

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

In re:	X	
	:	Chapter 11
	:	
MODIVCARE INC., <i>et al.</i> ,	:	Case No. 25-90309 (ARP)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
	X	

**DEBTORS' OBJECTION TO MOTION  
OF LISA SALLAJ FOR RELIEF FROM STAY**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) respectfully submit this objection (the “**Objection**”) to the *Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1)* [Docket No. 657] (the “**Motion**”) filed by Lisa Sallaj (the “**Movant**”).<sup>2</sup>

**PRELIMINARY STATEMENT**

1. Movant’s request for relief from the automatic stay to proceed with a civil action in the District of Kansas should be denied because Movant does not meet their burden to establish cause to lift the stay.<sup>3</sup> While Movant argues that, among other things, cause exists to lift the stay

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”) and the last four digits of each Debtor’s taxpayer identification number (if applicable) may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Objection will have the meaning ascribed to such terms in the *First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* [Docket No. 465].

<sup>3</sup> As discussed more fully below, the applicable insurer is Chubb Corporation, and the civil action involves general / professional liability coverage.



because the relief sought will not prejudice the Debtors' estate, the facts and circumstances of the Debtors' insurance policies leads to a different result here.

2. In particular, the Debtors' deductible under the applicable insurance policy is \$1 million per claim, but the insurance carrier holds substantial collateral from the Debtors. Therefore, in the event the insurer is required to pay a particular insured claim up to or exceeding the Debtors' \$1 million deductible amount, the insurer could then offset the deductible amount against the Debtors' collateral it is holding. This setoff clearly would deplete estate assets (and has already taken up time and resources). Accordingly, the Debtors submit the Motion should be denied.

### **OBJECTION**

#### **A. Legal Standard**

3. The automatic stay under section 362 of the Bankruptcy Code applies to actions or proceedings against a debtor or against property of the estate. *See* 11 U.S.C. § 362. In particular, the automatic stay protects against, among other things, (i) "the commencement or continuation ... of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case", (ii) "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate, and (iii) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case[.]" 11 U.S.C. § 362(a)(1), (3) and (6).

4. The automatic stay provides "one of the fundamental debtor protections provided by the bankruptcy laws." *S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1146 (5th Cir. 1987). It is intended to "give[] the Debtor a breathing spell from his creditors." *Id.* (the automatic stay "prohibits the proliferation of numerous

claims in different forums against the debtor.”). The automatic stay is particularly important in maintaining the status quo and permitting the debtor in possession or trustee to attempt to formulate a plan of reorganization. 3 Collier on Bankruptcy ¶ 362.03 (16th ed. 2019) (“[W]ithout the stay, the debtor’s assets might well be dismembered, and its business destroyed, before the debtor has an opportunity to put forward a plan for future operations.”); *see also City of Chicago Ill. v. Fulton*, 592 U.S. 154, 158 (2021) (interpreting section 362(a)(3) as a “prohibit[ion of] affirmative acts that would *disturb the status quo of estate property as of the time when the bankruptcy petition is filed.*”) (emphasis added).

5. Although section 362(d) of the Bankruptcy Code authorizes a court to lift the automatic stay for “cause”, section 362(d) does not offer guidance as to what constitutes “cause”, and the reviewing court must determine whether cause exists on a case-by-case basis. *See, e.g., In re Reitnauer*, 152 F.3d 341, 343 n.4 (5th Cir. 1998); *In re Mosher*, 578 B.R. 765, 772 (Bankr. S.D. Tex. 2017) (explaining that whether “cause” exists is a fact-intensive inquiry “committed to the discretion of the bankruptcy judge ... that must be determined on a case-by-case basis.”).

6. In determining whether to allow prepetition litigation against a debtor to proceed outside the bankruptcy forum, bankruptcy courts will often consider the following three factors: (i) whether lifting the stay will result in any great prejudice to the debtor or the bankruptcy estate, (ii) whether any hardship to a non-debtor of continuation of the stay outweighs any hardship to the debtor, and (iii) whether the creditor has a probability of prevailing on the merits of the case. *In re Samshi Homes, LLC*, No. 10-37643-H3-11, 2011 WL 3903054, at \*3 (Bankr. S.D. Tex. Sept. 6, 2011).

7. In addition, courts in this Circuit also have relied upon a set of twelve factors (known as the “*Sonnax Factors*”) when making such an assessment. *See Sonnax Indus., Inc. v.*

*Tri Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2d Cir. 1990). The *Sonnax* Factors are:

- whether relief would result in a partial or complete resolution of the issues;
- lack of any connection with or interference with the bankruptcy case;
- whether the other proceeding involves the debtor as a fiduciary;
- whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- whether the debtor’s insurer has assumed full responsibility for defending it;
- whether the action primarily involves third parties;
- whether litigation in another forum would prejudice the interests of other creditors;
- whether the judgment claim arising from the other action is subject to equitable subordination;
- whether movant’s success in the other proceeding would result in a judicial lien avoidable by the debtor;
- the interests of judicial economy and the expeditious and economical resolution of litigation;
- whether the parties are ready for trial in the other proceeding; and
- impact of the stay on the parties and the balance of harms.

*See id.* at 1286.

8. Although not all of the *Sonnax* Factors may be relevant to each case,<sup>4</sup> “even slight interference with the administration [of the Debtors’ estates] may be enough to preclude relief.” *Anderson v. Hoechst Celanese Corp. (In re U.S. Brass Corp.)*, 173 B.R. 1000, 1006 (Bankr. E.D. Tex. 1994), *modified*, 176 B.R. 11 (Bankr. E.D. Tex. 1994); *see also In re W.R. Grace & Co.*, No. 01-01139, 2007 WL 1129170, at \*2 n.7 (Bankr. D. Del. Apr. 13, 2007) (“The most important

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<sup>4</sup> See *In re Xenon Anesthesia of Tex., PLLC*, 510 B.R. 106, 112 (Bankr. S.D. Tex. 2014).

factor in determining whether to grant relief from the automatic stay ... is the effect on such litigation on the administration of the estate.”) (citation omitted). Not every possible detriment to the creditor or estate independently justifies lifting the stay. *In re Omni Lion’s Run, L.P.*, 578 B.R. 394, 399 (Bankr. W.D. Tex. 2017).

9. Critically, the party seeking relief from the stay carries the initial burden to establish that cause exists to lift the stay, and only if the movant makes a *prima facie* case does the debtor need to respond. *See In re Kowalsky*, 235 B.R. 590, 594 (Bankr. E.D. Tex. 1999) (citing *In re Sonnax Indus., Inc.*, 907 F.2d 1280 (2d Cir. 1990)). “If a movant fails to make a *prima facie* showing, the court should deny the relief requested.” *Id.* (citing *In re Keene Corp.*, 171 B.R. 180, 182 (Bankr. S.D.N.Y. 1994)).

10. Moreover, where an unsecured creditor seeks relief from the automatic stay, such relief is granted only in extraordinary circumstances. *In re Eagles Enters., Inc.*, 265 B.R. 671, 680 (E.D. Pa. 2001) (“[U]nsecured creditors are entitled to relief from an automatic stay only in extraordinary circumstances.”); *In re Stranahan Gear Co.*, 67 B.R. 834, 838 (Bankr. E.D. Pa. 1986) (“Several factors mitigate strongly against the allowance of any relief in this case – in any but the most extraordinary set of circumstances – where the moving party is an unsecured creditor.”).

**B. Movant Has Not Satisfied its Burden and Cause Does Not Exist to Lift the Automatic Stay**

11. Movant seeks relief from the automatic stay so that they can continue to litigate or pursue the civil action commenced on June 3, 2025 (the “*Civil Action*”). The Civil Action commenced prior to the filing of the Chapter 11 Cases in the United States District Court for the District of Kansas. It is styled *Lisa Sallaj v. Laura Howard, Secretary of Kansas Department for Aging and Disability Services (KDADS), in Her Official Capacity, United Healthcare, Modivcare*

(*Motive Transportation*), case number 6:25-cv-1119-DDC-BGS and was commenced against Debtor ModivCare Inc., as well as other named defendants (the other named defendants referred to collectively as the “**Non-Debtor Defendants**”), for the alleged breach of contract and discrimination, fraud, willful neglect, and personal injury.

12. With respect to the relief against the Debtors, Movant asserts that the relief sought will not prejudice the Debtors’ estate, creditors, or reorganization efforts, as any recovery in the Civil Action will be limited to the available proceeds from the Debtors’ liability insurance coverage through the Debtors’ insurer, Chubb Corporation (“**Chubb**”). The liability coverage is subject to an annual aggregate policy limit of \$3 million, and the applicable insurance policy carries a deductible of \$1 million per eligible claim (the “**Policy**”). Further, in connection with the Policy, the Debtors and Chubb also entered a prepetition Collateral Agreement dated May 15, 2017 (amended as of January 7, 2021 and May 15, 2021), pursuant to which Chubb holds substantial collateral in the form of cash and letters of credit, well in excess of the deductible.<sup>5</sup>

13. The Movant’s argument does not take into account the actual facts of this case. As discussed above, the Debtors have a high-deductible policy and Chubb is holding substantial collateral of the Debtors. While Chubb initially would pay any amounts ultimately owing to Movant, Chubb is then entitled to be reimbursed by the Debtors up to the amount of the deductible and is holding sufficient collateral to set off any such amounts. The Debtors understand that Chubb

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<sup>5</sup> As of September 29, 2025, Chubb held approximately \$40,333,930.00 of collateral relating to the Policy, comprised of (i) irrevocable standby letter of credit number NUSCGS043296 issued by JPMorgan Chase Bank, N.A. in the current amount of \$22,541,324.00, (ii) irrevocable standby letter of credit number 75002306 in the current amount of \$11,291,494.00, (iii) a paid loss deposit fund in the current amount of \$1,314,325.00, and (iv) cash collateral in the current amount of \$5,186,787.00. See *Reply of the Chubb Companies to the Debtors’ Objection to Motion of Thresa Lyons for Relief from Stay and for Order Determining Inapplicability of Stay to Certain Non-Debtors* [Docket No. 731] (the “**Chubb Filing**”)¶ 8. Any amounts drawn under the letters of credit will increase the amount of the First Lien Claims, thereby harming the estate and decreasing the assets available to the Debtors’ other creditors. Similarly, if Chubb were to take the cash collateral it is holding, it would harm the Debtors’ estates.

will draw on the collateral if they fail to reimburse Chubb for the amounts within the deductible. See Chubb Filing ¶ 6.

14. Therefore, lifting the stay to allow the Movant to litigate the Civil Action would result in Chubb enforcing its collateral rights to the extent of the \$1 million deductible, which would directly deplete the resources available to the Debtors' bankruptcy estates (at least up to the amount of the deductible), thereby reducing the potential recovery for other creditors. Such harm to the Debtors outweighs any hardship that Movant would experience by maintaining the stay. In addition, lifting the stay would cause the Debtors to expend significant and limited estate resources on defense costs, thereby further prejudicing the Debtors. The Debtors believe their estates are better served by focusing their limited resources on confirming a chapter 11 plan instead of defending prepetition litigation.

15. Moreover, a majority of the *Sonnax* Factors weigh against granting the Movant's request for relief from the stay. For example:

- ***Lifting the stay would interfere with the bankruptcy cases.*** Lifting the automatic stay at this time would cause an unnecessary distraction for the Debtors and their professionals. It may also allow other claimants to seek stay relief on similar terms.
- ***The Civil Action does not involve the Debtors as fiduciaries.*** The Debtors are not being sued in a fiduciary capacity by the Movant. Accordingly, the Movant's action should remain stayed because it bears a direct relationship to the purpose of the stay, which is to protect the Debtors and their estate from creditors.
- ***The interests of judicial economy and the expeditious and economical resolution of the litigation do not require the stay to be lifted.*** The Movant has not demonstrated an immediate need for stay relief to litigate the Civil Action now, as opposed to as part of the post-confirmation claims reconciliation process. There is no reason why the Civil Action cannot proceed at another date.
- ***Litigation in another forum would prejudice the interests of other creditors.*** As described above, lifting the stay to allow the Movant to litigate the Civil

Action in another forum could result in a \$1 million reduction in the estates' bankruptcy assets.

- ***The parties are not trial ready.*** The Movant has not provided any evidence that it is trial ready in the Civil Action.
- ***The balance of the harms weighs in favor of maintaining the stay.*** As described above, lifting the stay would be highly prejudicial to the Debtors as they would be required to expend significant estate resources defending the Movant's action in the state court. On the other hand, the Movant would experience little harm if the stay is not lifted at this time. Accordingly, the balance of harms strongly weighs in favor of denying the Motion.

16. Accordingly, cause does not exist to lift the stay to allow the Movant to proceed with their Civil Action against the Debtors' available insurance coverage in these circumstances.

#### **RESERVATION OF RIGHTS**

17. The Debtors reserve all rights to supplement or add to the legal and factual arguments raised in this Objection or any basis whatsoever, at a future date. Nothing herein shall be interpreted as an admission that any claim described herein is valid, and the Debtors reserve all rights with respect thereto.



**CONCLUSION**

18. For the reasons set forth herein, the Debtors respectfully request that the Motion be denied.

Dated: November 20, 2025  
Houston, Texas

Respectfully submitted,

*/s/ Timothy A. ("Tad") Davidson II*

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*Co-Counsel to the Debtors and Debtors-in-Possession*

**CERTIFICATE OF SERVICE**

I certify that on November 20, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

*/s/ Timothy A. ("Tad") Davidson II*

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