

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

In re:

AFH AIR PROS, LLC, et al.,

Debtors.

Chapter 11

Case No. 25-10356 (PMB)

(Jointly Administered)

**MOTION FOR RELIEF FROM DISCHARGE INJUNCTION TO PURSUE
NOMINAL ACTION AGAINST DEBTOR FOR PURPOSE OF
ACCESSING INSURANCE COVERAGE**

COMES NOW, Nadine Howell, by and through the undersigned counsel, pursuant to 11 U.S.C. § 524 and 11 U.S.C. § 105(a), and hereby respectfully moves this Court for an order granting relief from the discharge injunction to permit Plaintiff to proceed nominally against the Debtor solely for the purpose of establishing liability to access available insurance coverage, without seeking to impose personal liability on the Debtor. In support of this Motion, Plaintiff states as follows:

1. On August 19, 2024, Nadine Howell filed claims in the United States District Court for the Southern District of Alabama against the Debtor arising from violations of the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the Family Medical Leave Act (FMLA).



2. The Debtor disclosed to Howell on November 25, 2024, that it maintained liability insurance coverage that may provide coverage for Plaintiff's claims.

3. On March 16, 2025, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code.

4. On September 4, 2025, this Court confirmed the Debtor's Chapter 11 Plan of Reorganization (the "Plan").

5. On or about January 8, 2026, the Debtor filed a motion for summary judgment in the Alabama Court to dismiss the claims against it and cites this Court's confirmation of the Debtor's Chapter 11 Plan as the basis for such dismissal.

ARGUMENT

This Court has authority under 11 U.S.C. § 105(a) to issue any order necessary or appropriate to carry out the provisions of the Bankruptcy Code, including modifying the discharge injunction to allow Plaintiff to proceed nominally against the Debtor. 11 USCS § 105. The discharge injunction under 11 U.S.C. § 524(a) operates as an injunction against actions to collect, recover, or offset discharged debts as personal liabilities of the Debtor. However, the

discharge of the Debtor's debt does not affect the liability of any other entity, such as the Insurer, for such debt. 11 USCS § 524. The Eleventh Circuit has held that “a plaintiff may proceed against the debtor simply in order to establish liability as a prerequisite to recover from another, an insurer, who may be liable.” In *re AP Framing, Inc.*, 669 B.R. 894, 902 (Bankr. N.D. Ga. 2025)(citing *In re Jet Fla. Sys., Inc.*), 883 F.2d 970, 976 (11th Cir. 1989)).

Plaintiff seeks permission from this Court to proceed nominally against the Debtor solely for the purpose of establishing the Debtor's liability, which is a prerequisite to recovering from the Insurer. Even though this Court has previously explained that it is not convinced that modification is required, Plaintiff cautiously seeks modification because the Debtor is a necessary party to the Alabama litigation and Plaintiff would have no ability to pursue the Debtor's insurers should the Debtor be dismissed from the Alabama litigation. See *In re AP Framing, Inc.*, 669 B.R. 894, 902 (Bankr. N.D. Ga. 2025). Plaintiff does not seek to impose any personal liability on the Debtor or to collect any judgment from the Debtor or the bankruptcy estate.

Allowing Plaintiff to proceed nominally against the Debtor will not frustrate the purpose of the discharge injunction or the fresh start provided by the Bankruptcy Code because:

- a. The Debtor will not be required to pay any judgment;
- b. The Debtor will incur minimal or no expense in defending the action as the Insurer has a duty to defend;
- c. The action will not interfere with the administration of the bankruptcy estate or the implementation of the confirmed Plan;
- d. Other creditors will not be impacted by granting Howell permission to proceed in litigation against the Debtor;
- e. Howell would sustain substantial prejudice if she is not allowed to proceed in litigation against the Debtor in a nominal capacity to access the insurance coverage; and
- f. The action is necessary to allow Plaintiff to access the insurance coverage that may be available for the claim.

The confirmation of the Debtor's Chapter 11 Plan discharged the Debtor from pre-confirmation debts and vested property of the estate in the reorganized Debtor free and clear of claims. 11 USCS § 1141. Granting the requested relief will not disturb the finality of the Plan confirmation or impose any burden on the reorganized Debtor.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order:

1. Granting relief from the discharge injunction to permit Plaintiff to proceed nominally against the Debtor solely for the purpose of establishing liability to access available insurance coverage;
2. Providing that any judgment obtained against the Debtor may only be enforced against the Insurer and the applicable insurance policies, and not against the Debtor personally or any property of the Debtor or the bankruptcy estate; and
3. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/Kira Fonteneau

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CERTIFICATE OF SERVICE

I certify that on February 4, 2026, I filed the preceding using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the parties who have appeared in this case and mailed to counsel for the Debtor:

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