

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

TEHUM CARE SERVICES, INC.¹

Debtor.

Chapter 11

Case No. 23-90086 (CML)

**REPLY IN SUPPORT OF WINDHURST'S
MOTION FOR RELIEF FROM THE AUTOMATIC STAY**
[Relates to Docket No. 1573]

Antoinette Windhurst, individually and on behalf of the Estate of David Windhurst (collectively "Windhurst"), replies in support of her motion for relief from the automatic stay to allow Windhurst to liquidate her claims. As Windhurst makes clear in her Motion and proposed Order, she agrees to return to this Court and proceed through this Bankruptcy Proceeding to address **all issues** of collection against the Debtor and/or property of the Estate.

But Windhurst should not be unreasonably delayed in liquidating her claims or proceedings against non-debtor third parties. Windhurst is not a large corporation seeking stay relief to somehow seize advantage or control of assets of the Estate. Windhurst is a widow asserting claims related to the wrongful death of her late husband. Her claims involve other defendants and potential parties in interest. Her claims have survived summary judgment both for liability and punitive damages. They have also been

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.



significantly delayed by the Debtor's bankruptcy. There is no dispute that even if stay relief were granted today, the trial would not be scheduled until late 2025. There is no just reason nor benefit to the Estate to leave the stay in place. Windhurst, on the other hand, has rights of expediency, and rights to proceed against the non-debtor defendants, that justify stay relief to allow her to liquidate claims against the Debtor, and seek collection against non-debtor third parties.

1. Cause Exists to Grant Relief from Stay

After Windhurst filed her Motion, the Pima County Superior Court conducted a status hearing with regard to the pending litigation matter. Corizon Health was represented by Counsel. Consistent with the argument made by Windhurst in her Motion, the superior court confirmed that if the stay was lifted, the trial could be scheduled **at the earliest** in August 2025. (See Attached Declaration of Nathan Rothschild). That is the state of civil litigation in this County, with trials scheduled only after the completion of all discovery, and more than a year out.

Windhurst's litigation claim has been pending since 2017 against Corizon Health and several other defendants. There is no dispute that this Court lacks jurisdiction to liquidate the claim against the estate or the claims between Windhurst and various third parties. There is also no dispute that granting stay relief now will lead to a trial being set over a year from now.

Windhurst has a right to expediency. Expediency is a part of our legal system to ensure prompt resolution and compensation for damages caused. That includes the right of Windhurst to liquidate and collect her claims against non-debtor third Parties. It is also

a function of due process so witnesses and evidence are available, and still able to provide reliable factual testimony.

The Debtor (and the non-debtor defendants) has enjoyed more than a year of the benefit of the Automatic Stay. But no party could credibly argue that the right to the automatic stay should last forever. Early in this case, the Debtors predicted a confirmed plan and distribution process within a matter of months after filing. The Court itself has urged the parties several times that this case cannot drag on indefinitely. Yet the case now appears stalled. The last Plan was proposed and abandoned by the Debtor more than six months ago. No alternate plan has been proposed, and based on pleadings and reports to the Court, it does not appear a resolution is anywhere near.

The interests of fairness, due process, and expediency all weigh heavily in favor of granting Windhurst's Motion so that a trial can be scheduled. Forcing her to wait an indefinite period of time, before her trial against the Debtors and several non-debtor defendants can even be scheduled for more than a year later, is not just nor appropriate.

2. Shielding Third Parties is not a Proper Justification to Continue the Stay.

The Debtor's opposition argues that allowing Windhurst to pursue direct claims against third parties, including CHS TX, may interrupt CHS TX's willingness to settle with the Debtor. But Windhurst makes clear that she will not seek to collect against the Debtor or Property of the Estate unless through this Bankruptcy. Windhurst simply seeks stay relief so its claims against the Debtor can be liquidated, and collection actions undertaken against third parties. Windhurst agrees and acknowledges that she will return

to this Court for all matters related to collection against the Debtor or Property of the Estate.

To the extent Windhurst has claims against other defendants, the Code is clear that the automatic stay does not prevent Windhurst from pursuing those claims. Perhaps as important, the Supreme Court's recent ruling in *Harrington v. Purdue Pharma, L.P.* (S.Ct. June 27, 2024) makes clear that no settlement entered with a non-debtor may include a nonconsensual release compelled through this Bankruptcy process. Therefore, the only "settlement" possible between the Debtor and CHS TX relates to claims held by the estate. Direct claims of Windhurst, on the other hand, and her right to pursue those claims against CHS TX, are beyond the authority of this Court or the Bankruptcy Code.

The *Purdue* case makes clear that Debtor must focus on itself and its estate. Previous efforts to extend the stay for the benefit of third parties is no longer appropriate. Windhurst must be allowed to prosecute her claims and that includes all claims against third parties.

Arguments from the Debtor that third parties will be harmed or inconvenienced is not a valid basis to deny relief from the stay. The Court should remember that tortious conduct by those third parties contributed to the wrongful death of David Windhurst, and they should not be shielded from liability by function of this bankruptcy case, especially for claims that cannot be addressed in this case, unless Windhurst consents.

3. No Harm will be Done to the Estate if Stay Relief is Granted.

Windhurst recognizes the underlying rationale of the automatic stay is to give a Debtor a “breathing spell” to allow it to focus on its reorganization efforts. But a fair or reasonable “breathing spell” has clearly ended in this case.

First, the Debtor is not an operating business. A “breathing spell” is not necessary to get affairs in order or repair an operating business so a reorganization is successful. This estate will never reorganize—the only option is and always has been a liquidation.

Second, the Debtor has had more than a 14 month reprise to negotiate and propose a Confirmable Plan. The last Plan (now withdrawn) was proposed more than six months ago. The Debtor has had a full and fair opportunity intended by the Code. Equity now demands that relief from the stay be granted, so Windhurst can liquidate her claims, and pursue collection against third parties.

Third, even when stay relief is granted, the trial in the Windhurst matter will be scheduled for more than a year from now. Therefore, the “breathing spell” for the Debtor will be significantly more than the 14 plus months already passed. Is the Debtor suggesting that 26 months is not enough? Certainly, if this case does not have a confirmed plan by August of 2025, there is little likelihood that a Plan will ever be confirmed.

Finally, the last Plan proposed by the Debtor (and since withdrawn), included obligations that tort creditors complete litigation in state court and then pursue collections against all other judgment defendants. Only after such collection efforts were complete would the claim be considered and paid through the bankruptcy estate. Although not a

pending proposal from the Debtor, this Plan provision alone demonstrates cause justifying relief from the stay. Windhurst simply wants to schedule the start of the process proposed by the Debtor, which because of the civil case backlog in Pima County, Arizona, will take more than a year from now.

4. Conclusion

Discovery is completed in the Windhurst case and the matter is ready to be tried. There is no dispute that the Windhurst claim **must** be eventually liquidated in state court. The only question for the Court is whether to allow that trial to be scheduled for more than a year from now (no earlier than August 2025) or continue prejudicing Windhurst by making her wait an additional indefinite time until the Debtor confirms a plan or has this case converted. The stay with regard to Windhurst's claim no longer serves a purpose of giving the Debtor a "breathing spell" or otherwise aiding the reorganization process. The litigation pending since 2017 should not be delayed further and stay relief is appropriate.

DATED: July 1, 2024

MESCH CLARK ROTHSCHILD

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David Windhurst, deceased

CERTIFICATE OF SERVICE

I certify that on July 1, 2024, I caused a copy of the foregoing document to be served (a) 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, and (b) via electronic mail (where available) on the following parties listed below.

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Frederick J. Petersen

Exhibit A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

TEHUM CARE SERVICES, INC.¹

Debtor.

Chapter 11

Case No. 23-90086 (CML)

**DECLARATION OF NATHAN ROTHSCHILD IN SUPPORT OF
WINDHURST'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY**
[Relates to Docket No. 1573]


NATHAN S. ROTHSCHILD, under the penalty of perjury, declares as follows:

1. I am over 21 years of age. If called to testify, I would make the below statements under oath, based on my first-hand knowledge of the matters addressed below.
2. I am a shareholder at the law firm Mesch Clark Rothschild, located in Tucson, Arizona.
3. I am counsel of record for Antoinette Windhurst, individually and on behalf of the estate of David Windhurst related to a wrongful death personal injury case filed against Corizon Health, among other defendants, in Pima County, Arizona.
4. The Windhurst matter is not currently scheduled for trial. The pending proceeding is stayed by operation of the Tehum Care Services, Inc. bankruptcy case.
5. On June 13, 2024, the Pima County Superior Court conducted a status hearing regarding the pending matter. The Defendants were represented by counsel.
6. The Superior Court was informed that the automatic stay arising from this bankruptcy case remained in place, so no substantive deadlines could be set.

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7. The Superior Court was also informed that this Stay Relief Motion was filed, and being briefed to the Court.
8. The Superior Court reviewed its calendar and indicated that if being scheduled on that date, the earliest a jury trial could be set would be August 2025.

Dated: July 1, 2024



Nathan S. Rothschild
Personal Injury Counsel for Windhurst