

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

IN RE:
PROGRESSIVE ACUTE CARE, LLC, ET AL
DEBTOR

CASE NO. 16-50740
CHAPTER 11
JOINTLY ADMINISTERED

MOTION TO LIFT AUTOMATIC STAY

NOW INTO COURT, through undersigned counsel, comes Brad Desadier, Creditor, who moves this Court to lift and/or modify the Stay granted in the captioned proceeding, to allow Creditor to proceed with a medical malpractice claim against Winn Parish Medical Center for the following reasons, to wit:

Jurisdiction and Venue

1.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

2.

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

3.

The statutory basis for relief is 11 U.S.C. §362.

Background

4.

On or about July 21, 2015, Brad Desadier (In the Matter of Brad Desadier, Docket No. 44967, 8th Judicial District Court, Winn Parish, Louisiana) filed a medical malpractice complaint with the Patient's Compensation Fund ("PCF") against Dr. Julio E. Iglesias and Winn Parish

Medical Center requesting formation of a Medical Review Panel for consideration of the malpractice complaint. On or about September 16, 2015, David Cook was notified of his selection as Attorney Chairman of the Medical Review Panel. Said complaint was designated PCF No. 2015-00809.

5.

On May 31, 2016, the Debtor, Progressive Acute Care Winn, LLC dba Winn Parish Medical Center (“WPMC”), filed a petition under Chapter 11 of the Bankruptcy Code. As a result of this and pursuant to the United States Bankruptcy Code, PCF No. 2015-00809 is subject to the automatic stay as long as Winn Parish Medical Center remains a defendant in the matter designated as PCF No. 2015-00809.

6.

As a result of the filing of the bankruptcy and the issuance of the automatic Stay, Brad Desadier is unable to prosecute his claim against the insurer and/or WPMC.

7.

Under La. R.S. 22:1269, Louisiana has a Direct Action Statute which provides that in the event a defendant that is insured goes bankrupt or files bankruptcy proceedings, the claimant, or petitioner, can proceed directly against the insurer of the Debtor.

8.

Movant acknowledges that a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor.

Relief Requested

9.

Movant requests a partial lift of the automatic stay solely for the purposes of concluding the litigation of this matter and not for purposes of enforcing a judgment or to pursue collection efforts against debtor, WPMC. Instead, Movant seeks an Order from this Court allowing them to amend their state law suit to name as a defendant the insurer of WPMC, and to allow petitioner to proceed directly against said insurer and all other defendants, except the debtor, WPMC.

10.

Brad Desadier avers that he is entitled to have the Stay lifted and/or modified as against the insurer of Debtor as provided by the Bankruptcy Code.

WHEREFORE, movant prays that this matter be set for hearing of the motion herein and that the automatic Stay be lifted and/or modified as to permit Movant to continue litigation of his medical malpractice claim against the insurer of WPMC. Movant further prays that the Order sought herein continue in effect in the event that these proceedings are converted to any other chapter for relief under the Bankruptcy Code.

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