Joseph M. Coleman (State Bar No. 04566100)
Jason B. Binford (State Bar No. 24045499)
KANE RUSSELL COLEMAN & LOGAN PC
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Telephone - (214) 777-4200
Facsimile – (214) 777-4299
Email: ecf@krcl.com

ATTORNEYS FOR IRONSHORE SPECIALTY INSURANCE COMPANY

THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	**CASE NO. 16-31854-BJH-11**
	§	
CHC GROUP, LTD., *ET AL.*,	§	**CHAPTER 11**
	§	**JOINTLY ADMINISTERED**
DEBTORS.	§	
	§	

SPAREBANK 1 SR-FINANS AS & SPAREBANKEN FINANS NORD-NORGE AS,	§	
	§	
PLAINFIFFS,	§	
	§	
v.	§	**Adversary No. 16-03121-BJH**
	§	
DEBTOR HELI-ONE LEASING (NORWAY) AS, CHC HELICOPTER S.A. AND IRONSHORE SPECIALTY INSURANCE COMPANY	§	
	§	
DEFENDANTS.	§	

IRONSHORE SPECIALTY INSURANCE COMPANY'S BRIEF IN SUPPORT OF MOTION TO ABSTAIN

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TO THE HONORABLE BARBARA J. HOUSER,
UNITED STATES BANKRUPTCY JUDGE:

Ironshore Specialty Insurance Company (the "Ironshore") files this brief (the "Brief") in support of Ironshore's Motion to Abstain (the "Motion to Abstain") seeking that this Court abstain from hearing this adversary proceeding, and respectfully states as follows:

I. RELIEF REQUESTED

1. Mandatory abstention is applicable to this adversary proceeding under 28 U.S.C. § 1334(c)(2). An adversary proceeding involving an agreement to which the Debtors[1] are not even a party is clearly a non-core matter and could not have been commenced in federal court absent 28 U.S.C. § 1334(b). Moreover, the matter could – and should pursuant to the express terms of the RVI Policies – be arbitrated or litigated in London under English law. Case law makes clear that a more appropriate foreign forum meets the requirement for mandatory abstention. Alternatively, this Court should exercise its discretion to abstain under permissive abstention, 28 U.S.C. § 1334(c)(1), because the applicable factors supporting abstention weigh entirely in Ironshore's favor.

2. On September 15, 2016, Ironshore filed its Motion to Dismiss [Doc. No. 8] and brief in support [Doc. No. 9]. As made clear in the Motion to Dismiss, Ironshore asserts that this adversary proceeding should be dismissed on the basis that Sparebank has failed to state a claim under Fed. R. Civ. P. 12(b)(6). Ironshore is filing its Motion to Abstain as an alternative to dismissal under Rule 12(b)(6) on the basis that the abstention elements have also been met.

[1] Capitalized terms in this introductory section have the meanings ascribed to them in the Procedural Background below.

II. PROCEDURAL BACKGROUND

A. The Bankruptcy Case

3. On May 5, 2016 (the "Petition Date"), CHC Group Ltd. and its affiliated debtors (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the U.S. Code (the "Bankruptcy Code").

4. On May 6, 2016, the Court entered an order providing for the joint administration of the Debtors' bankruptcy cases (the "Bankruptcy Case").

5. On May 13, 2016, the U.S. Trustee appointed an official committee of unsecured creditors in the Bankruptcy Case.

6. The Debtors continue to operate the business as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed.

B. The Motions to Reject and Orders Granting Same

7. On the Petition Date, the Debtors filed their *First Omnibus Motion for Entry of an Order Authorizing the Debtors to Reject Certain Equipment Leases and Subleases Pursuant to Section 365 of the Bankruptcy Code* [Doc. No. 20] (the "First Motion to Reject").

8. By the First Motion to Reject, the Debtors sought to reject a number of leases and executory contracts, including a helicopter lease (the "2594 Lease") between debtor Heli-One Leasing (Norway) AS ("Heli-One") and Sparebank 1 SR-Finans AS ("Sparebank 1").[2] The First Motion to Reject sought to reject the 2594 Lease as of the Petition Date.

9. In support of the First Motion to Reject, the Debtors filed a declaration of Michael B. Cox ("Cox"), the Vice Chairman of Seabury Advisory Group and the Global Head of

[2] The 2594 Lease was identified on Schedule 1 to the First Motion to Reject with the helicopter serial number cited as 2594 and the engine serial numbers cited as 3077 and 3180. Schedule 1 further identified the location of the related helicopter and engines as a Norway facility belonging to debtor CHC Helikopter Service AS.

Seabury's Corporate Advisory Services [Doc. No. 21] (the "First Declaration"). According to the First Declaration, the Debtors were seeking to reject the leases in the First Motion to Reject because the leased equipment was not necessary to the Debtors' continued operations or successful reorganization.

10. On May 27, 2016, the Debtors filed their Second Omnibus Motion for Entry of an Order Authorizing the Debtors to Reject Certain Equipment Leases and Subleases Pursuant to Section 365 of the Bankruptcy Code [Doc. No. 210] (the "Second Motion to Reject"). By the Second Motion to Reject, the Debtors sought to reject additional leases and executory contracts, including the following helicopter leases: (i) a lease (the "2716 Lease") between Heli-One and Sparebank 1; (ii) a lease (the "2692 Lease") between Heli-One and Sparebank 1; and (iii) a lease (the "2907 Lease") between Heli-One and Sparebanken Finans Nord-Norge AS ("Sparebanken Finans").[3] The Second Motion to Reject sought to reject the 2716 Lease, the 2692 Lease, and the 2907 Lease each as of June 7, 2016.

11. The 2594 Lease, the 2692 Lease, and the 2907 Lease shall be collectively referred to herein as the "Leases."[4]

12. On May 27, 2016, Cox filed a declaration [Doc. No. 211] (the "Second Declaration") in support of the Second Motion to Reject. Once again, according to the Second Declaration, the Debtors were seeking to reject the leases in the Second Motion to Reject

[3] The 2716 Lease was identified on Schedule 1 to the Second Motion to Reject with helicopter serial number cited as 2716 and engine serial numbers cited as 1023 and 13002. The 2692 Lease was identified on Schedule 1 to the Motion to Reject with helicopter serial number cited as 2692 and engine serial numbers cited as 1029 and 1009. the 2907 Lease was identified on Schedule 1 to the Second Motion to Reject with helicopter serial number cited as 2907 and engine serial numbers cited as 13305 and 13103. Schedule 1 further identified the location of each of the related helicopters and engines as a Norway facility belonging to debtor CHC Helikopter Service AS.

[4] Lease 2716 is not included in the definition of Leases because it is not the subject of Sparebank's Complaint (as defined below).

because the leased equipment was not necessary to the Debtors' continued operations or successful reorganization.

13. On June 20, 2016, Sparebank 1 and Sparebanken Finans (collectively, "Sparebank") filed a limited objection [Doc. No. 379] (the "Objection") to the First Motion to Reject and the Second Motion to Reject. By the Objection, Sparebank did not oppose rejection of the Leases, but sought to reserve certain rights related to the lease rejections.

14. On June 24, 2016, the Debtors filed an omnibus reply [Doc. No. 395] (the "Reply") to the objections filed by various parties to the First Motion to Reject and the Second Motion to Reject. The Reply did not specifically address the reservation of rights matters in Sparebank's Objection.

15. On June 30, 2016, the Court entered orders granting the First Motion to Reject [Doc. No. 428] (the "First Motion to Reject Order") and the Second Motion to Reject [Doc. No. 427] (the "Second Motion to Reject Order," collectively, the "Rejection Orders"). As to Sparebank, the Rejection Orders reserved Sparebank's alleged rights "against the Debtors and third-party non-Debtors with respect to any claims, determination of validity and liability related to any residual value insurance policies related to" the equipment underlying the Leases. Further, Rejection Orders rejected the 2594 Lease as of June 30, 2016 and rejected the 2716 Lease, the 2692 Lease, and the 2907 Lease as of June 27, 2016.

C. The Sparebank Adversary Proceeding

16. On August 17, 2016, Sparebank initiated the instant adversary proceeding by filing a complaint (the "Complaint") against debtors Heli-One and CHC Helicopter S.A. ("CHC"), as well as Ironshore.

17. By the Adversary Proceeding, Sparebank refers to Residual Value Insurance Policies (the "RVI Policies") between Sparebank and Ironshore related to the equipment underlying Lease 2594, Lease 2907, and Lease 2692. According to Sparebank, the RVI Policies "insured the residual value of the helicopters and related equipment."[5] Further, according to Sparebank, the RVI Policies "contains an RVI Indemnity clause that provides that the Lessee shall agree to pay the Lessor if the residual value insurer does not pay under the RVI Policy."[6]

18. Sparebank further alleges that Ironshore terminated the RVI Policies as a result of the Debtors' insolvency pursuant to RVI Policy Clause 6.1(a).[7] Sparebank argues that Clause 6.3 is an ipso facto provision and that, therefore, Ironshore's termination runs afoul of Bankruptcy Code section 365(e)(1).

III. ARGUMENTS AND AUTHORITIES

A. This Adversary Proceeding is "Non-Core"

19. The core/non-core distinction is well settled under Fifth Circuit law. A matter is considered core "if it involves a substantive right provided by title 11 or if it's a proceeding that, by its nature, could arise only in the context of a bankruptcy case."[8] Non-core matters, in contrast, are proceedings that are otherwise related to a bankruptcy case.[9]

[5] Complaint at ¶ 12.

[6] *Id.* at ¶ 13.

[7] *Id.* at ¶ 14.

[8] *In re Wood*, 825 F.2d 90, 97 (5th Cir. 2005).

[9] *In re Stonebridge Techs., Inc.*, 430 F.3d 260, 266 (5th Cir. 2005).

20. The Fifth Circuit has recognized that "claims between third parties are typically considered [if at all] with the bankruptcy court's non-core jurisdiction."[10] Other courts agree with this common-sense approach. For example, in *In re Renaissance Hospital – Grand Prairie, Inc.*,[11] Judge Lynn clearly stated that "disputes between third party non-debtors are not core matters pursuant to 28 U.S.C. § 157(b)(2)."[12] Likewise, the court in *In re Nat'l Enters., Inc.*[13] was even more explicit, stating that classifying as core an alleged post-petition breach of contract action related to an agreement entered into pre-petition "would create too grave a chance that the bankruptcy court could adjudicate rights at law that, under the Constitution, must be adjudicated by Article III courts."[14]

21. By its Complaint, Sparebank seeks declaratory judgments from the Court related to non-debtor agreements. Moreover, if insurance proceeds were paid under the RVI Policy by Ironshore to Sparebank, it is undisputed that the Debtors would have no right to the proceeds. This dispute between non-debtors is clearly a non-core matter.[15]

[10] *Id.* at 267.

[11] 2009 WL 398963 (Bankr. N.D. Tex. Feb. 17, 2009). In addition, Sparebank can find no refuge on the core/non-core issue in the "catch all" provision of 28 U.S.C. § 157(b)(2)(O) by making a broad argument that the adversary proceeding has some sort of tenuous potential effect on the Debtors' estate. Fifth Circuit precedent makes clear that section 157(b)(2)(O) "issues generally must be limited to claims that arise under title 11 or arise in a case under title 11 in addition to having an [effect] on estate assets and debtor-creditor relations." *Longhorn Partners Pipeline L.P. v. KM Liquids Terminals, L.L.C.*, 408 B.R. 90, 97 (Bankr. S.D. Tex. 2009) (emphasis added) (citing *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 468 U.S. 50 (1982) and *In re Wood*).

[12] *Id.* at *2.

[13] 128 B.R. 956 (E.D. Va. 1991.

[14] *Id.* at 961.

[15] Given the fact that any indemnification rights of Sparebank under the Leases (not the RVI Policies) have yet to be established, this adversary proceeding may not even be a "related to" proceeding under 28 U.S.C. § 1334(b).

B. Mandatory Abstention Is Arguably Applicable in This Case

(1) Legal Standard

22. Mandatory abstention is governed by 28 U.S.C. § 1334(c)(2) which requires a bankruptcy court to abstain from hearing a matter where: "(1) a party to the proceeding files a timely motion to abstain; (2) the proceeding is based upon a state law claim or state law cause of action; (3) the proceeding is a related (non-core) proceeding; (4) absent section 1334(b), the cause of action (one 'related to' the bankruptcy case) could not have been commenced in a federal court; and (5) the proceeding is commenced and can be timely adjudicated in a state forum."[16]

(2) Application of Legal Standard

23. Element numbers 1, 3, and 4 are very clearly met in this case. Ironshore has timely filed this Motion, the matter is non-core (as set forth above), and absent alleged jurisdiction under 28 U.S.C. § 1334(b) there otherwise would not be federal jurisdiction in this contractual dispute between two non-debtor parties.

24. As to element number 2, Ironshore acknowledges that the RVI Policies are not governed by "state" law. Rather, the policies explicitly provide that they are governed by English law.[17] The Fifth Circuit has recognized, however, that the point of this abstention element is that law other than federal law is at issue in the dispute. In *Baumgart v. Fairchild Aircraft Corp.*,[18] the Fifth Circuit stated:

> [I]t does not follow that [in enacting 28 U.S.C. § 1334(c)] Congress would expressly allow the federal district courts to defer

[16] 16 Collier on Bankruptcy ¶ 3.05[2] (16th ed. Rev. 2016).

[17] *See* RVI Policies (attached to the Complaint as Exhibits B1 through B3) at section 16(a).

[18] 981 F.2d 824 (5th Cir. 1993).

> by abstention to state courts 'in the interest of justice,' but would at the same time implicitly divest them of their inherent power to abstain when the interest of justice would be served by a case being heard in a foreign tribunal where the action arose.[19]

25. The Fifth Circuit's analysis stands to reason, given the policy underpinnings of abstention. Stated in a slightly different way than the *Baumgart* court: why would a federal court be required to abstain only on the basis of deference to state law, but not foreign law, when there is even more reason for a U.S. federal court to defer to the laws of a sovereign foreign nation? That rational is even more apparent where (as here) the parties contractually agreed to have disputes governed by foreign law and tried in a foreign country.[20]

26. The remaining element – element number 5 – is whether a proceeding has been commenced and can be timely adjudicated in a state forum. As to timeliness, there is no reason to believe that either the English courts or an arbitration panel in London would not expeditiously take this matter up. Moreover, litigation or arbitration in that forum was part of the express bargain between Ironshore and Sparebank. Finally, as to whether a proceeding has been commenced, Ironshore acknowledges that no litigation or arbitration is currently pending in England. The substantive reason is that conditions under certain of the RVI Policies have not yet been met for a claim to be ripe for adjudication. Sparebank has attempted to take advantage of this "pre-ripe" period by venue shopping and filing its Complaint in this Court, despite the fact that Sparebank's actions were contrary to the express forum selection provisions of the RVI Policies. For the purposes of mandatory abstention, and given that the other elements are clearly met in this case, Ironshore should not be denied its right to abstention based solely on

[19] *Id.* at 833; *see also In re Viking Offshore (USA), Inc.*, 405 B.R. 434, 440-41 (Bankr. S.D. Tex. 2008) (noting the difference between "state law" and "foreign law" when analyzing the text of 28 U.S.C. § 1334(c), but nevertheless determining that abstention was appropriate where foreign law was at issue based on the doctrine of comity); *In re Regus Business Centre Corp.*, 301 B.R. 122, 128-29 (Bankr. S.D.N.Y. 2003) (same).

[20] *See* RVI Policies at section 16.

Sparebank's forum shopping gamesmanship. As such, the court should determine, given that the substantive bases under the RVI Policies are not ripe for adjudication, the "commenced proceeding" portion of element 5 is not relevant.[21]

27. Thus, the elements of mandatory abstention have been met in this case and the Court should abstain from further hearing this adversary proceeding.

C. In the Alternative, the Court Should Exercise Permissive Discretion to Abstain

(1) Legal Standard

28. In the alternative to mandatory abstention, the Court should exercise its discretion to abstain under the doctrine of permissive abstention. Permissive abstention is authorized under 28 U.S.C. § 1334(c)(1), which states that a bankruptcy court may abstain "in the interest of justice, or in the interest of comity with State courts or respect for State law . . . ." In making this determination, a court's primary guiding principle is "whether abstention will impede or disrupt the bankruptcy court's exclusive and nondelegeable control over the administration of the estate within its possession."[22] As set forth below, courts have developed 12 factors used to guide the analysis.[23]

[21] Ironshore recognizes that at least one court has directly held that there need not be a pending proceeding for mandatory abstention to apply. *See In re World Solar Corp.*, 81 B.R. 603, 609-10 (Bankr. S.D. Cal. 1988). Ironshore further recognizes and acknowledges that the World Solar case has been criticized by a number of courts and commentators. *See, e.g., In re Denton County Elec. Co-Op, Inc.*, 281 B.R. 876, 880-81 (Bankr. N.D. Tex. 2002) (Judge Lynn). Nevertheless, there is no directly controlling contrary authority on this point of law and Ironshore asserts that, especially given the litigation tactics of Sparebank that are contrary to the bargain it struck with Ironshore in the RVI Policies, that mandatory abstention should apply.

[22] *In re Coho Energy, Inc.*, 309 B.R. 217, 221 (Bank. N.D. Tex. 2004) (quoting *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 483 (1940)).

[23] *In re Montcrest Energy, Inc.*, 2014 WL 6982643, at *7 (Bankr. N.D. Tex. Dec. 9, 2014) (each factor is listed in the table below).

(2) Application of Legal Standard

29. A critically important aspect of this adversary proceeding is that the ultimately dispositive facts are not in dispute. Sparebank attached copies of the RVI Policies to its Complaint.[24] Ironshore does not dispute that exhibits are true and correct copies of the RVI Policies. It is undisputed that none of the Debtors are a party to any of the RVI Policies. It is undisputed that the RVI Policies are governed by English law.[25] It is undisputed that one of the three RVI Policies contains an arbitration provision requiring disputes to be resolved before an arbitration panel in London.[26] It is undisputed that the alleged *ipso facto* clause issue raised by Sparebank in its Complaint is not the only substantive dispute between Sparebank and Ironshore regarding policy coverage.[27] Furthermore, it is undisputed that the prospect of indemnification raised by Sparebank in the Complaint relates solely to alleged indemnification rights between the Debtors and Sparebank under Leases that have been rejected by order of this Court.[28]

30. Starting with the primary guiding principle, abstention under these facts would not in any way impede or disrupt the bankruptcy court's exclusive and non-delegable control over the administration of the Debtors' bankruptcy case. The fact is that this contractual dispute between two non-debtors is, at best, only remotely related to the administration of the Debtors' bankruptcy. Nevertheless, Sparebank attempts to bring the dispute within the purview of this

[24] Complaint at Exhibits B1 through B3.

[25] RVI Policies at section 16(a).

[26] RVI Policy attached to Complaint as Exhibit B1 at section 16(b) ("Any dispute arising in connection with this Policy, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration ('LCIA') rules ('Rules'), which Rules serve as expressly amended by this Clause 16 are deemed to be incorporated by reference into this clause.").

[27] Complaint at ¶ 14 ("Prior to the Petition Date, Ironshore sent multiple correspondence to Sparebank 1 and Sparebanken N-N indicating that it was no longer liable under the RVI Policies because of, among other reasons, the insolvency of CHC." (emphasis added)).

[28] *Id.* at ¶ 36 ("Moreover, each Lease contains an indemnity provision in favor of the Debtors." (emphasis added)).

Court in two different ways. First, by arguing that the RVI Policies fit within the broad definition of the Debtors' property of the estate under Bankruptcy Code section 541(a). Second, by asserting that the potential effect of alleged – and unproven – indemnification rights under the Leases between Sparebank and the Debtors (which have been rejected) properly place this matter before this Court. Both of these assertions collapse as soon as settled law is considered.[29]

(i) Property of the Estate

31. While Bankruptcy Code section 541 defines property of the estate broadly, it only includes contracts to which the debtor is a party. Even where a debtor is a party to an insurance contract, settled Fifth Circuit law makes clear that there is a distinction between a debtor's insurance policy itself and the proceeds of the policy.[30] But, *Louisiana World* and its progeny start with the basic understanding that the Debtor is a party to the policy before moving on to analyzing whether the policy proceeds are property of the estate. If, as here, the debtor is not even a party to the policy, the property of the estate analysis ends.

32. In addition, even if the Court were to rule that the RVI Policies between Sparebank and Ironshore are property of the estate, that determination would not end the necessary inquiry by the Court. "Acknowledging that the debtor owns the policy, however, does not end the inquiry. 'The question is not who owns the policies, but who owns the liability proceeds.'"[31] Once again, the *Louisiana World* decision is instructive. In *Louisiana World*, a creditors' committee sought to use Bankruptcy Code section 362 to prohibit proceeds from an

[29] Note that certain arguments that follow apply equally to the Motion to Dismiss filed by Sparebank in this adversary proceeding on September 15, 2016. As such, there necessarily is some degree of overlap in the following sections between the brief in support of the Motion to Dismiss and this brief.

[30] *See In re La. World Exposition, Inc.*, 832 F.2d 1391, 1399 (5th Cir. 1987).

[31] *In re Edgeworth*, 993 F.2d 51, 55 (5th Cir.1993) (quoting *La. World*, 832 F.2d at 1399)).

officer and director policy (to which the debtor was a party) from being paid to the officers and directors. The court noted that, in making a property of the estate determination, "the estate's legal and equitable interests in property rise no higher than those of the debtor" and that the debtor in the case "had no ownership interest whatever in the proceeds from the liability coverage."[32] Also, importantly, the Fifth Circuit held that alleged indemnification rights under the policy did not cause the insurance proceeds to become property of the estate.[33] Similarly, in *In re Fort Worth Osteopathic Hospital, Inc.*[34] Judge Lynn held in a similar officer and director insurance dispute that "even if the Trustee may have some entitlement some day to receive proceeds from the Policies, neither he nor Debtors had any 'legal or equitable interest' in the proceeds of the Policies when Debtors' cases were commenced, and so he does not have an interest in the proceeds that falls within section 541(a)(1)."[35]

33. Applying the law to this case, even if the Court were to reject Ironshore's contention and determine that the RVI Policies are somehow property of the estate despite the Debtors not being a party thereto, that would certainly not end the inquiry. The true issue (and Sparebank's specific request for a declaratory judgment) is whether the proceeds of the RVI Policies are property of the estate; thus apparently justifying the Court ruling on whether the proceeds should, or should not, be paid to Sparebank under the terms of the RVI Policies. It is undisputed that if the proceeds were to be paid by Ironshore, they would be paid not to the Debtors, but to Sparebank. In other words, the Debtors have "no ownership interest whatever" in those proceeds. Therefore, the proceeds are not property of the estate and, just as section 362 did

[32] *La. World*, 832 F.2d at 1399 (quoting *In re Gagnon*, 26 B.R. 926, 928 (Bankr. M.D. Pa. 1983)).

[33] *Id*. at 1398-99.

[34] 387 B. R. 706 (Bankr. N.D. Tex. 2008).

[35] *Id.* at 715.

not apply to non-estate property in *Louisiana World*, section 365(e)(1) does not apply to non-estate property here. Thus, a ruling by this Court that the RVI Policies, as opposed to the proceeds thereof, are property of the Debtors bankruptcy case would resolve nothing between the parties and would be a waste of this Court's judicial resources.

(ii) Alleged Indemnification Rights of the Debtors

34. The Debtors' indemnification rights (if any) against Sparebank under the Leases likewise do not cause this adversary proceeding to affect the administration of the Debtors' bankruptcy case for the purposes of determining whether this Court should abstain. The *In re TIC United Corp.*[36] case decided by this Court is instructive on this point. The *TIC* case involved a trucking company debtor that obtained a letter of credit in favor of its insurance company (Kemper) to secure the debtor's reimbursement obligations to Kemper after Kemper paid claims in full that the debtor was partially liable for. The debtor filed bankruptcy and Kemper drew down on the letter of credit. A chapter 7 trustee later sought to recover the funds under Bankruptcy Code section 549 as an unauthorized postpetition transfer. This Court ruled that section 549 did not apply because Kemper did not reimburse itself from property of the debtor's bankruptcy estate when it drew down the letter of credit.[37] This Court also refused to find any "diminution to the estate" based on the drawdown because (again) the drawdown did not involve estate property. Other courts have likewise refused to enjoin a payment of letters of

[36] 2008 WL 2437868 (Bankr. N.D. Tex. June 27, 2008).

[37] *Id.* at *5 (citing *In re Stonebridge*, 430 F.3d 260, 269 (5th Cir. 2005 in support of the fact that letter of credit proceeds are not property of the estate).

credit by the issuer, even where (as Sparebank is alleging in this case) the payment may directly result in a corresponding claim against the bankruptcy estate.[38]

35. In addition, the court in *In re Schwinn Bicycle Co.*[39] addressed the effect, if any, of potential and unproven indemnification rights that may arise following a dispute between two non-debtor parties. The court held that such alleged rights were not even sufficient to give the bankruptcy court subject matter jurisdiction. Specifically, the court stated:

> Even if Plaintiffs are successful in their state court action, Defendants do not have an automatic indemnification claim. The bankruptcy estate would not be affected until the third party action was brought and tried. Moreover, even if the third party action is "favorably" resolved, Debtor could still relitigate or adopt any position in response to any subsequent claim. . . Allowing a non-debtor party to litigate its non-debtor dispute involving a purported indemnification claim against the debtor in a bankruptcy forum which may or may not result in a claim against the estate would defeat the very scheme of efficient claims resolution.[40]

36. Just as in the *Schwinn* case, in this case there is nothing more than an allegation that Sparebank potentially has indemnification rights against the Debtors under the Leases (which have been rejected) in the event Ironshore does not pay under the RVI Policy.[41] As in the *Schwinn* case, this Court should not permit potential and unproven indemnification rights to be

[38] *See In re Bender Shipbuilding*, 2010 WL 749317 (S.D. Ala. March 2, 2010); *In re Oakwood Homes Corp.*, 342 B.R. 59, 67 (Bankr. D. Del. 2006); *In re Prime Motor Inns, Inc.*, 130 B.R. 610 (S.D. Fla. 1991) ; *In re Leisure Dynamics, Inc.*, 33 B.R. 171, 172-3 (Bankr D. Minn. 1983); *In re Page*, 18 B.R. 713, 715-16 (D. D.C. 1982).

[39] 210 B.R. 747, 756 (Bankr. N.D. Ill. 1997).

[40] *Id.* at 756; *cf. Liberty Mutual Ins. Co. v. Greenwich Ins. Co.*, 417 F.3d 193, 199 (1st Cir. 2005) (refusing to find that a debtor's potential indemnification obligation brought a non-debtor dispute within the application of Bankruptcy Code section 365(e)(1), stating: ""[t]he bond is an independent obligation of Greenwich which happens to have been triggered by a third party's non-payments of debts and resort to bankruptcy. It is beside the point that [the debtor] may be a co-guarantor under the bond and might have a defense if sued itself.").

[41] Complaint at ¶ 36 ("Moreover, each Lease contains an indemnity provision in favor of the Debtors." (emphasis added)). Significantly, the referenced indemnification obligations in the Leases are between Sparebank and the Debtors, not Ironshore.

used as a basis for somehow affecting the administration of the bankruptcy case for the purposes of whether to abstain.

(iii) Analysis of Permissive Abstention Elements

37. In addition to the application of the facts to the permissive abstention "guiding principle," literally each relevant factor guiding the Court's analysis is in favor of Ironshore as follows:

Factor	Description	Result
1	Abstention will have no effect on the administration of the Debtors' estate	Discussed above – in favor of Ironshore and permissive abstention
2	Extent to which state law issues predominate over bankruptcy issues	The RVI Policies are governed by English law – in favor of Ironshore and permissive abstention
3	The difficulty or unsettled nature of the applicable state law	This Court does not typically take up English law matters; moreover, the parties negotiated for venue in England – in favor of Ironshore and permissive abstention
4	The presence of an unrelated proceeding commenced in state court or another bankruptcy court	No other proceeding has been commenced, but only because the claims are not ripe and Sparebank engaged in blatant forum shopping by racing to this courthouse – in favor of Ironshore and permissive abstention
5	The jurisdictional basis, if any, other than 28 U.S.C. § 1334	None – in favor of Ironshore and permissive abstention
6	The degreed of relatedness or remoteness of the proceeding to the main bankruptcy case	This is a non-debtor contractual dispute – in favor of Ironshore and permissive abstention
7	The substance rather than form of an asserted "core" proceeding	This is a non-core matter – in favor of Ironshore and permissive abstention
8	The feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court	Not applicable

Factor	Description	Result
9	The burden on the bankruptcy court's docket	It would be a burden, and completely unnecessary, for this Court to analyze English contact law – in favor of Ironshore and permissive abstention
10	The likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties	Rather than being likely, it is certain that Sparebank has engaged in forum shopping to bring an un-ripe matter to this Court, despite contractually agreeing to resolution in England under English law – in favor of Ironshore and permissive abstention
11	The existence of a right to a jury trial	To the extent this matter goes forward in the United States, Ironshore reserves all rights relating to jury trial – in favor of Ironshore and permissive abstention
12	The presence of the proceeding of non-debtor parties	This is a dispute between two non-debtors relating to an agreement to which they are not a party – in favor of Ironshore and permissive abstention

38. Given all the foregoing, the proper result under the law is for this Court to abstain from hearing the adversary proceeding, thus allowing Sparebank and Ironshore to resolve their disputes before a proper tribunal or court in England, as per the explicit agreement between these two sophisticated parties.

IV. PRAYER

WHEREFORE, Ironshore respectfully requests the Court to grant the Motion to Abstain and grant such other and further relief to which Ironshore may be justly entitled.

Dated: September 19, 2016

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

By: /s/*Jason B. Binford*

Joseph M. Coleman
Texas State Bar No. 04566100
Jason B. Binford
Texas State Bar No. 24045499
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Telephone: (214) 777-4200
Facsimile: (214) 777-4299
Email: jcoleman@krcl.com; jbinford@krcl.com

ATTORNEYS FOR IRONSHORE SPECIALTY INSURANCE COMPANY

CERTIFICATE OF SERVICE

This is to certify that service of the foregoing document was served through Electronic Notice for Registered Participants and, unless an alternative means of service is set forth below, has been sent to all other parties listed below by e-mail and by United States Mail, first class postage prepaid, on the 19th day of September, 2016.

/s/ *Jason B. Binford*
Jason B. Binford

Monica S. Blacker
Jackson Walker L.L.P.
2323 Ross Avenue, Suite 600
Dallas, Texas 75201
mblacker@jw.com

Stephen A. Youngman
Weil, Gotschal & Manges
200 Crescent Court, Suite 300
Dallas, Texas 75201-6950
stephen.youngman@weil.com