

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

In re:

VERTEX ENERGY, INC.

Debtor.

Chapter 11

Case No. 24-90507 (CML)

**MOTION TO LIFT STAY OF PROCEEDINGS PURSUANT TO 11 U.S.C.
362(d) AND INCORPORATED MEMORANDUM**

NOW INTO COURT, through undersigned counsel, comes Deborra Tribe (hereinafter referred to as Tribe), and pursuant to 11 U.S.C. 362(d) who requests that this Court lift the stay of proceedings afforded by 11 U.S.C. 362(a)(1), and in support thereof, states:

I. Background

Tribe was injured on or about June 25, 2022 while operating her 2008 Toyota Tundra in the left-hand lane of southbound Highway 23 in Belle Chasse, Louisiana. At the same time, Mr. Holden Etheridge was operating a 2022 Dodge Ram, insured by Zurich American Insurance, westbound on Walker Road towards the intersection with Highway 23 while in the course and scope of his employment with Vertex Energy. Upon information and belief, Mr. Etheridge was attempting to make a left turn on northbound lanes of Highway 23 when he entered into the subject intersection without confirming that it was safe to do so and pulled into Complainant's lane of travel when Complainant had the legal right-of-way, causing the subject motor vehicle collision. On or about June 8, 2023, Tribe filed a Complaint in the 25th Judicial District Court for the Parish of Plaquemines entitled *Deborra Tribe vs. Zurich American Insurance Company, et al*, bearing Civil Action No. 00068156. The Complaint sets forth claims against Vertex Energy, its insurer, Zurich



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American Insurance and its employee, Holden Etheridge, for injuries sustained to Tribe on or about June 25, 2022. Tribe was caused severe injury to her back at L5-S1, resulting in Lateral Extracavitary Lumbar Interbody Fusion and Posterior Spinal Fusion and to her neck at C3-4, C4-5, and C5-6 resulting in fusion at C6-7 with disc replacements at C3-4 and C4-5. On August 16, 2023, this personal injury case was removed to the Federal Court for the Eastern District of Louisiana. Trial is presently set for April 28, 2025.

Debtor, Vertex Energy, Inc., filed a Voluntary Petition for Relief under Chapter 11 of the United States Bankruptcy Court on or about September 24, 2024. As a result, an automatic stay is believed to be in effect. Tribe avers that she is an unsecured creditor of Vertex Energy, Inc. whose liability is completely insured and protected by Zurich American Insurance.

II. Discussion

Section 362(d) allows creditors such as movant to seek relief from the automatic stay "for cause, including lack of adequate protection of an interest in property of such party in interest." *In re Holtkamp*, 669 F.2d 505, 507 (7th Cir. 1982), quoting 11 U.S.C. s 362(d). Cause may also be the lack of any connection with or interference with the pending bankruptcy case. *Elliot v. Hardison*, 25 B.R. 305, 308 (E.D. Va. 1982). Where no great prejudice to the bankruptcy estate or debtor will occur and the hardship to the plaintiff/party in interest outweighs the hardship that might be caused to the debtor by lifting the stay, the stay should be lifted. *In re McGraw*, 18 B.R. 140, 142 (Bankr. N.D. Wis. 1982). Where the pending civil action is not connected with and does not interfere with the bankruptcy proceeding, the automatic stay does not further the purposes of the bankruptcy code. *Holtkamp* at 508.

Where the claim is one covered by insurance or indemnity, continuation of the (civil) action should be permitted since hardship to the debtor is likely to be outweighed by hardship to the plaintiff. *McGraw* at 142, citing 2 Collier on Bankruptcy 362.07(3). Even where insurance does not pay for the costs of defense of a civil action, the equities may still weigh in favor of lifting the stay. *McGraw* at 142. [D]ebtors-defendants suffer little prejudice when they are sued by plaintiffs who seek nothing more than declarations of liability that can serve as predicate for a recovery against insurers, sureties, or guarantors. *In re Fernstorm Storage and Van Co.*, 938 F.2d 731 (7th Cir. 1991). The presence of insurance allows the Bankruptcy Court to find that permitting the civil action to go forward would not jeopardize the bankruptcy estate because financial responsibility for the defense of the litigation would be borne by the insurance company. *Holtkamp* at 508-509. Another factor that the courts have considered in determining that the balance of hardships favors allowing the civil action to proceed is that this would allow the amount of the claim to be determined and liquidated. *In re Best Repair Co., Inc.* 34 B.R. 664 (Bankr. E.D. Va. 1983); *Elliott v. Hardison*, 25 B.R. 305, 308 (E.D. Va. 1982).

In *Holtkamp*, the Seventh Circuit cited legislative history stating that [i]t will often be more appropriate to permit proceedings to continue in their place or origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere. 699 F.2d at 508, quoting *In re Honosky*, 6 B.R. 667, 669 (S.D.W.Va. 1980) quoting S.Rep.No. 989, 95th Cong., 2d Sess. 50.

The *McGraw* Court held that great prejudice does not result where plaintiffs stipulate that they **will not attempt to collect any judgment against the debtor proper or its employee.** 15

B.R. at 142. Accordingly, movant stipulates that any judgment obtained in the United States District Court for the Eastern District of Louisiana action will not be enforced against the debtor or the debtors' estate outside of this bankruptcy proceeding, except for collection from the debtor's insurance carrier, if any. Modification of the stay to permit the action in the United States District Court for the Eastern District of Louisiana to go forward would therefore have no effect on the bankruptcy estate or the debtor and no great prejudice would result.

In the present case, the only purpose served by refusing to lift the automatic stay would be to protect the debtor's insurance carrier. The Court is not convinced that the Bankruptcy Code was intended to bestow such a benefit upon insurance companies. *In re Honosky*, 6 B.R. 667, 669 (Bankr. S.D.W. Va. 1980).

The balance of hardships described in *Holtkamp* favors lifting the automatic stay in the present case. Allowing the claim to go forward would liquidate the claim in a forum better suited and with more expertise in determining the value of the claim, and, with the stipulation filed herein that Tribe will enforce any resulting judgment against the **insurer only** (except for amounts for possible deductibles that might be sought in this bankruptcy proceeding), would not affect the debtor or its estate.

III. Conclusion

Movant prays that this Court enter an Order lifting the automatic stay to allow Movant Tribe's civil action pending in the United States District Court for the Eastern District of Louisiana against Debtor, Vertex Energy, its insurer, Zurich American Insurance, and its Vertex Energy's employee, Holden Etheridge, to continue to conclusion on the condition that no judgment that may

result may be enforced against the debtor, the debtor's estate or its employee, Mr. Etheridge, except for any liability insurance policy applicable to the claim and in this bankruptcy proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2024, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system. Notice of this filing will be sent by operation of the court's electronic filing system to all CM/ECF participants. I also certify that the above and foregoing has this date been forwarded by U.S. Mail, postage prepaid and properly addressed to the non-CM/ECF participants.

S/ THOMAS M. DISCON
THOMAS M. DISCON

**IN THE UNITED STATES BANKRUPTCY COURT
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ORDER

Considering the foregoing Motion To Lift Stay of Proceedings Pursuant to 11 U.S.C. § 362(d);

IT IS HEREBY ORDERED, that Deborra Tribe's Motion To Lift Stay is hereby GRANTED.

IT IS FURTHER ORDERED, that the automatic stay be lifted to allow Movant Tribe's civil action pending in the United States District Court Eastern District of Louisiana against Debtor and other named defendants to continue to conclusion on the condition that no judgment that may result may be enforced against the debtor or the debtor's estate except any judgment obtained can be enforced against any liability insurance policy applicable to the claim herein.

Houston, Texas, this _____ day of _____, 2024.

JUDGE