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

In re:	) Chapter 11
	)
IEH AUTO PARTS HOLDING LLC, *et al.*,[1]	) Case No. 23-90054 (CML)
	)
	) (Jointly Administered)
Debtors.	)
	) **Re: Docket No. 864**

DEBTORS' AMENDED OBJECTION TO EDWIN MCCRARY'S MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR PLAN INJUNCTION TO PROSECUTE A PENDING LAWSUIT

The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this amended objection (this "Objection") to *Motion by Edwin McCrary for Relief from Automatic Stay and/or Plan Injunction to Prosecute a Pending Lawsuit* [Docket No. 864] (the "Motion"). In support of this Objection, the Debtors state as follows:

Preliminary Statement

1. Edwin McCrary ("Movant") seeks to lift the automatic stay to pursue claims asserted against Peter Vasilas, an alleged employee of one of the Debtors and an insured party under the Debtors' insurance policy, related to alleged personal injuries suffered from an auto collision with a Debtor owned automobile. The Movant asserts that the litigation should proceed because the Movant's claims in the related civil action are not against the Debtors, but against Mr. Vasilas. However, the Movant is mistaken. If Mr. Vasilas is an employee of the Debtors,

[1] The Debtor entities in these chapter 11 cases, along with the last four digits of each Debtor entity's federal tax identification number, are: IEH Auto Parts Holding LLC (6529); AP Acquisition Company Clark LLC (4531); AP Acquisition Company Gordon LLC (5666); AP Acquisition Company Massachusetts LLC (7581); AP Acquisition Company Missouri LLC (7840); AP Acquisition Company New York LLC (7361); AP Acquisition Company North Carolina LLC (N/A); AP Acquisition Company Washington LLC (2773); Auto Plus Auto Sales LLC (6921); IEH AIM LLC (2233); IEH Auto Parts LLC (2066); IEH Auto Parts Puerto Rico, (Continued…)

the Debtors' insurance policy may compensate the Movant and thereby interfere with Debtors' bankruptcy proceedings or deplete assets of the estate. Under the terms of the Debtors' primary insurance policy, the Debtors are responsible to reimburse the insurer for up to $3 million of any settlement or judgment *plus* allocated loss adjustment expenses incurred to defend Debtors against the claim, including attorney's fees and costs for experts, court reporters, and similar expenses. Lifting the automatic stay and allowing Movant to pursue a judgment against Mr. Vasilas, and in turn the Debtors, would substantially burden the Debtors' estates. The result would be to transfer assets out of the Debtors' estate to the detriment of other creditors.

2. Further, the Movant's claims against Mr. Vasilas and the Debtors were released under the Plan. The Plan defined "Released Parties" as "collectively, and in each case in its capacity as such: (a) the Debtors and their Estates . . . and each Related Party of each Entity in clause (a) . . . ." Movant is a Releasing Party under the Plan as a "Holder of Claims, Interests, and Causes of Action" who did not (a) validly opt out of the releases contained in the Plan, (b) file an objection to the releases contained in the Plan by the Plan Objection Deadline, nor (c) timely voted to reject the Plan.

3. Cause does not exist for the lifting of the automatic stay as required by section 362(d)(1) of the Bankruptcy Code. The relief requested by Movant should be denied.

Jurisdiction and Venue

4. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core

Inc. (4539); and IEH BA LLC (1428). The Debtors' service address is: 112 Townpark Drive NW, Suite 300, Kennesaw, GA 30144.

proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The bases for the relief requested herein are section 362 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2002 and 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rule 4001 of the Local Bankruptcy Rules for the Southern District of Texas (the "Bankruptcy Local Rules").

Statement Pursuant to Local Rule 4001-1

7. The Debtors certify that Debtors and Movant were unable to come to a resolution.

8. The Debtors dispute the following factual assertions and issues raised in the Motion: (i) that lifting the stay will not interfere with the bankruptcy case (Motion ¶ 14(a)); (ii) that even if the Debtors incur costs in defending against Movant's claims it is insufficient to deny relief (Motion ¶ 14(b)); (iii) that the Debtor and other creditors may benefit from having Mr. McCrary's substantial claims satisfied in whole or in part from collateral sources of recovery(Motion ¶ 14(c)); (iv) that Mr. McCrary has been subject to "additional, severe, and actual prejudice" due to the litigation being stayed; (Motion ¶ 14(d)); and (v) that "the interests of judicial economy and the expedition and economical resolution of litigation strongly support granting relief from the automatic stay" Motion ¶ 14(e)).

Background

9. The Debtors maintain auto liability insurance coverage through Ace American Insurance Company ("Ace"). In 2020—the year in which the Movant alleges they suffered

injuries by one of Debtors' vehicles—the Debtors had an Ace primary auto policy (the "2020 Primary Policy").[2]

10. The 2020 Primary Policy covers damages for certain bodily injury or property damage up to $3 million. The 2020 Primary Policy also includes a "Fronted Reimbursement of Deductible" endorsement which provides that the insured must reimburse the insurer up to the "Deductible Amount" for any amounts that the insurer pays (the "Fronted Reimbursement Deductible"). The "Deductible Amount" is equal to $3 million per accident limit plus claim expenses and costs incurred in connection with the investigation, administration, adjustment, settlement, and defense of a claim or suit, including court costs, attorney's fees, expert fees, and several other types of expenses (the "Allocated Loss Adjustment Expenses"). Meaning the Debtors are required to reimburse Ace up to $3 million plus all Allocated Loss Adjustment Expenses and are effectively self-insured with respect to the first $3 million of liability for each claim under the policy.

11. Movant claims to have suffered injuries from an auto collision allegedly caused by Debtors' vehicle in 2020. Motion, Ex. 1. On February 14, 2022, Movant filed a complaint in the State Court of Gwinnett County, State of Georgia under Civil Action File No. 22-C-00924-S2 (the "Georgia Litigation"). *Id.*

12. The Debtors filed their petition for chapter 11 in this Court on January 31, 2023. Subsequently, the *Notice of Suggestion of Pendency of Bankruptcy for IEH Auto Parts LLC and Automatic Stay of Proceedings* was filed in all pending litigation.

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[2] Because the 2020 Primary Policy is voluminous it is not attached to this Objection but is available upon request.

13. On June 16, 2023, the Debtors filed their *Third Amended Combined Disclosure Statement and Joint Plan of Liquidation of IEH Auto Parts Holding LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 738] (the "Plan"). That same day, the Court entered an order confirming the Debtors' Plan [Docket No. 749] (the "Confirmation Order"). The Plan's effective date occurred on October 6, 2023 [Docket No. 922] (the "Plan Effective Date"). The Movant here did not vote on the Plan, did not file a Proof of Claim, and did not opt out of any Releases, as provided under the Plan.

Objection

I. Movant Has Not Established Cause for Relief From the Automatic Stay.

14. Movant fails to demonstrate cause for relief from the automatic stay and relief should be denied. "The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws."[3] "The purpose of the automatic stay is 'to prevent certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor's assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor."[4] In short, its purpose is "to give the debtor a 'breathing spell' from [its] creditors, and also, to protect creditors by preventing a race for the debtor's assets."[5]

15. Section 362(d)(1) of the Bankruptcy Code provides that the Court shall grant relief from the automatic stay "for cause." 11 U.S.C. § 362(d)(1). Although the Bankruptcy

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[3] *In re Timbers of Inwood Forest Assocs., Ltd.*, 793 F.2d 1380, 1409 (5th Cir. 1986), *on reh'g*, 808 F.2d 363 (5th Cir. 1987), *aff'd sub nom. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988) (quoting H.R. Rep. 95-595, 340 (1977), U.S.C.C.A.N. 1978, p. 6296).

[4] *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007).

[5] *Matter of Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1182 (5th Cir. 1986).

Code does not define "cause" under section 362(d)(1), the Fifth Circuit determined that the statute affords flexibility to the bankruptcy courts when determining whether cause exists.[6]

16. In considering whether to lift the automatic stay, courts apply one of two tests. First test considers three factors (the "Three Factor Test"): (i) the prejudice to the debtor or the bankruptcy estate; (ii) the relative hardships to the debtor and non-debtor party by continuation of the stay; and (iii) whether the creditor has a probability of prevailing on the merits of the case.[7] The second test, most commonly applied in the context of applications to lift the stay to allow litigation against a debtor to proceed in another forum, considers the so-called "*Sonnax* factors."[8] The *Sonnax* court outlined 12 factors for determining whether cause exists to lift the stay, including:

(1) whether relief would result in a partial or complete resolution of the issues;

(2) lack of any connection with or interference with the bankruptcy case;

(3) whether the other proceeding involves the debtor as a fiduciary;

(4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;

(5) whether the debtor's insurer has assumed full responsibility for defending it;

(6) whether the action primarily involves third parties;

(7) whether litigation in another forum would prejudice the interests of other creditors;

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6 *See*, *e.g.*, *In re Reitnauer*, 152 F.3d 341, 343 n.4 (5th Cir. 1998) ("Because [section] 362 does not offer guidance as to what constitutes 'cause,' reviewing courts must determine whether cause existed on a case-by-case basis.").

7 *See In re Samshi Homes, LLC*, 2011 WL 3903054, at *3 (Bankr. S.D. Tex. Sept. 6, 2011) (citing three-factor test for determining whether to lift the automatic stay); at *3 (Bankr. S.D. Tex. Aug. 25, 2011) (same); *In re Rashad*, 2011 WL 1770437, at *2 (Bankr. S.D. Tex. May 9, 2011) (same).

8 *See In re Xenon Anesthesia of Tex., PLLC*, 510 B.R. 106, 112 (Bankr. S.D. Tex. 2014) (applying *Sonnax* factors when deciding whether to lift the automatic stay to allow litigation against the debtor to proceed in another forum).

(8) whether the judgment claim arising from the other action is subject to equitable subordination;

(9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;

(10) the interests of judicial economy and the expeditious and economical resolution of litigation;

(11) whether the parties are ready for trial in the other proceeding; and

(12) impact of the stay on the parties and the balance of harms.[9]

Not all factors may be relevant in a given case and only the relevant factors need to be considered.[10]

17. Movant has failed to show that "cause" exists to lift the automatic stay under both the Three Factor Test and the *Sonnax* factors.

A. Movant Fails to Satisfy the Three Factor Test.

(i) Lifting the Stay Will Prejudice the Debtors.

18. Movant primarily argues that they are entitled to relief because the Movant's claims are not against the Debtors, but rather against Mr. Vasilas, and even if it contains a claim against the Debtors, Movant should be allowed to continue since the Debtors' Plan does not enjoin any claims under any insurance contracts. Motion, ¶ 8–9. Movant's argument is unpersuasive and inaccurate.

19. The primary factor in determining whether to lift the automatic stay is whether allowing such action would impact the administration of the debtor's estate.[11] Even a "slight

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[9] *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990).

[10] *Id.*

[11] *See In re United States Brass Corp.,* 173 B.R. 1000, 1006 (Bankr. E.D. Tex. 1994) ("When balancing the hardships in lifting the stay, the most important factor is the effect on such litigation on the administration of the estate.").

interference" with the administration of the debtor's estate "may be enough to preclude relief in the absence of a commensurate benefit."[12] As the Fifth Circuit held in *Edgeworth*, the controlling question is whether the litigation would place the financial burden solely on the insurer or implicate the debtor.[13]

20. Relief from the stay to proceed against insurers should not be granted if a debtor's unexhausted self-insured retention or deductible obligations are implicated.[14] In *In re iHeartMedia Inc.*, the court denied a motion to lift the automatic stay for a personal injury claim where the movant's "attempt to collect against the [i]insurance [p]olicy directly affect[ed] the bankruptcy estate" by virtue of the insurance policy's deductible, which the court explained operated like a SIR in implicating the insured debtors' finances.[15] The court reasoned "[a]lthough [the movant] characterizes its claim as a claim against the insurance proceeds, that is simply incorrect. Its claim is against [the debtor], the insured. Any claim necessarily invokes the [i]nsurer's right to reimbursement from [the debtor], *whether that payment is required prior to claim payment under a SIR, or as a reimbursement under a deductible is irrelevant*."[16]

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[12] *See Curtis*, 40 B.R. at 806; *see BDA Design Grp., Inc.*, 2013 WL 12100467, at *5 (same).

[13] *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 54 (5th Cir. 1993).

[14] *See e.g.*, *In re Tailored Brands, Inc.*, No. 20-33900 (MI), 2021 WL 2021472, at *5 (Bankr. S.D. Tex. May 20, 2021) (decling to allow movant relief from discharge to pursue his tort claims against the debto in state court with the SIR "effectively left [the debtors] uninsured with respect to the first $500,000 in incurred in relation to [the movant's] action.").

[15] *In re iHeartMedia, Inc.*, Case No. 18-31274 (MI) 2019 Bankr. Lexis 1617, at *12, *16 (Bankr. S.D. Tex. May 28, 2019).

[16] *Id.* at *15, *16 (emphasis added).

21. Allowing the Georgia Litigation to proceed would prejudice the Debtors and their estates.[17] For Example, the administrative costs that would be borne by the Debtors' estates if the action is permitted to proceed outside this Court, even for the limited purpose of pursuing available insurance coverage, would prejudice the Debtors and their estates. Further, if Movant was able to enforce a judgment against the insurers, the Debtors would ultimately be on the hook for such judgment plus defense costs and expenses. The Fronted Reimbursement of Deductible requires the Debtors to reimburse Ace up to $3 million plus all Allocated Loss Adjustment Expenses. Proceeding with the litigation would also divert time, resources, and attention that would otherwise be focused on administering their estates without a commensurate benefit.[18]

22. The time and costs outlined above will be borne by the Debtors and their estates, outside of the bankruptcy-claims process and at the expense of the Debtors' other creditors. The Court should deny Movant's request for relief from the automatic stay to proceed against the Debtors' insurance.

(ii) The Balance of Hardships Favors Maintaining the Stay.

23. The Debtors and their estates face substantial prejudice in connection with lifting the automatic stay to allow the Movant's litigation to proceed. Movant cannot overcome the

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17 *See In re W.R. Grace & Co.*, No. 01-01139, 2007 WL 1129170, *2 n. 7 (Bankr. D. Del. Apr. 13, 2007) ("when balancing the hardships in lifting the stay, the most important factor is the effect of such litigation on the administration of the estate"). Even a "slight interference" with the administration of the debtor's estate "may be enough to preclude relief in the absence of a commensurate benefit." *See In re Curtis*, 40 B.R. 795, 806 (Bankr. D. Utah 1984).

18 *See In re Bally Total Fitness of Greater New York, Inc.*, 402 B.R. 616, 623 (Bankr. S.D.N.Y. 2009) (denying relief from stay finding that "allowing the actions to proceed would distract the Debtors' management from the bankruptcy proceeding . . . thereby affecting the interests of other creditors.").

"heavy and possibly insurmountable burden of proving that the balance of hardships tips significantly in favor of granting relief."[19]

24. The Movant's claim, if any valid claim exists, will be a general unsecured claim and resolved efficiently via the Debtors' confirmed Plan. Given the structure of the Debtors' financial obligations under the insurance policies, permitting the litigation to go forward will put the Movant ahead of other general unsecured creditors. Movant should not be allowed to prejudice other creditors by forcing the Debtors to defend themselves in the Georgia Litigation and reimburse significant sums for a potential claim that would be a general unsecured claim.

B. Movant Fails to Satisfy the *Sonnax* Factors.

25. In addition to failing the Three Factor Test, Movant fails to satisfy the *Sonnax* factors, as the majority of the relevant factors weigh in favor of denying the Motion.

26. ***First***, the Debtors' insurer has not assumed full responsibility for defending the claim. The Debtors are ultimately on the hook for all expenses and costs incurred in connection with the defense of the claim and Ace has not assumed full responsibility for defending the claim.

27. ***Second,*** lifting the stay will not result in the complete resolution of the issues because Movant will have to return to this Court to seek to have their Claims allowed. Courts have routinely denied lift stay motions in analogous circumstances.[20] "Claims for damages

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[19] *In re W.R. Grace & Co.,* No. 01-01139 (JFK), 2007 WL 1129170, at *3 (Bankr. D. Del. Arpil 13, 2007) (internal quotation omitted); *see also In re Irish Bank Resolution Corp. Ltd.*, No. BR 13-12159-CSS, 2019 WL 4740249, at *7 (D. Del. Sept. 27, 2019) ("[T]o establish cause, the party seeking relief from the stay must show that [the] balance of hardships from not obtaining relief tips significantly in [its] favor." (citation omitted)).

[20] *See, e.g.*, *Residential Capital, LLC*, 2012 WL 3249641 at *4 (finding that the first *Sonnax* factor weighed against lifting the stay because the movants would be required to go through the bankruptcy court claims process to collect on any judgment).

against [debtors] are the usual grist for the bankruptcy claims allowance process and absent unusual circumstances the bankruptcy court remains the appropriate forum to resolve such claims."[21]

28. ***Third***, if the stay were lifted, the Debtors would be forced to spend significant amounts of money reimbursing the defense of Movant's claims, reducing the amount of available assets for distribution to creditors in these chapter 11 proceedings.[22]

29. ***Fourth*,** lifting the automatic stay would prejudice the interests of other creditors. Allowing the Movant to lift the automatic stay, or modify the plan injunction, would force the Debtors to expend estate resources reimbursing the insurers for defending against Movant's claims. There is no basis to permit the Movant to jump the line ahead of the Debtors' other creditors.

30. ***Finally***, the balance of harms weighs heavily in favor of denying the relief requested. The Debtors' efforts should remain focused on their reorganization without the distraction of expensive, piecemeal litigation.

31. Whether viewed under the Three Factor Test or the *Sonnax* test, the Movant cannot satisfy the standard for lifting the stay. The Motion should be denied.

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21 *Id.* at *4.

22 *See* 28 U.S.C. § 157(b)(2)(A) (providing that core proceedings include "matters concerning the administration of the estate"); *see also Matter of Wood*, 825 F.2d 90, 97 (5th Cir. 1987) ("[A] claim filed against the estate is a core proceeding because it could arise only in the context of bankruptcy."); *Matter of U.S. Abatement Corp.*, 79 F.3d 393, 398 (5th Cir. 1996) (holding that a matter that involved filing a proof of claim and was conducted pursuant to the bankruptcy rules guiding adversary actions was "sufficiently ensconced in the bankruptcy context to render it a core proceeding").

II. Movant Is A Releasing Party and Both Peter Vasilas and the Debtors are Released Parties Under the Plan.

32. The Movant's claims against the parties to the Georgia Litigation, specifically Peter Vasilas and the Debtors, were released under the Plan. The Debtors and their Estates, under Article I of the Plan, are included as a member of the "Released Parties".

> 110. "Released Parties" means, collectively, and in each case in its capacity as such: (a) the Debtors and their Estates; (b) the Icahn Entities; (c) the Committee, in its capacity as such; (d) the members of the Committee in their individual capacities, and (e) each Related Party of each Entity in clause (a) through clause (d); *provided* that any Holder of a Claim or Interest that (x) validly opts out of the releases contained in the Plan, (y) Files an objection to the releases contained in the Plan by the Objection Deadline, or (z) timely votes to reject the Plan, shall not be a "Released Party."

Further, Mr. Vasilas, as an employee of the Debtors, is a "Related Party" and thereby included under subsection (f) of the "Released Parties" definition.

> 109. "Related Party" means, with respect to any Person or Entity, such Person's or Entity's current or former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, participants, successors, and assigns, subsidiaries, Affiliates, managed accounts or funds, and each of their respective current and former equity holders, directors, managers, owners, principals, shareholders, members, management companies, fund advisors, employees, agents, advisory board members, financial advisors, partners, attorneys, investment bankers, consultants, representatives, other professionals and the respective successors and assigns thereof.

33. Movant here is a member of the "Releasing Parties" under subsection (e), as a Holder of Claims, Interests, and Causes of Acction. Simply put, the Movant's cause of action has been released under the Plan.

> 111. "Releasing Parties" means collectively, and in each case in its capacity as such: (a) the Debtors and their Estates; (b) the Icahn Entities; (c) the Committee, in its capacity as such; (d) the members of the Committee in their individual capacities, (e) all Holders of Claims, Interests, and Causes of Action, and (f) each Related Party of each Entity in clause (a) through clause (e) for which such Entity is legally entitled to bind such Related Party to the releases contained in the Plan under applicable law; *provided* that any Holder of a Claim or Interest that (x) validly opts out of the releases contained in the Plan, (y) Files an objection to the releases contained in the Plan by the Plan Objection Deadline, or (z) timely votes to reject the Plan, shall not be a "Releasing Party."

34. Under Article VIII.F.4 of the Plan, and as of the Plan Effective Date, "each Released Party is deemed to be hereby conclusively, absolutely, unconditionally, irrevocably,

and forever released and discharged by each of the Releasing Parties . . . ." Thus, any claim held by the Movant against either Mr. Vasilas or the Debtors was released.

35. The Movant has no right to continue litigation against Mr. Vasilas, or the Debtors, in the Georgia Litigation. Continued prosecution of the claims in the Georgia Litigation is in direct violation of the Court's Confirmation Order. The Motion should be denied.

36. For the reasons set forth herein, the Debtors request that the Court deny the Motion.

Houston, Texas
Dated: October 27, 2023

/s/ Elizabeth C. Freeman

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<u>Certificate of Service</u>

I certify that on October 27, 2023, 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.

/s/ Elizabeth C. Freeman
Elizabeth C. Freeman