

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA

IN RE: HOSPITAL FOR SPECIAL	)	Case No. 24-12862
	)	Chapter 11
SURGERY, LLC d/b/a ONECORE HEALTH	)	Judge Janice D. Loyd
	)	
Debtor.	)	

TIMOTHY W. FOX'S MOTION FOR RELIEF  
FROM AUTOMATIC STAY AND NOTICE WITH BRIEF IN SUPPORT 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 A. McGee Avenue, Oklahoma City, OK 73102, no later than 14 days from the date of filing of this Motion. You should also serve a file-stamped copy of your response to the undersigned [and others who are required to be served] and file a certificate of service with the Court. [Note - this is flat fourteen (14) days regardless of the manner of service.]



**MOTION FOR RELIEF FROM AUTOMATIC STAY**

Pursuant to 11 U.S.C. § 362(a), Timothy W. Fox (Fox), files the following Motion for Relief from Automatic Stay with Brief in Support and Notice of Opportunity for Hearing and states as follows:

1. On October 7, 2024, Debtor filed a voluntary Chapter 11 Petition, thereby commencing this matter.
2. Prior to Debtor commencing this bankruptcy case, Timothy W. Fox was a patient at one of Debtor's facilities in Oklahoma City. Timothy W. Fox suffered injuries as a result of the negligence of the Debtor, via a nurse practicing at OneCore Health and other employees.
3. Fox commenced a state court medical negligence lawsuit in Oklahoma County against Debtor and others for his injuries (the "State Court Lawsuit"). The State Court Lawsuit is styled as *Timothy W. Fox, v. Hospital for Specialty Surgery, LLC d/b/a OneCore Health, aka a/or dba One Core Orthopedic and OneCare Holdings, LLC, a domestic company, CJ-2023-3620*.
4. At the time Debtor filed bankruptcy, the *State Court Lawsuit* was pending.
5. By this Motion, and pursuant to 11 U.S.C. § 362 and F. R. Bankr. P. 4001 and Local Rule 4001-1 of the Local Rules, Fox seeks to lift the automatic stay to allow him to proceed in the *State Court Lawsuit* against Debtor for injuries. In particular, Fox requests that the Court modify the automatic stay for the purpose of allowing him to proceed in the *State Court Lawsuit* to establish the negligence of the Debtor and to only recover proceeds from the Debtor's insurance carrier.
6. Pursuant to 11 U.S.C. § 362(d), it is appropriate that the Court terminate the automatic stay and permit Poteat to proceed with the *State Court Lawsuit* to recover any proceeds from any policy of insurance that might cover Debtor.

7. Debtor maintains certain insurance policies which will provide coverage with respect to the medical negligence alleged by Fox. Debtor has scheduled insurance policies [DKT. No. 139]. These policies are property of the Estate per Bankruptcy Code Section 541.

8. If the Court grants stay relief or modification, Fox will proceed against Debtor only to the extent of Debtor's insurance coverage for the recovery of compensatory damages, if any awarded. This is consistent with the most recent Amended Chapter 11 Plan proposed by Debtor and other creditors which are similarly situated to Fox.

9. Nothing contained in this Motion, any order subsequently entered relating to this Motion, any Chapter 11 Plan or related Confirmation Order filed in this case should be construed to diminish Fox's right to establish, by jury trial in state court or otherwise, his claim to the proceeds of any and all applicable liability insurance policies, including primary policies and excess coverage policies, that insure against the losses claimed by Fox.

#### **ARGUMENTS & AUTHORITIES**

11 U.S.C. § 362(d) allows the modification of the automatic stay to allow Fox to proceed with the *State Court Lawsuit* and recover any proceeds from any policy of insurance that might cover Debtor. Fox seeks relief from the automatic stay by showing "cause" as alleged herein 11 U.S.C. § 362(d)(1). "Because "cause" is not further defined in the Bankruptcy Code, relief from stay for cause is a discretionary determination made on a case-by-case basis." *In re Busch*, 294 B.R. 137, 140 (10<sup>th</sup> Cir. 2003). Initially, the burden of showing "cause" to lift the stay lies with the moving party. *Id.* at 141. Once the moving party has met its burden, the burden "shifts to the debtor to demonstrate why the stay should remain in place." *Id.*

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 to cooperating with his insurer in the defense of the litigation, outweighed by the prejudice to the creditor whose ability to prosecute the action and reach the insurance benefits may be determined by the “aging of evidence, loss of witnesses, and crowded court dockets”. *In Re Gruck*, 342 B.R. 717 at Headnote 19.

Showing cause to proceed with the State Court Lawsuit requires a condition of several factors. *Jim's Maintenance & Sons Inc v. Target Corp (In re Jim's Maintenance & Sons Inc.)*, 2010 U.S. Dist. LEXIS 7188 at \*5 & n.2 (W.D. Okla. Jan 28, 2010). These factors include:

- 1) Whether the relief will result in 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 action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 6) Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee, and other interested parties;
- 7) Whether the judgment claim arising from the foreign action is subject to equitable subrogation under Section 510(c);
- 8) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(i);

- 9) The interest of judicial economy and the expeditious and economical determination of litigation for the parties;
- 10) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- 11) The impact of the stay on the parties and the “balance of hurt.”

In the instant case, the prior factors weigh heavily in favor of lifting the automatic stay and allowing Fox to proceed with the *State Court Lawsuit* to recover any proceeds from any policy of insurance that might cover Debtor. First, relief from automatic stay will allow a complete resolution of the issues between Fox and Debtor. Second, allowing Fox to proceed with the *State Court Lawsuit* to recover any proceeds from Debtor’s insurance will not interfere with Debtor’s bankruptcy case. The subject insurance policies are listed assets, thereby providing some amount of insurance to Debtor. Debtor’s plan of reorganization will not be impacted by the lifting of the automatic stay. Third, the *State Court Lawsuit* does not involve the debtor as a fiduciary. Fourth, that *State Court Lawsuit* can best be resolved by the State District Court. The lifting of the stay will allow for all claims against all defendants to be resolved in one proceeding. Fifth, the *State Court Lawsuit* will not prejudice the creditors, creditor’s committee, or other interest parties since Fox will only be seeking recovery of money from Debtor’s insurance carrier if the stay is lifted. Finally, the interest of judicial economy weighs in favor of the Court lifting the stay to the extent of insurance so that all claims against all parties in the *State Court Lawsuit* can be resolved in a single trial.

WHEREFORE, Fox respectfully requests that this Court enter an order modifying the automatic stay to allow him to continue prosecuting the *State Court Lawsuit* to recover from Debtor’s available liability insurance only and for any relief deemed proper by the Court.

/s/Bret D. Davis

Bret D. Davis, OBA #15079

Lamun Mock Cunyningham & Davis, P.C.

5621 North Classen Blvd.

Oklahoma City, OK 73118

Phone: 405-840-5900/Fax 405-842-6132

[bdavis@lamunmock.com](mailto:bdavis@lamunmock.com)

Attorney for Timothy W. Fox

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 18th day of March, 2025, that I electronically filed the foregoing with the Clerk of the Court by using CM/ECF Notice of this filing will be sent by s-mail to all parties by operations of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the notice of Electronic filing. This pleading is also being sent by email to the following attorneys in the State Court lawsuit:

Robert D. Hoisington  
Lauren K. Lindsey  
Isabella M. Piske  
408 N.W. 7th Street  
Oklahoma City, OK 73102  
Rob@HospitalDefense.com  
Lauren@HospitalDefense.com  
Isabella@HospitalDefense.com  
Attorneys for Hospital for Specialty Surgery, LLC

s/Bret D. Davis  
Bret D. Davis, OBA #15079