

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In Re:	)	
	)	CASE NO. 25-52415-SMS
OTB ACQUISITION LLC, <i>et al.</i> ,	)	
	)	CHAPTER 11
Debtor.	)	
<hr/>	)	
HECTOR FRANCISCO VANCINI, JR.,	)	CONTESTED MATTER
INDIVIDUALLY AND AS NEXT FRIEND	)	
OF HECTOR FRANCISCO VANCINI,	)	
SR.; DELILAH VANCINI,	)	
INDIVIDUALLY; BIANCA VANCINI,	)	
INDIVIDUALLY; and JULIETTA	)	
VANZINI, INDIVIDUALLY,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
OTB ACQUISITION, LLC D/B/A ON THE	)	
BORDER MEXICAN GRILL AND	)	
CANTINA; MALL AT LONGVIEW, LLC	)	
D/B/A WPG MALL AT LONGVIEW;	)	
WPG REAL ESTATE ASSOCIATES,	)	
LLC; WPG MANAGEMENT	)	
ASSOCIATES II, LLC; SIMON	)	
PROPERTY GROUP (TEXAS), L.P.;	)	
JANE DOES; AND TREBORIA	)	
LYMYOUS-DEWAYNE WALLACE,	)	
	)	
Defendants.	)	
<hr/>	)	

**NOTICE OF PLEADING, DEADLINE TO OBJECT, AND HEARING ON  
MOTION FOR RELIEF FROM STAY**

**PLEASE TAKE NOTICE** that the above-captioned Plaintiffs have filed a Motion for Relief from Stay and related papers with the Court seeking an order granting relief from the automatic stay so that the Plaintiffs may liquidate their claims against the Debtors and seek to collect against insurance coverage only.

**PLEASE TAKE FURTHER NOTICE** that the Court will hold an initial telephonic hearing for announcements on the Motion for Relief from Stay at the following number: **Toll**



2552415250519000000000006

**Free Number 833-568-8864; Meeting ID 161 179 4270 at 10:00 a.m. on June 18, 2025, in Courtroom 1201**, United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303.

Matters that need to be heard further by the Court may be heard by telephone, by video conference, or in person, either on the date set forth above or on some other day, all as determined by the Court in connection with this initial telephonic hearing. Please review the “Hearing Information” tab on the judge’s webpage, which can be found under the “Dial-in and Virtual Bankruptcy Hearing Information” link at the top of the webpage for this Court, [www.ganb.uscourts.gov](http://www.ganb.uscourts.gov) for more information.

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 pleading 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 at least two business days before the hearing. The address of the Clerk’s Office is Clerk, U. S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive, 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 for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

Dated: May 19, 2025

**KECK LEGAL, LLC**

*/s/ Jonathan Clements*

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LYMYOUS-DEWAYNE WALLACE,	)	
	)	
Respondents.	)	
_____	)	

**MOTION FOR RELIEF FROM STAY**

Hector Francisco Vancini, Jr., Individually and as Next Friend of Hector Vancini, Sr. (the “Deceased”); Delilah Vancini, Individually; Bianca Vancini, Individually; and Julietta Vanzini, Individually (collectively Hector Francisco Vancini, Jr., Delilah Vancini, Bianca Vancini, and Julietta Vanzini hereinafter referred to as the “**Family**”) move for relief from the automatic stay in

order to liquidate their claims against the Debtors and to seek to collect against insurance coverage only, showing the Court as follows:

1. The Debtors filed a petition for relief under Chapter 11 of the Bankruptcy Code on March 4, 2025.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

3. Venue is proper under 28 U.S.C. § 1408 and § 1409. The predicates for the relief sought are 11 U.S.C. § 362(d) and Federal Rule of Bankruptcy Procedure 4001. This matter constitutes a core proceeding pursuant to 28 U.S.C. § 157 (b)(2).

4. The Movants are plaintiffs in a separate, previously pending action in the District Court of Dallas County, Texas, 191st District Court, Cause No. DC-24-06966 (the “**State Court Action**”).

5. As alleged in the State Court Action, the Movants state that on January 17, 2024, Hector Francisco Vancini, Sr., the Deceased, was at On the Border Mexican Grill and Cantina in Longview, Texas, when he and his friend were served alcohol to the point of obvious intoxication. Also present were other restaurant visitors who were also served alcohol despite being visibly intoxicated and behaving aggressively. The intoxicated parties later confronted the Deceased and his friend outside the restaurant, where they struck him, causing him to lose consciousness. Despite the apparent danger and ongoing threats, the restaurant and property owners allegedly failed to intervene or provide adequate security. The Deceased later succumbed to his injuries on February 2, 2024.

6. The Family asserts multiple claims, including dram shop liability against On the Border for overserving alcohol to visibly intoxicated individuals, which allegedly contributed to the altercation and the Deceased’s death. They also claim premises liability and negligent security,

arguing that On the Border failed to take reasonable steps to prevent foreseeable violence. The lawsuit further includes wrongful death and survival claims on behalf of the Family, seeking damages for his suffering, their loss of companionship, and financial losses. Additionally, they allege gross negligence, warranting punitive damages, as the defendants allegedly disregarded known risks that led to the Deceased's fatal injuries.

7. The State Court Action preceded through discovery, during which Movants sought, but did not receive, copies of Respondent's insurance policies. To obtain this critical information, the Movants filed a motion to compel. A hearing on the motion to compel was scheduled for March 5, 2025. However, immediately before the hearing, counsel for Respondents filed a notice of bankruptcy stay. As a result, the state court took no action on the motion, which left the Movants without access to the insurance policies.

8. The Movants have reason to believe that insurance coverage may be available for claims arising from the wrongful death that occurred on January 17, 2024. Without access to the relevant insurance policies, the Movants are unable to evaluate or pursue potential coverage.

9. Accordingly, the Movants seeks relief from the automatic stay to obtain the insurance policies and pursue any available insurance proceeds, without seeking recovery from the bankruptcy estate OR the Movants seek an order modifying the automatic stay to permit them to move forward with the State Court Action through trial, any appeals, and collections efforts against any insurance carriers and to collect against any applicable insurance coverage.

10. As a general rule, the filing of a bankruptcy petition operates to stay litigation involving pre-petition claims against a debtor. *See* 11 U.S.C. § 362(a)(1).

11. The automatic stay can be lifted, so long as the interested party can demonstrate "cause." *See* 11 U.S.C. § 362(d)(1). The term "cause" is not defined in the Bankruptcy Code, but

courts have previously applied an equitable balancing test to determine if “cause” exists to lift the automatic stay in cases where civil litigation against the Debtor was pending pre-petition. *See e.g.*, *In re Rexene Prods. Co*, 141 B.R. 574 (Bankr. D. Del. 1992). Under the equitable balancing test, courts consider three factors:

- a. Whether any great prejudice to either the bankrupt estate or the Debtor will result from continuation of the civil suit;
- b. Whether the hardship to the injured party by maintenance of the stay considerably outweighs the hardship to the Debtor; and
- c. Whether the injured has a probability of prevailing on the merits. *Id.*

12. Hardship will result to the Movants from denying relief, whereas the prejudice to the Debtor’s estate in granting relief will be none. The Family suffered substantial emotional damage due to the negligence of the Debtor and related parties. Continuation of the stay would prevent the family from prosecuting the State Court Action, delay discovery and investigation into time sensitive factual matters, substantially reduce the value of their recovery and potentially cause them to go without recourse for the negligence of the Debtor that resulted in the death of the Deceased.

13. When a party seeks to lift an automatic stay, the required showing for the movant’s probability of success is “very slight.” *In re Rexene Products*, 141 B.R. at 578; *see also In re Continental Airlines, Inc.*, 152 B.R. 420, 426 (D. Del. 1993) (“Even a slight probability on the merits may be sufficient to support lifting an automatic stay in an appropriate case.”). It “merely requires a showing that [the movant’s] claim is not frivolous.” *Levitz Furniture Inc. v. T. Rowe Price Recovery Fund L.P. (In re Levitz)*, 267 B.R. 516, 523 (Bankr. D. Del. 2000).

14. As detailed in the Complaint that initiated the State Court Action, the Family’s probability of success in pursuing their claim on the merits is much greater than “very slight.”

Debtor filed an Answer to the Family's Complaint in June 2024. The family's probability of success passes muster under the equitable balancing test.

15. When weighing the above factors, it is clear that the Court should lift the automatic stay and allow the Family to continue to prosecute the State Court Action for her daughter's injuries and to pursue collections against applicable insurance coverage and non-debtor defendants.

WHEREFORE, the Movant respectfully prays that the Court enter an order substantially in the form of the proposed order attached hereto as **Exhibit A**, which would (a) modify the automatic stay of 11 U.S.C. § 362 to allow the Family to resume litigation of their lawsuit against the Debtor and related parties that is currently pending; (b) waive the 14-day stay under Bankruptcy Rule 4001(a)(3); and (c) for such other and further relief the Court deems just and proper.

Dated: May 19, 2025

**KECK LEGAL, LLC**

*/s/ Jonathan Clements*

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**Exhibit A**

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D/B/A WPG MALL AT LONGVIEW; )  
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JANE DOES; AND TREBORIA )  
LYMYOUS-DEWAYNE WALLACE, )  
Respondents. )

**ORDER GRANTING MOTION FOR RELIEF FROM STAY**

This matter is before the Court on the Motion for Relief from Stay [Doc. \_\_\_\_] (the “**Motion**”) filed by the family of Hector Vancini Sr. (the “**Movant**”). Upon consideration of the Motion and all other matters of record; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor’s estate, creditors, and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. The automatic stay under 11 U.S.C. § 362 is MODIFIED to the extent necessary such that the Movant may liquidate any and all claims asserted by the Movant against the Debtor in the case currently pending in the District Court of Dallas County, Texas, 191st District Court, Cause No. DC-24-06966 (the “**State Court Action**”) and may pursue any and all claims against any non-debtor parties, including those asserted in the State Court Action; provided however the Movant may not take collection

actions against the Debtor or its estate directly, except for the filing of a proof of claim, absent further order of the Court, but may attempt to collect against any applicable insurance policies.

3. Notwithstanding Fed. R. Bankr. P. 4001(a)(3) or anything else to the contrary, this Order is enforceable immediately upon entry.
4. The Court retains jurisdiction over all matters related to the interpretation and enforcement of this Order.

**### END OF ORDER ###**

**Prepared and presented by:**

**KECK LEGAL, LLC**

*/s/ Jonathan Clements*

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**Distribution List:**

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2025, I served the Motion for Relief From Stay through the Court's e- filing system, which generates an electronic service copy of same to all parties registered to receive notices thereby.

Dated: May 19, 2025

**KECK LEGAL, LLC**

/s/ Jonathan Clements

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