

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

In re

MODIVCARE INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 25-90309 (ARP)

(Jointly Administered)

**REPLY OF THE CHUBB COMPANIES TO THE DEBTORS' OBJECTION TO
MOTION OF LISA SALLAJ FOR RELIEF FROM STAY**

ACE American Insurance Company, Pacific Employers Insurance Company, Illinois Union Insurance Company, Westchester Fire Insurance Company, Westchester Surplus Lines Insurance Company, ACE Property and Casualty Insurance Company, Indemnity Insurance Company of North America, ACE Fire Underwriters Insurance Company, Federal Insurance Company, Executive Risk Indemnity Inc., Great Northern Insurance Company, ESIS, Inc. (collectively, and together with each of their respective affiliates and successors, solely in their capacities as insurers and third party administrators, the "Chubb Companies") by and through their undersigned counsel, hereby file this Reply (the "Reply") to the *Debtors' Objection To Motion Of Lisa Sallaj for Relief from Stay* [Docket No. 790] (the "Objection")², and in support of the Reply, respectfully state as follows:

REPLY

1. The Chubb Companies take no position on whether the Motion should be granted but assert that if Movant is granted relief, the terms and conditions of Chubb Insurance Program

¹ 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 the Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

² Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Objection.



cannot be altered and therefore, the Chubb Companies request that any order and/or stipulation entered granting the Movant relief from the stay include the Requested Language (as defined herein).

2. The Chubb Companies further file this Reply to provide the Court with certain information related to the Liability Policy (as defined herein).

3. In the Objection, the Debtors allege that a healthcare facilities general and professional liability insurance policy (the “Liability Policy”) issued by ACE American Insurance Company (“ACE”) provides coverage for Movant’s claims³.

4. When insured claims are paid under the Liability Policy, which contains a \$1,000,000.00 deductible per claim, any amounts up to the applicable limit related to the claim and/or the Liability Policy are paid by ACE and/or a third party administrator (not the Debtors).

5. ACE then seeks reimbursement from the Debtors of any amounts paid within the applicable deductible.

6. ACE will draw on the collateral if the Debtors fail to reimburse ACE for amounts within the deductible. *Compare* Objection at ¶¶ 13-14.

7. Certain of the collateral here includes letters of credit.

8. If and when ACE draws on any letters of credit held as collateral in order to be reimbursed for amounts paid within the deductible, the issuing bank is required to honor the draw request – using the bank’s own funds – without regard to whether the bank itself is reimbursed for the draw⁴.

³ Nothing in this Reply is or shall be construed as a representation of coverage for Movant’s claims. The Chubb Companies expressly reserve and preserve all rights and coverage defenses.

⁴ *See In re Hechinger Inv. Co. of Del., Inc.*, No. 99-2261, 2001 Bankr. LEXIS 148 (Bankr. D. Del. Jan. 29, 2001) (noting “the fact that [an LOC’s] proceeds are funds of the issuer, not of the debtor”); *In re Metro Commc’ns, Inc.*, 115 B.R. 849, 854 (Bankr. W.D. Pa. 1990) (“When the issuer of a letter of credit honors a proper draft under it, the issuer does so from its own funds, not from the assets of the customer who caused the letter of credit to be issued.”). Moreover, any collapsing of these separate and independent transactions would eradicate the

9. Further, the terms and conditions of the Liability Policy, as well as any other insurance policy issued by the Chubb Companies cannot be altered by any order granting the relief requested in the Motion. Indeed, it is well-established that courts cannot alter terms of contracts, and must instead enforce them as written. *See, e.g., Wilson v. Career Educ. Corp.*, 729 F.3d 665, 679 (7th Cir. 2013) (“A court may not rewrite a contract to suit one of the parties but must enforce the terms as written.”) (citation omitted); *In re Coupon Clearing Serv., Inc.*, 113 F.3d 1091 (9th Cir. 1997) (noting that a debtor’s estate has “no greater rights in property than those held by the debtor prior to the bankruptcy”); *Trustmark Ins. Co. v. Transamerica Occidental Life Ins. Co.*, 484 F. Supp. 2d 850, 853 (N.D. Ill. 2007) (a “court cannot alter, change or modify the existing terms of a contract or add new terms or conditions to which the parties do not appear to have assented, write into the contract something which the parties have omitted or take away something which the parties have included.”) (citation omitted); *In re Lloyd E. Mitchell, Inc.*, 06-13250-NVA, 2012 Bankr. LEXIS 5531 (Bankr. D. Md. Nov. 29, 2012) (noting that “insurance contracts cannot be rewritten by th[e] Court”).

10. Further, the Debtors cannot receive benefits of any contract, including the Liability Policy, without being liable for the obligations thereunder. *See Tompkins ex. rel. A.T. v. Troy Sch. Dist.*, 199 Fed. Appx. 463, 468 (6th Cir. 2006) (holding that it is a basic principle of contract law that a party to an agreement is constrained to accept the burdens as well as the benefits of the agreement); *St. Paul Fire & Marine Ins. Co. v. Compaq Computer Corp.*, 457 F.3d 766, 773 (8th

“independence principle” which provides that (i) a letter of credit is a contract solely between the issuing bank and the beneficiary and that it is separate and independent from any underlying agreements that may exist between the debtor and the beneficiary or the debtor and the issuing bank and (ii) once a beneficiary complies with the terms of the letter of credit, the applicant may not prevent the issuing bank from honoring any draws except in cases of fraud. *See Postal v. Smith (In re Marine Distribs., Inc.)*, 522 F.2d 791, 795 (9th Cir. 1975); *Ins. Co. of N. Am. v. Heritage Bank, N. A.*, 595 F.2d 171, 173 (3d Cir. 1979); *see also, In re Delphi Corp.*, Chp. 11 Case No. 05-44481 (Bankr. S.D.N.Y) (rejecting debtors’ argument that relief from stay would cause an indirect impact on the estate and granted movant’s motion for relief from stay, noting that “the recovery is limited to insurance here and I, in these circumstances, weigh that more heavily than the indirect effect of a recovery upon the debtors’ estate through the funding of the [deductible].”).

Cir. 2006) (finding that a party who accepts the benefit of a contract must also assume its burdens); *Bhushan v. Loma Alta Towers Owners Assoc., Inc.*, 148 Fed. Appx. 882, 888 (11th Cir. 2005) (stating “one who has accepted a contract’s benefit may not challenge its validity in order to escape its burdens”); *S & O Liquidating P’ship v. C.I.R.*, 291 F.3d 454, 459 (7th Cir. 2002) (“A party who has accepted the benefits of a contract cannot ‘have it both ways’ by subsequently attempting to avoid its burdens.”); *Hughes Masonry Co. v. Greater Clark Cnty. Sch. Bldg. Corp.*, 659 F.2d 836, 839 (7th Cir. 1981) (“In short, [plaintiff] cannot have it both ways. [It] cannot rely on the contract when it works to its advantage, and repudiate it when it works to [its] disadvantage.” (citations and quotations omitted)); *Ricketts v. First Trust Co. of Lincoln, Neb.*, 73 F.2d 599, 602 (8th Cir. 1934) (finding that “he who seeks equity must do equity, and that one may not accept the benefits and repudiate the burdens of his contract.”); *Meierhenry Sargent Ltd. Liab. P’ship v. Williams*, No. 16-4180, 2017 U.S. Dist. LEXIS 65739, at *20 (D.S.D. May 1, 2017) (“Various courts have held that a party may not avail itself of a favorable aspect of the contract and then disavow a non-favorable aspect.” (citations omitted)); *Power Sys. & Controls, Inc. v. Schneider Elec. USA, Inc.*, No. 10-137, 2010 U.S. Dist. LEXIS 56671 at *3 (E.D. Va. June 9, 2010) (“[A] party may not avail itself of one aspect of a contract and disavow another aspect of the contract in order to avoid its consequences. . . .[.]”); *see also In re Fleming Cos.*, 499 F.3d 300, 308 (3d Cir. 2007) (““The [debtor] . . . may not blow hot and cold. If he accepts the contract he accepts it *cum onere*. If he receives the benefits he must adopt the burdens. He cannot accept one and reject the other.””) (internal citations omitted); *Paradigm Air Carriers, Inc. v. Tex. Rangers Baseball Partners (In re Texas Rangers Baseball Partners)*, 521 B.R. 134, 179-80 (Bankr. N.D. Tex. 2014) (“A debtor may not merely accept the benefits of a contract and reject the burdens to the detriment of the other party.”).

11. Given the foregoing, and to adequately address and preserve the terms and conditions of any insurance policy or related agreement that may be implicated by the relief requested in the Motion, and the rights and obligations of the parties thereunder, the Chubb Companies respectfully request that the following provision be added to any order granting the relief requested in the Motion (the “Requested Language”):

Nothing in the Motion, Stipulation or this Order (i) alters, amends or otherwise modifies the terms and conditions of any insurance policies issued to the Debtors or of any related agreements; (ii) relieves the Debtors of any obligations to pay any retentions or to pay (or reimburse an insurer for) any deductibles; (iii) relieves the Debtors of any of their other obligations under the insurance policies and related agreements; (iv) creates or permits a direct right of action by the Movant against any of the Debtors’ insurers; (v) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under any allegedly applicable policy or to otherwise assert any defenses to coverage; (vi) constitutes a determination or admission that coverage exists with respect to the Movant’s claims; or (vii) relieves the Movants from their obligation, if any, to file a proof of claim. For the avoidance of doubt, the automatic stay is lifted, if and to the extent applicable, to allow, but not to require, the Debtors’ insurers and third party administrators to (a) administer, handle, defend, settle, and/or pay the Movants’ claims (and any costs related thereto) subject to and in accordance with the terms of any applicable insurance policies, any related agreements, or any claim services agreements; and (b) draw on any and all collateral provided by or on behalf of the Debtors therefor if and when the Debtors fail to pay

WHEREFORE, the Chubb Companies respectfully request that this Court (i) require that any order granting any of the relief requested in the Motion contain the Requested Language, and (ii) grant such other relief as the Court deems appropriate.

Dated: December 11, 2025

Respectfully submitted,

/s/ James H. Billingsley

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Counsel to the Chubb Companies

CERTIFICATE OF SERVICE

I, James H. Billingsley, certify that I am not less than 18 years of age, and that on the date set forth below, I caused a true and correct copy of the *Reply Of The Chubb Companies To The Debtors' Objection To Motion Of Lisa Sallaj For Relief From Stay* to be served by electronic transmission upon all parties eligible to receive services through this Court's CM/ECF system.

Dated: December 11, 2025

/s/ James H. Billingsley

James H. Billingsley, P.C. (TX 00787084)