganization, then that holding will reduce the total amount of claims lodged against the estate. Under such a scenario, even though the policy proceeds would not flow directly into the estate's DIP account, such proceeds would serve to reduce the Base Claim and, in so doing, to permit more extensive distribution of available assets in the reorganization of the estate. Because of the availability of the proceeds for distribution in satisfaction of the Base Claim under a plan of reorganization, the estate is worth more with the Base Policy and its proceeds than without. Consequently, the Base Policy *and* its proceeds (and by extension of this reasoning, all of the Policies and their proceeds) constitute estate property. *See, e.g., In re Titan Energy, Inc.*, 837 F.2d 325, 329 (8th Cir. 1988) (“In the instant case, if the policies are held to cover the damages claims, that holding will reduce the total amount of damages claims lodged against the estate. ... Though the policy proceeds do not flow directly into the coffers of the estate, they do serve to reduce some claims and permit more extensive distribution of available assets in the liquidation of the estate. ... [T]he policies here are property of Titan's estate because the estate is worth more with them than without them.”).

II. It Is AWIC's Burden to Establish Cause for Stay Relief Due to the Importance of the Stay.

43. The automatic stay set forth in section 362(a) of the Bankruptcy Code prohibits “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). The Policy and its proceeds are estate property under section 541(a) of the Bankruptcy Code.

44. AWIC seeks an order of this Court (a) precluding Debtor from distributing the proceeds of the Base Policy pursuant to a chapter 11 plan of reorganization for the benefit of the estate and its creditors and (b) permitting AWIC to pay such funds to a defense counsel against whom Debtor has scheduled a claim for professional malpractice which Debtor reasonably believes exceeds in amount the asserted Defense Costs under the Base Policy.

45. While Debtor can show that the automatic stay should be maintained with respect to the Policy's proceeds, it is critical to emphasize that Debtor does not need to make any such showing. AWIC bears the initial burden of showing "cause" for stay relief. AWIC's cursory effort to satisfy the *Curtis* factors entirely fails to show "cause" for the relief requested.

46. The automatic stay is one of the fundamental protections afforded to Debtor under the Bankruptcy Code. *See, e.g., Midlantic Nat'l Bank v. New Jersey Dep't of Env'tl. Protection*, 474 U.S. 494, 503 (1986). The automatic stay's purpose is to protect Debtor from creditor harassment and a multiplicity of litigation in a variety of forums at a time when Debtor should be focusing on its restructuring efforts. *See, e.g., In re Calder*, 907 F.2d 953, 957 (10th Cir. 1990) (stating that the purpose of the automatic stay "is to give a debtor a breathing spell from his creditors") (internal quotation marks omitted); *Pursifull v. Eakin*, 814 F.2d 1501, 1504 (10th Cir. 1987) (noting that the purpose of the automatic stay "is to protect the debtor and his creditors by allowing the debtor to organize his affairs").

47. The automatic stay is also intended to "allow[] the bankruptcy court to retain control over the resolution of all claims pertaining to the debtor and the bankruptcy estate." *In re Jim's Maintenance & Sons Inc.*, 418 F. App'x 726, 728 (10th Cir. 2011); *see also In re Busch*, 294 B.R. 137, 140 (10th Cir. B.A.P. 2003) ("The automatic stay serves to shield both a debtor and his creditors by permitting the debtor to marshal his affairs and by ensuring that the bankruptcy

procedure may provide an orderly resolution of all claims.”). Absent the automatic stay, with the Base Litigation and other, unliquidated, litigation claims having been filed, litigation against Debtor could proceed in numerous courts, depleting finite dollars and resources, and interfering with Debtor’s and the Court’s ability to move this Chapter 11 Case and the claims resolution process toward conclusion in an efficient manner.

48. Likewise, if AWIC is permitted to exhaust the proceeds of a Policy satisfying Defense Costs in a state court case that is stayed under the Bankruptcy Code, neither the estate nor its creditors will derive any benefit from such unnecessary diminution in the estate’s value. Relatedly, if AWIC obtains relief from stay with respect to the Fox Claim, it is difficult to foresee how such stay relief would not also have the effect of permitting Fox to pursue the Fox Claim in state court. Under such a scenario, Fox would be pursuing the Fox Claim without the Debtor, the estate and its creditors having received the concomitant benefit from Fox of a waiver of the Fox Claim as against Debtor and its estate.

49. Section 362(d) of the Bankruptcy Code provides that a party may obtain relief from the automatic stay “for cause.” 11 U.S.C. § 362(d). The party seeking to lift the automatic stay “has the burden to show that ‘cause’ exists to lift stay,” only after which must the debtor demonstrate why the stay should remain in place. *In re Busch*, 294 B.R. at 140-41.

50. The Tenth Circuit “has not set forth a precise framework or exhaustive set of factors for analyzing whether cause exists.” *In re Dampier*, 2015 WL 6756446, at *4 (10th Cir. B.A.P. Nov. 5, 2015). However, courts in the Tenth Circuit generally consider the 12 non-exclusive factors set forth in *In re Curtis*. See, e.g., *id.*; *In re Jim’s Maintenance & Sons, Inc.*, 2010 WL 432251, at *3, n. 2 (W.D. Okla. Jan. 28, 2010) (“The *Curtis* factors are the factors mainly used by the reviewing court in this circuit.”).

51. The 12 non-exclusive *Curtis* factors are: “(1) whether the relief will result in a partial or complete resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether the foreign proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases; (5) whether the debtor’s insurance carrier has assumed full financial responsibility for defending the litigation; (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit; (7) whether litigation in another forum would prejudice the interests of other creditors, the Committee or other interested parties; (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c); (9) whether movant’s success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f); (10) the interest of judicial economy and economical determination of litigation for the parties; (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and (12) the impact of the stay on the parties and the ‘balance of the hurt.’” *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984).

52. Ultimately, the Court must “determine whether discretionary relief is appropriate on a case-by-case basis.” *In re Tapia*, 2000 WL 1707254, at *2-3 (10th Cir. B.A.P. Nov. 15, 2000). Presently, stay relief is inappropriate in this Chapter 11 Case.

III. Cause Does Not Exist to Lift the Automatic Stay.

53. Application of the *Curtis* factors demonstrates that the Motion should be denied and the automatic stay should be maintained for the benefit of Debtor, its estate and all creditors.

54. If the Motion is granted, the relief will not result in a complete resolution of the issues. With respect to the Base Policy, Base maintains a competing claim to the proceeds of the

Base Policy and the relative entitlement of Base, Hoisington and the expert to the proceeds of the Base Policy must be determined before any distribution therefrom may be made. Furthermore, since Debtor has asserted an affirmative claim against Hoisington that may be setoff against any defense costs Hoisington has incurred, the relative entitlement of the parties claiming an interest in the Base Policy's proceeds to receive such proceeds is a matter of claims administration that is within the core and exclusive jurisdiction of this Court. Since the granting of the Motion would fail to result in complete resolution of issues between parties claiming entitlement to the proceeds of the Base Policy and OneCore, the first *Curtis* factor weighs against stay relief.

55. With respect to the Fox Policy, Fox's claim against Debtor and its estate will not be resolved by the Motion and AWIC will merely diminish proceeds of such Policy that would otherwise be available to satisfy the Fox claim.

56. The second *Curtis* factor weighs against stay relief. The relief sought would interfere with the bankruptcy case. The relief, if granted, would deprive the estate of the Base Policy's proceeds which could be distributed under a confirmed plan of reorganization for the benefit of the estate and all creditors. Likewise, the relief, if granted with respect to the Fox Policy, will diminish funds available to satisfy the Fox claim without advancing the goals of Debtor and the estate to successfully administer claims for the benefit of all creditors. Thus, the relief, if granted, would interfere with the claims administration process in this Chapter 11 Case and would increase the likelihood that litigation occurs in other forums, which would also interfere with this Chapter 11 Case. Finally, the Motion, if granted, will deprive Debtor of a significant source of unencumbered cash, which presently provides substantial value to the estate and its creditors.

57. The third and fourth *Curtis* factors are inapplicable.

58. The fifth *Curtis* factor weighs against stay relief. Debtor's insurer has borne all costs of defending the Base Litigation to date; however, the Policy is a "wasting" policy and, if the costs of defending further litigation or prosecuting the appeal exceed the Policy's limits, then Debtor is solely responsible for further costs. AWIC intends, through its Motion, to substantially deplete the Base Policy, such that little will remain for the benefit of the estate.

59. The sixth *Curtis* factor weighs against stay relief. The action contemplated does not merely involve third parties because depleting the proceeds of the Base Policy directly impacts the value of the estate and causes harm to Debtor and its creditors. *See Santa Rosa Mall, LLC v. Sears Holdings Corp.*, No. 20-CV-03923 (PMH), 2021 WL 4429507 (S.D.N.Y. Sept. 27, 2021) (denying stay relief to creditor who sought to pursue insurance proceeds against liability carrier, in part because any judgment against the insurer would be a direct liability to the estate); *BDA Design Grp.*, 2013 WL 12100467, at *4 and *6 (finding insurance proceeds property of a debtor's estate and denying stay relief, noting that the debtor was not a mere bailee or conduit of the proceeds but was also itself a beneficiary). Depleting the Fox Policy likewise diminishes the value of the estate, causing harm to the Debtor, its estate and all creditors.

60. The seventh *Curtis* factor weighs against stay relief. As shown herein, any effort by AWIC to exhaust the Base Policy's proceeds in favor of Hoisington and the expert will invariably result in litigation between Base, Hoisington, the expert and AWIC. And, invariably, Debtor will be drawn into such litigation at great and unpredictable cost to the estate, to the detriment of its creditors. Similarly, if AWIC is granted relief with respect to the Fox claim as requested without any claims waiver by Fox, then Debtor and the estate will be dragged into that state court litigation, too, in which Fox's claim will not be limited to insurance proceeds only.

61. The eighth and ninth *Curtis* factors are inapplicable.

62. The tenth *Curtis* factor weighs against stay relief. Debtor must administer the Base Claim herein as it must any claims arising out of prepetition work performed by Hoisington and the expert. The ordinary claims administration process which is within this Court's core and exclusive jurisdiction should proceed in the ordinary course. It should not, as would be the natural consequence of granting AWIC's request, spill over into state court litigation between the rival claimants to the Base Policy's proceeds. Such an outcome would multiply litigation and be against the interest of judicial economy and economical determination of litigation for the parties.

63. The eleventh *Curtis* factor is inapplicable.

64. The twelfth *Curtis* factor weighs heavily against stay relief. Notwithstanding that AWIC claims the twelfth *Curtis* factor favors its position, the Motion does not indicate that AWIC will suffer any financial hardship whatsoever if the Motion is denied. To the contrary, the status quo is preserved. In contrast, if the Motion is granted, Debtor will be deprived of the Base Policy's proceeds, which may be distributed under a confirmed plan of reorganization for the benefit of the estate and all creditors, or otherwise administered during the claims administration and resolution process.

65. "The most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit." *In re Curtis*, 40 B.R. at 806. As shown, if AWIC is granted relief from the stay to pursue the proceeds of the Policy, not only will estate assets be cannibalized, but it is certain that litigation to recover the Policy's proceeds will commence between Base, AWIC, Hoisington and the expert and this litigation invariably will substantially and negatively interfere with administration of the estate. Likewise, as shown the

Fox litigation will be substantially more complicated and Debtor and the estate will be exposed to unnecessary and avoidable financial risk.

66. Like all creditors who have filed proofs of claim in this Chapter 11 Case, Base is subject to the jurisdiction of this Court and Debtor has taken the position that she should not be afforded special treatment. The same holds true for Fox. And, the same is true for Hoisington and the expert, for whom AWIC is carrying their water. Granting any of these parties in interest special treatment not afforded other creditors, at the expense of the estate, would be “contrary to the purpose of the automatic stay” and should weigh heavily against the relief requested. *See In re Sunland, Inc.*, 508 B.R. 739, 744 (D.N.M. 2014) (noting that the purpose of the automatic stay is “to provide for equality of distribution among creditors and to protect creditors by averting a scramble for the debtor’s assets”) (internal quotation marks omitted). The Base Claim, and indeed, all claims against Debtor, including, without limitation, any claims that might be asserted by Fox, Hoisington or the expert will be resolved at the appropriate time. Lifting the automatic stay now would prejudice other creditors and jeopardize Debtor’s ability to reorganize by setting off a race to lay claim to various assets of Debtor. During the exclusivity period, Debtor should be permitted to remain focused on maximizing the value of its estate for all stakeholders, including, most importantly, pursuing the development, proposal, and confirmation of a plan of reorganization that is in the best interest of Debtor, its estate, and all creditors. AWIC does not argue that it is harmed by the maintenance of the stay at this time because it cannot. In contrast, Debtor, the estate, and other creditors would suffer substantial harm if the Motion is granted.

Conclusion

For the foregoing reasons, Debtor respectfully requests that this Court deny the Motion.

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Respectfully submitted,

ONECORE

/s/ Craig M. Regens

William H. Hoch, OBA #15788

Craig M. Regens, OBA #22894

Mark A. Craige, OBA #1992

Kaleigh Ewing, OBA #35598

-Of the Firm-

CROWE & DUNLEVY

A Professional Corporation

Braniff Building

324 N. Robinson Ave., Suite 100

Oklahoma City, OK 73102-8273

(405) 235-7700

will.hoch@crowedunlevy.com

craig.regens@crowedunlevy.com

mark.craige@crowedunlevy.com

kaleigh.ewing@crowedunlevy.com

Counsel to Debtor