Docket #0594 Date Filed: 7/1/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SC HEALTHCARE HOLDING, LLC, *et al.,*	Case No. 24-10443 (TMH)
Debtors.	(Jointly Administered)
	Hearing Date: July 30, 2024 at 10 a.m. (ET) **Objection Deadline: July 1, 2024 at 4 p.m. (ET)**

MOTION OF MARIALYCE DRAVES
FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO SECTION 362(D) OF THE BANKRUPTCY CODE

Marialyce Draves, ("Ms. Draves" or "Movant") by and through her undersigned counsel, hereby moves this Court (the "Motion"), pursuant to Section 362(d) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Federal Rule of Bankruptcy Procedure 4001, and Local Rule 4001-1 for an order lifting the automatic stay imposed by Section 362(a) of the Bankruptcy Code in order to permit Ms. Draves to commence and prosecute a personal injury lawsuit against debtors Petersen Health Business, LLC d/b/a Sandwich Rehab & Home Health Care (together with the above-captioned co-debtors, the "Debtors"), and others parties responsible for her injuries and to proceed to collect any award against the Debtors and the Debtors' applicable insurance policies. In support of this Motion, Ms. Draves respectfully represents as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this judicial district is proper under 28 U.S.C. §1408 and 1409.

2. This is a core proceeding within the meaning of 28 U.S.C. § 157(b).

3. The statutory predicates for the relief requested herein are 11 U.S.C. §§ 362(d)(1) and 362(d)(2) and Bankruptcy Rule 4001.

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FACTS

4. On March 20, 2024, (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors' cases are being jointly administered.

5. Prior to the Petition Date, Ms. Draves was a resident at the Debtors' skilled nursing care facility known as Sandwich Rehab & Home Health Care ("Sandwich").

6. At the time of her admission, and during her period of residency at Sandwich, Ms. Draves suffered from dementia which prevented her from living independently. Ms. Draves was otherwise in good health.

7. On or about November 21, 2023, Ms. Draves was being transferred from her shower to the bed using a mechanical lift by employees of Sandwich. Those employees negligently and carelessly allowed the lift to tip over, causing Ms. Draves to fall and suffer a hip fracture. Ms. Draves spent nearly 20 hours in agonizing pain before the Sandwich employees finally requested Ms. Draves transfer to the emergency room.

8. As a result of the fall and the Debtors negligence, on or about November 27, 2023, Ms. Draves underwent hip pinning surgery to repair her fracture.

9. Following the fall, the Illinois Department of Public Health (the "ILDPH") conducted an inquiry into the fall (the "ILDPH Inquiry") and concluded that Sandwich had neglected to ensure that Ms. Draves was assessed, treated, and timely provided pain management after she was dropped and sustained a broken right hip. The ILDPH also found that Sandwich neglected to timely notify the attending physician. The report found that these failures resulted in Ms. Draves being placed on bedrest without necessary care and effective pain management services from the time of the fall at 5:30 AM on November 21, 2023, until she was finally transported to the hospital on November 22, 2023, at or around 1:25 AM.

10. On or about December 29, 2023, Ms. Draves was being transported by Sandwich to a medical appointment necessitated by her November 21, 2023, fall and resultant injuries when the vehicle she was in was involved in an automobile accident.

11. Immediately following the crash, Ms. Draves was taken via ambulance to the ER at Adventist Health in Bolingbrook, Illinois, where CT scans showed that Ms. Draves had sustained a compression fracture of the L4 and L2 vertebra and a closed fracture of the base of the fifth 6 metatarsal bone of the right foot. The right foot fracture was noted to have progressed to a healing stage, indicating that it was sustained prior to the accident. 30. Based on the progression of healing of the fractured fifth metatarsal bone of Ms. Draves' right foot, the original fracture was more likely than not to have been sustained during the fall sustained on November 21, 2023. 31. Additionally, Ms. Draves was discovered to have an open pressure wound on her right heel measuring approximately 6 cm by 4 cm by 0.2 cm. An assessment of the wound indicated the presence of painful, necrotic tissue which required sharp debridement.

12. As a result of Ms. Draves injuries and the Debtors' negligence, on May 20, 2024, Ms. Draves, through counsel, filed her poof of claim the ("Proof of Claim") against debtor Petersen Health Business, LLC. Ms. Draves files the present motion in order to liquidate her claims by commencing and prosecuting a lawsuit in the Circuit Court of 12th Judicial Circuit, Will County, Illinois, Law Division against the Debtors and other responsible parties for Ms. Draves injuries (the "State Court Action").

13. The filing, prosecution and liquidation of Ms. Draves' claims in the State Court Action has been delayed as a consequence of the Debtors' chapter 11 filings and the automatic stay provisions set forth in 11 U.S.C. § 362(a).

14. Upon information and belief, the Debtors are covered by insurance policies applicable to Ms. Draves' claims.

RELIEF REQUESTED

15. Through this Motion, Ms. Draves seeks the entry of an order pursuant to § 362(d) of the Bankruptcy Code and 4001 of the Federal Rules of Bankruptcy Procedure, granting relief from the automatic stay so that she may file and prosecute her claims to judgment in the State Court Action and satisfy any award or other resolution she may obtain against the Debtors, the Debtors' applicable insurance policies and any other responsible individual or entity

BASIS FOR RELIEF REQUESTED

16. Ms. Draves is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

17. The Bankruptcy Code provides:

> On request of a party in interest and after notice and a hearing, the Court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay….

11 U.S.C. §362(d)(1).

18. The term "cause" is not defined in the Code, but rather must be determined on a case-by-case basis. *In re Rexene Prods. Co.,* 141 B.R. 574, 576 (Bankr. D. Del. 1992) (internal citations and quotations omitted). "Cause is a flexible concept and courts often…examin[e] the totality of the circumstances to determine whether sufficient cause exists to lift the stay." *In re SCO Group, Inc.,* 395 B.R. 852, 856 (Bankr. D. Del. 2007).

19. At a hearing for relief from automatic stay under Section 362(d), the party opposing stay relief bears the burden of proof on all issues with the exception of the debtors' equity in property. *See In re Domestic Fuel Corp.,* 70 B.R. 455, 462-463 (Bankr. S.D.N.Y. 1987); 11 U.S.C.

§362(g). If a creditor seeking relief from the automatic say makes a *prima facie* case of "cause" for lifting the stay, the burden of going forward shifts to the trustee pursuant to Bankruptcy Code Section 362(g). *See In re 234-6 West 22nd Street Corp*., 214 B.R. 751, 756 (Bankr. S.D.N.Y. 1997).

20. Courts often follow the logic of the intent behind §362(d) which is that it is most often appropriate to allow litigation to proceed in a non-bankruptcy forum, if there is no prejudice to the estate, "in order to leave the parties to their chosen forum and to relieve the bankruptcy court from duties that may be handled elsewhere." *In re Tribune Co.,* 418 B.R. 116, 126 (Bankr. D. Del. 2009) (quoting legislative history of §362(d)) (internal citations omitted).

21. Courts in this District rely upon a three-pronged balancing test in determining whether "cause" exists for granting relief from the automatic stay to continue litigation:

(1) Whether prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit;

(2) Whether the hardship to the non-bankrupt party by maintenance of the stay outweighs the debtor's hardship; and

(3) The creditor's probability of success on the merits.

See In re Tribune Co., 418 B.R. at 126.

19. Here, the facts weigh in Ms. Draves' favor on each of these three prongs. First, the Debtors will not suffer prejudice should the stay be lifted because Ms. Draves' claims must eventually be liquidated before she can recover from the bankruptcy estate. Further, because her claims involve personal injury, they must be liquidated in a forum outside the Bankruptcy Court. 11 U.S.C. §157(b)(5) ("personal injury tort…claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claims arose…"). Furthermore, Ms. Draves intends to demand and is entitled to a jury trial in the State Court Action and a jury trial is not available in this Court.

22. Upon information and belief, the Debtors' liability in this matter is covered by insurance. As such, any recovery by Ms. Draves will not greatly impact the Debtors' estates. *See In re 15375 Memorial Corp.,* 382 B.R. 652, 687 (Bankr. D. Del. 2008), *rev'd on other grounds,* 400 B.R. 420 (D. Del. 2009) ("when a payment by an insurer cannot inure to the debtor's pecuniary interest, then that payment should neither enhance nor decrease the bankruptcy estate" (quoting *In re Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993)); *see also In re Allied Digital Tech Corp.,* 306 B.R. 505, 510 (Bankr. D. Del 2004) (ownership by a bankruptcy estate is not necessarily determinative of the ownership of the proceeds of that policy. "[W]hen the debtor has no legally cognizable claim to the insurance proceeds, those proceeds are not property of the estate." *In re Edgeworth,* 993 F.2d 51, 55-56 (5th Cir. 1993).

23. To the extent the Debtors claim prejudice to the estate by way of any applicable self-insured retention or deductible, they are protected under applicable Illinois law. Pursuant to Section 215 ILCS 5/388 of Illinois Code, no policy of insurance against liability or indemnity for loss or damage to any person shall be issued or delivered by any company unless it contains in substance a provision that the insolvency or bankruptcy of the insured shall not release the company from the payment of damages for injuries sustained or death resulting therefrom, or loss occasioned during the term of such policy. S.H.A. 215 ILCS 5/388. The Bankruptcy Court for the Northern District of Illinois has interpreted 215 ILCS 5/388 to require insurers to pay damages notwithstanding an insureds inability to satisfy any applicable self-insured retention. *See In re: Allied Products Corporation,* 288 B.R. 533 at 537, (Bankr. N.D. of Ill. 2006). ("insurance policy provisions requiring insured's actual payment of self-insured retention (SIR) as condition precedent to insurer's obligation to pay damages in excess of SIR violate public policy of statute requiring

liability and indemnity policies to contain provision that insolvency or bankruptcy of insured shall not release insurer from payment of damages for injuries and, are therefore, invalid.").

24. Conversely, Ms. Draves will face substantial hardship if the stay is not lifted. Mr. Draves suffered severe pain and injury as a result of the Debtors' negligence. Ms. Draves will be prejudiced by the continued delay resulting from the automatic stay due to the possibility of witnesses moving to unknown locations, witnesses who may pass away and the memory of events becoming less clear. Further, Ms. Draves resides in State of Illinois, and the events which form the basis of her claims occurred exclusively in Illinois. If Ms. Draves is forced to litigate her claims in Delaware, she would incur the increased expense of bringing attorneys, witnesses, and physical evidence to Delaware. "[O]ne of the primary purposes in granting relief from the stay to permit claim liquidation is to conserve economic judicial resources." *In re Peterson,* 116 B.R. 247, 250 (D. Colo. 1990). Here, judicial economy would be served by lifting the automatic stay and allowing Ms. Draves' claims to be liquidated in the forum where they are presently postured to be adjudicated quickly.

25. Neither the Debtors nor their estates will suffer any hardship if Ms. Draves claims in the State Court Action are allowed to proceed. Her claims are personal injury claims which do not present any factual or legal issues which will impact or distract the Debtors from their liquidation or reorganization process. Indeed, under applicable Illinois law, the Debtors' insurer(s) are required to pay any damages awarded in the State Court Action, irrespective of the Debtors' non-payment of any applicable self-insured retention. *In re Allied Products Corporation,* 288 B.R at 537.

26. Lastly, the likelihood of success on the merits prong is satisfied by "even a slight probability of success on the merits may be sufficient to support lifting an automatic stay." *In re*

Continental Airlines, Inc., 152 B.R. 420, 426 (D. Del. 1993). This prong also weighs in Ms. Draves favor. The facts regarding the Debtors' negligence set forth herein and in the ILDPH Inquiry speak for themselves. No defenses, much less strong defenses, appear to exist here. "Only strong defenses to state court proceedings can prevent a bankruptcy court from granting relief from the stay in cases where…the decision-making process should be relegated to bodies other than [the bankruptcy] court." *In re Fonseca v. Philadelphia Housing Authority,* 110 B.R. 191, 196 (Bankr. E.D. Pa. 1990).

27. When weighing the above factors, the Court should lift the automatic stay, in order to permit Ms. Draves to commence and prosecute her claims against the Debtors and any other responsible individual or entity to judgment in the State Court Action and satisfy any award or other resolution they may obtain against the Debtors, the Debtors' applicable insurance policies and any other individuals or entities that are responsible for the injuries sustained.

WHEREFORE, Ms. Draves respectfully requests that the Court enter an Order lifting the automatic stay, substantially in the form attached hereto, and for such further additional relief as may be just and proper under the circumstances.

Dated: July 1, 2024

/*s/ Michael J. Joyce*
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SC HEALTHCARE HOLDING, LLC, *et al.*,	Case No. 24-10443 (TMH)
Debtors.	(Jointly Administered)

ORDER GRANTING MOTION OF MARIALYCE DRAVES FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO SECTION 362(D) OF THE BANKRUPTCY CODE

Upon consideration of the Motion of Marialyce Draves, ("Movant") for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code (the "Motion"), it is hereby ORDERED that:

1. The Motion is Granted.

2. Movant is granted relief from the Automatic Stay for cause shown and is permitted to commence and prosecute the State Court Action[1] against the Debtors and any other individuals or entities, including any subsequent appeals, and may enforce any judgment, including any alternative dispute resolution award or settlement obtained in the State Court Action against the Debtors and/or the Debtors' applicable insurance.

3. This Order shall become effective immediately upon entry by the Court and is not subject to the fourteen-day stay provided in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

[1] Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

4. This Court shall retain jurisdiction over any and all issues arising from or related to the implementation and interpretation of this Order.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SC HEALTHCARE HOLDING, LLC*, et al.,*	Case No. 24-10443 (TMH)
Debtors.	(Jointly Administered)
	Hearing Date: July 30, 2024 at 10 a.m. (ET) **Objection Deadline: July 15, 2024 at 4 p.m. (ET)**

NOTICE OF MOTION OF MARIALYCE DRAVES FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO SECTION 362(D) OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that on July 1, 2024, Marialyce Draves, ("Movant") filed the *Motion of Marialyce Draves for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code* (the "Motion") with the United States Bankruptcy Court for the District of Delaware.

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **July 15, 2024 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon Movant's undersigned counsel so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **July 30, 2024 at 10 a.m. (ET)** before the Honorable Thomas M. Horan in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, courtroom 7, Wilmington, Delaware 19801, if an objection is filed.

The hearing date specified above may be a preliminary hearing or may be consolidated with the final hearing, as determined by the Court.

The attorneys for the parties shall confer with respect to the issues raised by the Motion in advance for the purpose of determining whether a consent judgment may be entered and/or for the purpose of stipulating to relevant facts such as value of the property, and the extent and validity of any security interest.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OF A HEARING.

Dated: July 1, 2024
Wilmington, Delaware

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Counsel to Marialyce Draves

CERTIFICATE OF SERVICE

I, Michael J. Joyce, hereby certify that on July 1, 2024, I caused to be served the foregoing *Motion of Marialyce Draves for Relief from the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code* via CM/ECF upon those persons or entities registered to receive such notice in these cases, and via First Class Mail on the following:

Dated: July 1, 2024

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Michael J. Joyce

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