

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: : Case No. 12-11436 (SCC)
: :
: Chapter 11
DAYTOP VILLAGE FOUNDATION INC., : (Jointly Administered)
*et al.*¹, : :
: :
Debtors. : :
:

**STIPULATION AND AGREED ORDER RESOLVING MOTION OF
DOUGLAS BELL FOR RELIEF
FROM THE AUTOMATIC STAY**

This Stipulation (the “Stipulation”) is entered into between the above-captioned debtors and debtors-in-possession (the “Debtors”), by and through their counsel, Lowenstein Sandler PC, and Douglas Bell (the “Movant”), by and through his counsel, Mainetti, Mainetti & O’Connor, P.C.

WHEREAS, on April 5, 2012 (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”); and

WHEREAS, Movant is a plaintiff in a pre-petition action (the “Action”) commenced against, *inter alia*, Debtor DVF in New York State Supreme Court, County of Ulster (Index No. 11-3971), alleging personal injuries and damages; and

WHEREAS, the Debtors are insured parties under a certain third-party liability insurance policy (the “Policy”), which Policy may be subject to a per claim deductible (the “Deductible”); and

¹ The Debtors in these chapter 11 cases are: (1) Daytop Village Foundation Incorporation (“DVF”) (6772) and (2) Daytop Village, Inc. (“Daytop Village”) (1438) (collectively, the “Debtors”).

WHEREAS, on or about September 20, 2012, Movant filed a motion seeking relief from the automatic stay to proceed in the Action for a recovery solely against available proceeds under the Policy, if any; and

WHEREAS, the Movant and the Debtors seek to modify the automatic stay on the terms set forth herein.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, SUBJECT TO BANKRUPTCY COURT APPROVAL, AS FOLLOWS:

1. The foregoing provisions are incorporated herein as if set forth separately below.
2. The automatic stay of section 362 of the Bankruptcy Code is hereby modified for the limited purpose of permitting the Movant to proceed against the Debtors in the Action as nominal defendants only, at no cost to the Debtors or their estates, so that the Moving Party may seek to establish liability and damages for the sole purpose of recovering against proceeds of the Policy, if any.
3. Any recovery by the Movant based on upon any judgment, settlement, mediation, arbitration, or otherwise on account of the Movant's claims against the Debtors, including relating to the Action, shall be solely from the proceeds of the Policy and not against the Debtors or their estates.
4. The Debtors make no warranty or representation as to the availability or terms for payment under the Policy, the amount of coverage, or the likelihood of recovery against the Policy or any other insurance policies, if any.
5. Any and all proof(s) of claim filed (or to be filed) by the Movant in these chapter 11 cases, including claim numbers (i) 103 filed against both Daytop Village and DVF; (i) 123 filed against both Daytop Village and DVF; and (iii) 124 filed against both Daytop Village and

DVF, are hereby disallowed and expunged for all purposes, and the Movant shall not be entitled to receive any distributions from any of the Debtors or their estates in their chapter 11 cases under a plan of reorganization or otherwise on account of the claims asserted in the Action. The Debtors' claims agent, Epiq Bankruptcy Solutions, LLC, is hereby directed to expunge claim numbers 103, 123, and 124 from the Debtors' claims docket. Additionally, Movant's claim listed on DVF's *Schedules of Assets and Liabilities* [Docket No. 132] as contingent, disputed and unliquidated, is hereby expunged.

6. The Movant shall not have any allowed claim (as defined in section 101(5) of the Bankruptcy Code) pursuant to section 502 of the Bankruptcy Code based upon the Action (or the claims asserted therein) against any of the Debtors and shall not be entitled to any distributions from any of the Debtors or their estates, whether under a chapter 11 plan or otherwise on behalf of such claim(s). To the extent the Policy proceeds are unable, in whole or in part, to satisfy a judgment or other disposition with respect to the Action, the Movant agrees that any such unsatisfied portion, which could otherwise be sought as a general unsecured claim in the Debtors' chapter 11 cases, is hereby fully and finally waived and forever released, and the Movant shall not otherwise engage in any efforts to collect any amount from the Debtors or their estates based upon the Action (or the claims asserted therein).

7. The Debtors will not be responsible for payment of the Deductible or any other self-insured retention or deductible liability (to either the Debtors' insurance company or to Movant, as may be applicable) which is or may be owed on account of the Action (or the claims asserted therein).

8. The Debtors are authorized to take all actions necessary to effectuate the relief provided by this Stipulation.

9. This Stipulation may be modified only by written agreement approved by the Bankruptcy Court.

10. Each signatory hereto represents that he or she has the authority to execute this Stipulation on behalf of the party for whom it is executed and to bind that party to all terms set forth herein.

11. This Stipulation shall constitute the sole and complete agreement of the parties hereto with respect to the matters addressed herein.

12. This Stipulation may be executed simultaneously or in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. A facsimile or email copy of a signature page is the equivalent of an original signature page.

13. The terms and conditions of this Stipulation shall be immediately effective and enforceable upon its entry.

14. By entering into this Stipulation, the Debtors are not waiving any defenses at law or in equity against the Movant, including with respect to the Action. This Stipulation contains the entire agreement and understanding of the parties hereto with respect to the agreement contemplated hereby, and supersedes any and all prior agreements, arrangements, releases, and understandings, whether oral or written, between the Parties and/or executed solely by the Movant.

15. The Parties agree that the Bankruptcy Court shall retain jurisdiction to resolve any dispute arising with respect to the terms of this Stipulation.

**IN WITNESS WHEREOF, THE UNDERSIGNED HAVE CAUSED THIS STIPULATION
TO BE EXECUTED AS OF THE DATES HEREIN BY DULY AUTHORIZED
OFFICERS OR REPRESENTATIVES.**

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DATED: October 7, 2012

DATED: October 19, 2012

IT IS SO-ORDERED:

November 8, 2012
New York, New York

/s/ Shelley C. Chapman
HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE