

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 June 17, 2025

ROUNTREE LEITMAN KLEIN & GEER LLC

By: /s/ William D. Matthews
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Counsel for the Movant

**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
Debtors.)	
)	
<hr/>)	
EMILY IZAGUIRRE,)	CONTESTED MATTER
)	
Movant,)	
)	
v.)	
)	
OTB ACQUISITION, LLC D/B/A ON THE)	
BORDER MEXICAN GRILL AND)	
CANTINA, <i>et al.</i>,)	
)	
Respondents.)	
)	

MOTION FOR RELIEF FROM STAY

Emily Izaguirre (“**Movant**”) moves for relief from the automatic stay in order to liquidate her 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. On August 3, 2024, Movant suffered a slip and fall injury – with brain injury leading to stroke – in the bathroom at the On The Border location owned or operated by Debtors at 7695 N Academy Blvd, Colorado Springs, CO 80920. Movant alleges that her injuries were proximately caused by the negligence of the Debtors and others. Movant has reason to believe that insurance coverage may be available for claims arising from the injury that occurred on August 3, 2024. Without access to the relevant insurance policies, Movant is unable to evaluate or pursue potential coverage.

5. Accordingly, Movant 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* Movant seeks an order modifying the automatic stay to permit her to move forward to pursue an action to recover for her injuries through trial, any appeals, and collections efforts against any insurance carriers and to collect against any applicable insurance coverage.

6. 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).

7. The automatic stay can be lifted, so long as the interested party can demonstrate “cause.” *See* 11 U.S.C. § 362(d)(1). When considering whether to grant this relief, “[i]t is intuitively obvious that determining whether cause exists to modify the stay to permit a lawsuit to proceed in another court requires a balancing of the costs and benefits of maintaining the stay.” *In re Comdisco, Inc.*, 271 B.R. 273, 276 (Bankr. N.D. Ill. 2002). But whether there is “cause” to modify the stay “has no clear definition and is determined on a case-by-case basis.” *Int’l Bus. Machines v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731, 735 (7th Cir. 1991) (quoting *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990)). *See also In re Andersen 2000, Inc.*, No. 04-14155-WHD, 2006

Bankr. LEXIS 1133, at *8-9 (Bankr. N.D. Ga. Apr. 24, 2006) (wherein Judge Drake quoted from the *Fernstrom* case and stated that “debtors-defendants suffer little prejudice when they are sued by plaintiffs who seek nothing more than declarations of liability that can serve as a predicate for a recovery against insurers, sureties, or guarantors.”).

8. In the *Andersen 2000, Inc.* case, Judge Drake further stated: “Here, the Movants have asserted that they would only seek to establish liability against the Debtor to the extent of existing insurance coverage. Accordingly, the assets of the Debtor's bankruptcy estate would not be subject to payment for any judgment obtained by the Movants... The Debtor has also pointed to no reason why permitting the suit to go forward would interfere with the Debtor's ability to operate its business or to complete its reorganization. Presumably, the Debtor's officers or employees may be called upon to provide discovery or testimony during the course of the litigation, but this is not a substantial burden on the Debtor.” *In re Andersen 2000, Inc.*, No. 04-14155-WHD, 2006 Bankr. LEXIS 1133, at *8-9 (Bankr. N.D. Ga. Apr. 24, 2006)

9. Hardship will result to the Movant from denying relief, whereas the prejudice to the Debtors' estate in granting relief will be none. Movant suffered substantial injuries due to the negligence of the Debtor and related parties. Continuation of the stay would prevent Movant from liquidating her claim for damages, delay discovery and investigation into time sensitive factual matters, substantially reduce the value of her recovery and potentially cause Movant to go without recourse for the negligence of the Debtors that resulted in Movant's injuries.

10. 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).

11. Movant's probability of success in pursuing her claim on the merits is much greater than "very slight."

12. When weighing the above factors, it is clear that the Court should lift the automatic stay and allow Movant to prosecute an action for her injuries and to pursue collections against applicable insurance coverage and non-debtor defendants.

13. WHEREFORE, the Movant respectfully prays that the Court enter an order modifying the automatic stay of 11 U.S.C. § 362 to allow Movant to commence and pursue litigation of a lawsuit against the Debtors and related parties; (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: June 17, 2025

ROUNTREE LEITMAN KLEIN & GEER LLC

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 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: June 17, 2025

ROUNTREE LEITMAN KLEIN & GEER LLC

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