

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SC HEALTHCARE HOLDING, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 24-10443 (TMH)

(Jointly Administered)

Hearing Date: October 29, 2024 at 10 a.m. (ET)

Objection Deadline: October 4, 2024 at 4 p.m. (ET)

**MOTION OF JOHN GOODALL,
INDEPENDENT EXECUTOR
OF THE ESTATE OF MARCEL WILHELM,
FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO SECTION 362(D) OF THE BANKRUPTCY CODE**

John Goodall, in his capacity as Independent Executor of the Estate of Marcel Wilhelm, (“Mr. Goodall” or “Movant”) by and through his 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 Mr. Goodall to prosecute a Nursing Home Care Act survival claim and wrongful death lawsuit against debtor Swansea HCO, LLC d/b/a Swansea Rehabilitation & Health Care Center (“Swansea” or, together with the above-captioned co-debtors, the “Debtors”), and to proceed to collect any award against the Debtors’ applicable insurance policies. In support of this Motion, Mr. Goodall 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.

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, during the period of April 2, 2021, to and including June 10, 2021, Marcel Wilhelm (“Mrs. Wilhelm”) was a resident of Swansea.

6. At the time of his admission on April 2, 2021, and during his period of residency at Swansea, Mr. Wilhelm was identified as an individual that required assistance with activities of daily living, including assistance while using his wheelchair to ensure he received proper care and treatment to prevent the development of skin breakdown and pressure ulcers.

7. On or about April 2, 2021, Mr. Wilhelm was examined by an agent and/or employee of Swansea. That examination found that Mr. Wilhelm’s skin was intact with no indication that he had skin breakdown or pressure ulcers.

8. On or about April 13, 2021, Swansea, through its agents/and or employees preformed a Braden Scale for Predicting Pressure Ulcer Risk on Mr. Wilhelm and determined he was at a high risk for the development of pressure ulcers.

9. On or about June 9, 2021, Swansea, through its agents/and or employees completed a Dietary Services Communication form that indicated Mr. Wilhelm had unstageable pressure wounds to his bi-lateral heels.

10. On or about June 10, 2021. Mr. Wilhelm was transferred to Memorial Hospital Belleville where he was diagnosed with large necrotic gangrenous dry eschar involving the entirety of the bi-lateral calcaneus.

11. As a result of the pressure ulcers, gangrene and osteomyelitis on his heels that Mr. Wilhelm developed while a resident of Swansea, Mr. Wilhelm underwent an above the knee amputation of both of his legs.

12. The injuries suffered by Mr. Wilhelm while a resident of Swansea, detailed herein ultimately led to his death on June 15, 2023.

13. As a result of Mr. Wilhelm's wrongful death and the Debtors' negligence, Mr. Goodall commenced a lawsuit in the Circuit Court of the 20th Judicial District, St. Clair County, Illinois against Swansea (the "State Court Action").

14. The filing, prosecution and liquidation of Mr. Wilhelm's claims in the State Court Action have 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).

15. Upon information and belief, the Debtors are covered by insurance policies applicable to Goodall's claims.

RELIEF REQUESTED

16. Through this Motion, Mr. Goodall 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 he may prosecute his claims to judgment in the State Court Action and satisfy any award or other resolution he may obtain against the Debtors' applicable insurance policies and any other responsible individual or entity

BASIS FOR RELIEF REQUESTED

17. Mr. Goodall is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

18. 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).

19. 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).

20. 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 stay 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).

21. 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).

22. 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.

23. Here, the facts weigh in Mr. Goodall's favor on each of these three prongs. First, the Debtors will not suffer prejudice should the stay be lifted because Mr. Goodall's claims must eventually be liquidated before he can recover from the bankruptcy estate. Further, because his 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, Mr. Goodall has demanded and is entitled to a jury trial in the State Court Action and a jury trial is not available in this Court.

24. Upon information and belief, the Debtors' liability in this matter is covered by insurance. Indeed, upon information and belief, prior to the Petition Date, the Debtors' insurer was paying defense fees and costs in the State Court Action. As such, any recovery by Mr. Goodall 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).

25. 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 insured's 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.”).

26. Conversely, Mr. Goodall will face substantial hardship if the stay is not lifted. Mr. Wilhelm suffered extreme pain, loss of a normal life, medical expenses and ultimately wrongful death as a result of the Debtors' negligence. Mr. Goodall 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, Mr. Goodall resides in State of Illinois, and the events which form the basis of his claims occurred exclusively in Illinois. If Mr. Goodall is forced to litigate his claims in Delaware, he 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 Mr. Goodall’s claims to be liquidated in the forum where they are presently postured to be adjudicated quickly.

27. Neither the Debtors nor their estates will suffer any hardship if Mr. Goodall’s claims in the State Court Action are allowed to proceed. His claims are personal injury/wrongful death 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.

28. 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 Mr. Goodall’s favor. The facts regarding the Debtors’ negligence set forth in the State Court Action 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).

29. When weighing the above factors, the Court should lift the automatic stay, in order to permit Mr. Goodall to prosecute his 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, Mr. Goodall 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: September 20, 2024

/s/ Michael J. Joyce

Michael J. Joyce (No. 4563)

JOYCE, LLC

1225 King Street

Suite 800

Wilmington, DE 19801

(302)-388-1944

mjoyce@mjlawoffices.com

*Counsel to John Goodall, in his capacity as
Independent Executor of the Estate of Marcel
Wilhelm*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SC HEALTHCARE HOLDING, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 24-10443 (TMH)

(Jointly Administered)

**ORDER GRANTING MOTION OF JOHN GOODALL, INDEPENDENT EXECUTOR
OF THE ESTATE OF MARCEL WILHELM, FOR RELIEF FROM THE AUTOMATIC
STAY PURSUANT TO SECTION 362(D) OF THE BANKRUPTCY CODE**

Upon consideration of the Motion of John Goodall, Independent Executor of the Estate of Marcel Wilhelm (“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 proceed with and prosecute the State Court Action¹ 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’ 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:

SC HEALTHCARE HOLDING, LLC, *et al.*,

Debtors.

Chapter 11

Case No. 24-10443 (TMH)

(Jointly Administered)

Hearing Date: October 29, 2024 at 10 a.m. (ET)

Objection Deadline: October 4, 2024 at 4 p.m. (ET)

**NOTICE OF MOTION OF JOHN GOODALL,
INDEPENDENT EXECUTOR
OF THE ESTATE OF MARCEL WILHELM,
FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO SECTION 362(D) OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that on September 20, 2024, John Goodall, in his capacity as independent executor of the estate of Marcel Wilhelm (“Movant”), filed the *Motion of John Goodall, Independent Administrator of the Estate of Marcel Wilhelm 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 **October 4, 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 **October 29, 2024 at 4:00 p.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: September 20, 2024
Wilmington, Delaware

/s/ Michael J. Joyce
Michael J. Joyce (No. 4563)
JOYCE, LLC
1225 King Street, Suite 800
Wilmington, DE 19801
(302)-388-1944
mjoyce@mjlawoffices.com

*Counsel to John Goodall, in his capacity as
independent executor of the estate of Marcel
Wilhelm*

CERTIFICATE OF SERVICE

I, Michael J. Joyce, hereby certify that on September 20, 2024, I caused to be served the foregoing *Motion of John Goodall, Independent Administrator of the Estate of Marcel Wilhelm for Relief from the Automatic Stay Pursuant to Section 362(d)* 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: September 20, 2024

Michael J. Joyce

Michael J. Joyce

Greenberg Traurig, LLP
Anthony W. Clark
Dennis A. Meloro
222 Delaware Avenue
Suite 1600
Wilmington, DE 19801

Young Conaway Stargatt & Taylor, LLP
Andrew L. Magaziner
Kenneth J. Enos
Shella Borovinskaya
Carol E. Cox
1000 North King Street
Rodney Square
Wilmington, DE 19801

Office of the United States Trustee Delaware
Linda Richenderfer
844 King St Ste 2207
Lockbox 35
Wilmington, DE 19801