

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	Chapter 11
)	
TEHUM CARE SERVICES, INC., ¹)	Case No. 23-90086 (CML)
)	
Debtor.)	
)	

**DEBTOR’S OBJECTION TO ANTOINETTE
WINDHURST’S MOTION FOR RELIEF FROM THE AUTOMATIC STAY
[Relates to Docket No. 1573]**

Tehum Care Services, Inc., the above-captioned debtor and debtor in possession (the “Debtor”), for its objection (the “Objection”) to the *Motion for Relief from the Automatic Stay* [Docket No. 1573] (the “Motion”) filed by Antoinette Windhurst (the “Movant”), respectfully represents as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3. The Debtor provided correctional healthcare services across the United States.² In May 2022, the Debtor effectuated a divisional merger pursuant to the Texas Business

¹ The last four digits of the Debtor’s federal tax identification number is 8853. The Debtor’s service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.

² In further support of this Objection, the Debtor relies on the *Declaration of Russell A. Perry in Support of Debtor’s Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority*



Organizations Code in which (among other things) assets and liabilities were allocated between CHS TX, Inc. and the Debtor. Through this chapter 11 process, the Debtor aims to maximize the value of its estate and propose a chapter 11 plan that, to the best of the Debtor's ability, provides meaningful recoveries for creditors and other stakeholders.

4. On February 13, 2023 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On June 30, 2023, certain parties in interest requested the appointment of a chapter 11 trustee [Docket No. 731], which was denied [Docket No. 932]. No request for the appointment of an examiner has been made in this chapter 11 case. On March 2, 2023, the United States Trustee for the Southern District of Texas appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code [Docket No. 77], as amended on March 6, 2023 [Docket No. 145]. On November 20, 2023, the U.S. Trustee appointed a second committee, the official tort claimants' committee [Docket No. 1127].

Responses to Allegations

5. The Debtor does not believe it is required to admit or deny the assertions contained in the first paragraph of the Motion. To the extent the Debtor is required to admit or deny such assertions, the Debtor denies that the Movant is entitled to any of the relief requested in the Motion.

6. The Debtor admits that 28 U.S.C. § 157(b)(5) provides that personal injury tort and wrongful death claims shall be tried in district court. The Debtor denies that cause exists to

Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief, filed on March 15, 2023 [Docket No. 186].

grant relief from the automatic stay to allow claims to proceed at this stage in the Debtor's chapter 11 proceedings, as alleged in the first full paragraph on page 2 of the Motion.

7. Upon information and belief, the Debtor generally admits the assertions contained in the first four paragraphs under the "Background Facts" section of the Motion.

8. The Debtor admits that in May 2022 it effectuated a divisional merger, as alleged in the fifth paragraph under the "Background Facts" section of the Motion. The Debtor denies that any transfer was made in relation to the divisional merger.

9. The Debtor denies the assertions contained in the sixth paragraph under the "Background Facts" section of the Motion.

10. The Debtor admits the assertions contained in the seventh paragraph under the "Background Facts" section of the Motion.

11. The Debtor does not have sufficient information to admit or deny the assertions contained in the last paragraph under the "Background Facts" section of the Motion.

12. The Debtor generally admits the assertions contained in the first three paragraphs under the "Cause Exists to Grant Relief from the Automatic Stay" section of the Motion.

13. The Debtor denies the assertions contained in the fourth paragraph under the "Cause Exists to Grant Relief from the Automatic Stay" section of the Motion.

14. The Debtor does not have sufficient information to admit or deny the assertions contained in the fifth paragraph under the "Cause Exists to Grant Relief from the Automatic Stay" section of the Motion, except that the Debtor denies that keeping the stay in place will unfairly delay the Movant's liquidation of her claims.

15. The Debtor denies the assertions contained in the sixth paragraph under the "Cause Exists to Grant Relief from the Automatic Stay" section of the Motion.

16. The Debtor denies the assertions contained in the seventh paragraph under the “Cause Exists to Grant Relief from the Automatic Stay” section of the Motion.

17. The Debtor admits that it is not a currently operating entity, and denies the remaining assertions contained in the eighth paragraph under the “Cause Exists to Grant Relief from the Automatic Stay” section of the Motion.

18. The Debtor denies the assertions contained in the ninth paragraph under the “Cause Exists to Grant Relief from the Automatic Stay” section of the Motion.

19. The Debtor denies the assertions contained in the tenth paragraph under the “Cause Exists to Grant Relief from the Automatic Stay” section of the Motion.

20. The Debtor does not believe it is required to admit or deny the assertions contained in the prayer to the Motion. To the extent the Debtor is required to admit or deny such assertions, the Debtor denies that the Movant is entitled to any of the relief requested in the Motion.

Objection

21. The Debtor incorporates by reference the statements contained above.

22. Through her Motion, the Movant requests special treatment from this Court, claiming that it is “unfair” for her litigation to remain stayed. The Movant fails to explain why her litigation should proceed, and she should be treated differently, when all other litigation against the Debtor (including other litigation in Arizona) remains stayed.

23. The injunction contained in section 362 of the Bankruptcy Code is self-executing, *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348, 355 (5th Cir. 2008), and constitutes a fundamental debtor protection that, together with other provisions of the Bankruptcy Code, provides a debtor with a “breathing spell” that is essential to a successful chapter 11 process.

Halo Wireless, Inc. v. Alenco Commc'ns, Inc. (In re Halo Wireless, Inc.), 684 F.3d 581, 586 (5th Cir. 2012) (internal quotations omitted); *S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1146 (5th Cir. 1987); see also *Midlantic Nat'l Bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 503 (1986) (“The automatic stay provision of the Bankruptcy Code, § 362(a), has been described as one of the fundamental debtor protections provided by the bankruptcy laws.” (citation and internal quotation marks omitted)). See *Commonwealth Oil Refining Co. v. EPA (In re Commonwealth Oil Refining Co.)*, 805 F.2d 1175, 1182 (5th Cir. 1986) (“The purpose of the automatic stay is to give the debtor a ‘breathing spell’ from his creditors, and also, to protect creditors by preventing a race for the debtor’s assets.” (citation omitted)).

24. Although the proceeds of liability insurance policies are typically not property of the estate, in the Fifth Circuit the proceeds are nonetheless property of the estate where such proceeds will be insufficient to cover all claims that have been asserted. See *Martinez v. OGA Charters, L.L.C. (In re OGA Charters, L.L.C.)*, 901 F.3d 599, 604 (5th Cir. 2018) (“We now make official what our cases have long contemplated: In the ‘limited circumstances,’ as here, where a siege of tort claimants threaten the debtor’s estate over and above the policy limits, we classify the proceeds as property of the estate. Here, over \$400 million in related claims threaten the debtor’s estate over and above the \$5 million policy limit, giving rise to an equitable interest of the debtor in having the proceeds applied to satisfy as much of those claims as possible.” (citations omitted)).

25. The insurance policies relating to this claim are (a) Lone Star Alliance #4-100167 (the “LSA Insurance Policy”) and (b) Coverys #5-10229 (the “Coverys Insurance Policy,” and together with the LSA Insurance Policy, the “Insurance Policies”). The limits under the LSA

Insurance Policy total no more than \$435,149, and there is no more than \$5,000,000 in limits remaining under the Coverys Insurance Policy.

26. There are a total of four claims asserted under the Insurance Policies, including the Movant's claim. Movant filed a proof of claim asserting damages of \$10,000,000. *See* Proof of Claim No. 152. Two other claimants under the Insurance Policies, Michael Rosales and Robert Gamez, Jr., filed proofs of claim asserting damages of \$603,000 and an unliquidated amount, respectively. *See* Proofs of Claim Nos. 137 and 462.

27. The total amount of claims asserted against the Insurance Policies vastly exceed the amount of available insurance limits. Just the Movant's claim, alone, is nearly double the amount of available limits. Thus, the Debtor's insurance proceeds are property of the Debtor's estate.

28. The Movant's asserted "cause" to lift the automatic stay is that it is unfair to her to continue to preclude her prepetition litigation. In her words, "continuing the stay will force [the Movant] to wait longer than other similarly situated creditors who will be entitled to payment upon a confirmed plan going effective." Motion at p. 6. The Movant also states that if stay relief is granted, she "intends to assert [direct] claims" against CHS TX, Inc., even though the asserted harm occurred in 2016, more than *six years prior* to CHS TX Inc.'s creation.

29. The Movant has failed to show cause to lift the automatic stay. Hundreds of lawsuits against the Debtor were initiated prepetition. Relatively few of those cases have been litigated to judgment. Thus, contrary to the Movant's claim that continuing the stay is "unfair" to her, continuing the stay ensures that the Movant remains on an equal footing with the many other claimants in this chapter 11 case with stayed litigation. Indeed, granting the Movant's requested relief would be unfair to *all other creditors* in this case with pending litigation. Additionally, the

Movant's litigation has not remained at a standstill throughout this chapter 11 case. On June 2, 2023, this Court entered a Stipulation and Agreed Order permitting the Movant's litigation to continue for the sole purpose of permitting the Arizona Supreme Court to enter a ruling on the Movant's pending appeal. *See* Docket No. 641. She has already made more progress in her case than most other claimants.

30. Further, Movant has made clear that she intends to pursue successor liability-type claims against CHS TX, Inc. that are property of this Debtor's estate. Accordingly, if the stay is lifted to allow the Movant's litigation to continue, she will violate the automatic stay by asserting new claims against CHS TX, Inc. and thus assert control over property of the estate. The Debtor will then be required to incur additional expense to protect estate assets in this Court (and perhaps in the Arizona court)—assets that the Debtor is currently seeking to settle for the benefit of all creditors. Granting the Movant's requested relief will harm the Debtor's estate, all other creditors, and detract from the Debtor's work on a global settlement.

31. In contrast to the harm that the Debtor, its estate, and other creditors would face if the Motion were granted, the only potential harm faced by the Movant is delay. Maintaining the automatic stay will only temporarily continue the pause of litigation that can negatively impact the Debtor's estate while the Debtor works toward a global settlement and confirmation of a chapter 11 plan. Mere delay as a result of an injunction issued until bankruptcy proceedings are resolved is not a significant harm. *See Lazarus Burnam Assocs. v. Nat'l Westminster Bank USA (In re Lazarus Burnam Assocs.)*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993); *Am. Film Techs., Inc. v. Taritero (In re Am. Film Techs.)*, 175 B.R. 847, 849 (Bankr. D. Del. 1994).

32. At least at this stage of the Debtor's bankruptcy case, the Debtor opposes modification of the automatic stay as requested and respectfully submits that cause to modify the stay has not been satisfied.

WHEREFORE, the Debtor requests that the Court deny the Motion and grant such other and further relief as the Court deems appropriate under the circumstances.

Respectfully submitted this 17th day of June, 2024.

GRAY REED

By: /s/ Jason S. Brookner

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*Counsel to the Debtor
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Certificate of Service

I certify that on June 17, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas to all parties authorized to receive electronic notice in this case.

/s/ Jason S. Brookner

Jason S. Brookner

**IN THE UNITED STATES BANKRUPTCY COURT
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HOUSTON DIVISION**

In re:)	
)	Chapter 11
TEHUM CARE SERVICES, INC., ¹)	
)	Case No. 23-90086 (CML)
Debtor.)	
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**ORDER DENYING ANTOINETTE
WINDHURST’S MOTION FOR RELIEF FROM THE AUTOMATIC STAY**
[Relates to Docket No. 1573]

Upon the *Motion for Relief from the Automatic Stay* [Docket No. 1573] (the “Motion”) filed by Antoinette Windhurst; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed and considered the Motion and the objection filed with respect thereto; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is DENIED without prejudice.

Signed: _____, 2024

Christopher López
United States Bankruptcy Judge

¹ The last four digits of the Debtor’s federal tax identification number is 8853. The Debtor’s service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.