IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
GULF COAST HEALTHCARE, LLC, *et al.*,[1]	Case No. 21-11336 (KBO)
Debtors.	(Jointly Administered)
	Re: Docket No. 155

OBJECTION OF FLORIDA PLAINTIFFS TO MOTION OF DEBTORS FOR ENTRY OF ORDER EXTENDING AUTOMATIC STAY TO CERTAIN NON-DEBTOR CO-DEFENDANTS

The Florida Plaintiffs,[2] by and through their undersigned counsel, hereby file this objection (the "Objection") to the *Motion of Debtors for Entry of Order Extending Automatic Stay to Certain Non-Debtor Co-Defendants* [Docket No. 155] (the "Motion")[3] filed by the debtors and debtors in possession in the above-captioned chapter 11 cases (the "Debtors"). In support of this Objection, the Florida Plaintiffs respectfully states as follows:

PRELIMINARY STATEMENT

1. Although filed as a motion, the Debtors actually seek the extraordinary remedy of enjoining litigation (the "Non-Debtor Litigation") brought by non-debtors, against an unidentified group of non-debtors (collectively, the "Non-Debtor Defendants"). As a basis for this

[1] The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, which cases are being jointly administered for procedural purposes only. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://dm.epiq11.com/GulfCoastHealthCare. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

[2] The list of people comprising the Florida Plaintiffs is attached hereto as **Exhibit A.**

[3] All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

extraordinary relief, the Debtors assert, in the most conclusory fashion, that 1) the Non-Debtor Defendants will receive a release from liability under the Plan; 2) an extension of the automatic stay would relieve the Debtors of the administrative burden of dealing with the Non-Debtor Litigation; 3) that the Non-Debtor Defendants are party to the RSA and therefore share common interest with the Debtors; and 4) the Non-Debtor Litigation will distract the current employees who are Non-Debtor Defendants.

2. These cursory arguments have no merit, but the Court need not even address the merits of the Motion, because it is deficient on two threshold grounds. First, the Court may not have subject matter jurisdiction over the Florida Plaintiffs, who are non-debtors that are asserting direct claims against other non-debtors in Florida state court (the "Florida Litigation"). Second, even if the Court has jurisdiction to grant the relief sought in the Motion, that relief can only be obtained through the commencement of an adversary proceeding under Bankruptcy Rule 7001(7).

3. In the event the Court declines to deny the Motion on either of those threshold issues, the Motion still must fail on the merits. The Debtors do not even allege, much less establish, that the Non-Debtor Litigation should be enjoined under the well-established section 105(a) standards for a preliminary injunction. Instead, the Debtors argue that the automatic stay itself can be extended to the Non-Debtor Litigation based on section 362(a) alone. This argument is folly, as nothing in the language of section 362(a) bars actions against anyone other than the Debtors and their estates. Because the Non-Debtor Defendants are not Debtors, and the Motion does not seek relief under any section but section 362(a), the Motion must fail.

BACKGROUND

4. Amongst the various claimants comprising the Florida Plaintiffs, are individuals (the "Tort Claimants") with state law personal injury tort claims against entities included within

the group defined in the Motion as the "Non-Debtor Co-Defendants"; the Tort Claimants have contingent and unliquidated claims against some of the "Non-Debtor Co-Defendants" arising from personal injuries they or their decedents suffered prior to the petition date. Also amongst the Florida Plaintiffs, however, are individuals (the "Breach of Contract Claimants") with liquidated state law claims arising from breaches of contract by Health Care Navigator, LLC ("HCN")—an entity included within the "Non-Debtor Co-Defendants."

5. The two distinct sets of claimants pose different questions in analyzing the propriety of granting the relief requested in the Motion. These important questions cannot be simply glossed over, as the Debtors themselves do in the Motion; rather, they must be taken into consideration since the rights the Debtors seek to abridge in the Motion are constitutional in derivation, and therefore fundamentally important.

6. Pursuant to Rule 9013-1(h) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Florida Plaintiffs do not consent to the entry of a final order by the Court in connection with the Motion in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

ARGUMENT

I. The Bankruptcy Court Lacks Jurisdiction to Enjoin the Florida Litigation Against the Non-Debtor Defendants.

7. As a threshold question, the Court must determine whether or not it has subject matter jurisdiction to enjoin the Florida Litigation (or even to extend the automatic stay) as it relates to the Florida Litigation against the Non-Debtor Defendants. The Third Circuit Court of Appeals in *In re Continental Airlines*, 203 F.3d 203, 214 n. 12 (3d Cir. 2000), has expressed its

concern (in the context of a confirmation hearing) "that the Bankruptcy Court apparently never examined its jurisdiction" to release and enjoin a third party's claims against non-debtors. While certain disputes between non-debtor third parties affecting the debtor and the bankruptcy case may be within the subject matter jurisdiction of the Court, it is not without limits and the Court "cannot simply presume it has jurisdiction in a bankruptcy case to permanently enjoin third-party class actions against non-debtors." *Id.*

8. To the extent a third-party claim is derivative, a bankruptcy court has subject matter jurisdiction. *See In re Dreier LLP*, 429 B.R. 112, 131 (Bankr. S.D.N.Y. 2010) (finding that where the subject of the dispute against the non-debtor involves property of the estate or will impact the estate, the court has "related to" jurisdiction to enjoin the claim, providing, of course, that the other legal requirements are met); *see also Steel Workers Pension Tr. V. Citigroup, Inc.*, Civ. A. No. 03-cv-2171, 2003 U.S. Dist. LEXIS 12392, at *8-*9 (E.D. Pa. July 17, 2003) (determining "related to" bankruptcy jurisdiction did not exist). The analysis here is the same because both "related to" jurisdiction under 28 U.S.C. § 1452 and an injunction under 11 U.S.C. § 105 require that the case against the non-debtor affect the debtor's estate. It follows that enjoining direct actions which seek recovery from non-debtors for their own independent wrongdoing is not within the bankruptcy court's jurisdiction. *See Dreier*, 429 B.R. at 131.

II. The Motion is Procedurally Deficient.

9. Even if the Court finds that it has related to jurisdiction over the Motion, the Motion seeks to extend the automatic stay to prevent the Florida Plaintiffs from continuing the prosecution of their litigation against the Non-Debtor Defendants. This request is the quintessential "action for injunctive relief." *Bora Bora*, 424 B.R. at 25; *In re Slabicki*, 466 B.R. 572, 2012 U.S. Dist. LEXIS 344, at *25 (1st B.A.P. Feb. 3, 2012). Requests for injunctive relief must be brought by

adversary proceeding. Fed. R. Bankr. P. 7001(7); 2 Collier on Bankruptcy ¶ 105.03[4][a] (16th 2021); *Bora Bora*, at *25; *In re Cincom iOutsource, Inc.*, 398 B.R. 223, 227 (Bankr. S.D. Oh. 2008) (holding that "a request for injunctive relief *must* be brought by adversary proceeding[.]") (emphasis added); *see also, e.g., Patton v. Bearden*, 8 F.3d 343, 349 (6th Cir. 1993) ("It should be noted that . . . extensions [of section 362(a)(10] to non-debtors, although referred to as extensions of the automatic stay, were in fact injunctions issued by the bankruptcy court after hearing and the establishment of unusual need to take this action to protect the administration of the bankruptcy estate. Even if we were to adopt the unusual circumstances test, the bankruptcy court would first need to extend the automatic stay under its equity jurisdiction pursuant to 11 U.S.C. § 105."). Courts typically deny motions seeking injunctive relief. *See, e.g., In re Swallen's Inc.*, 205 B.R. 879, 880 (Bankr. S.D. Oh. 1997).

10. Notably, in the cases from this Court relied upon by the Debtors in the Motion for the assertion that the Court has discretion to extend the automatic stay to non-debtors, the request for injunctive relief was properly brought by way of an adversary proceeding. *See* Motion at ¶ 18 (citing *In re Am. Film Techs., Inc.*, 175 B.R. 847, 851 (Bankr. D. Del. 1994); *In re Uni-Marts, LLC*, 399 B.R. 400, 416 (Bankr. D. Del. 2009); *In re W.R. Grace & Co.*, 386 B.R. 17, 30 (Bankr. D. Del. 2008)).

11. Therefore, the Motion must be denied as it is an improper means to obtain the injunctive relief requested. The Debtors' failure to seek this relief by adversary proceeding is, by itself, fatal to the Motion.

III. The Automatic Stay Should Not Be Extended to Enjoin the Florida Litigation.

A. 11 U.S.C. § 362(a)(1) does not provide for a stay of prosecution of litigation against the Non-Debtor Defendants.

12. By its plain language, § 362(a)(1) stays actions only against a debtor. The stay, however, does not extend automatically to non-debtors. "[S]tays pursuant to 362(a) are limited to debtors and do not encompass non-bankrupt co-defendants . . . . Chapter 11 . . . contains no provision to protect non-debtors who are jointly liable on a debt with the debtor." *In re Forever 21, Inc.*, 623 B.R. 53, 63 (Bankr. D. Del. 2020) ("The automatic stay only protects debtors, not non-debtor parties."); *see also Brown v. Jevic*, 575 F.3d 322, 328 (3d Cir. 2009) (automatic stay not generally applicable to non-debtor parties); *In re Crazy Eddie Sec. Litig.*, 104 B.R. 582, 583-84 (E.D.N.Y. 1989) (internal quotations omitted). *See also McCartney v. Integra Nat'l Bank N.*, 106 F.3d 506, 509-10 (3d Cir. 1997) (despite its broad scope, "the language of Section 362(a) stays actions only against a debtor"). Therefore, lawsuits against a codebtor, such as an affiliate of the debtor, are rarely stayed. *See* 3 Collier on Bankruptcy ¶ 362.04 (16th 2021).

13. Furthermore, where, as here, a party has an independent claim against the non-debtors, then there is no compelling basis by which a court must extend the automatic stay. *See In re Phar-Mor Sec. Litig.*, 166 B.R. 57, 62 (W.D. Pa. 1994) ("[T]he Code was not intended to stay action . . . where the non-debtor's liability rests upon his own breach of duty.").

14. To extend the stay in favor of the Non-Debtor Defendants in this case would provide the Non-Debtor Defendants with the protection of the Bankruptcy Code without requiring them to comply with its requirements. The Non-Debtor Defendants should not be allowed to benefit from the Debtors' bankruptcy at the expense of the Florida Plaintiffs.

B. The elements for preliminary injunctive relief are not satisfied.

15. Section 105 of the Bankruptcy Code, Rule 65 of the Federal Rules of Civil Procedure and Rule 7065 of the Federal Rules of Bankruptcy Procedure grant this Court the power to order a preliminary injunction. For this Court to grant a preliminary injunction, four requirements must be met: 1) there must be a danger of imminent, irreparable harm to the estate or the debtor's ability to reorganize; 2) there must be a reasonable likelihood of a successful reorganization; 3) the Court must balance the relative harms between the debtor and the creditors who would be restrained; and 4) the Court must balance the public interest in a successful reorganization with other competing societal interests. *See W.R. Grace*, 386 B.R. at 32-33; *In re Monroe Well Serv., Inc.*, 67 B.R. 746, 752-53 (Bankr. E.D. Pa. 1986). The Debtors have failed to allege, much less satisfy, their burden of proof under this standard.[4]

1. The likelihood of the Debtors' successfully restructuring is unknown.

16. It is unknown whether the Debtors will successfully restructure through bankruptcy. There are many questions about the Debtors assets and liabilities that are currently unanswered. Further, it is far from guaranteed that all necessary parties will vote to accept the Plan. The Debtors make no showing in the Motion that their reorganization will be successful, other than bare assertions regarding their intended result.

2. The Debtors will not be irreparably harmed if there is not injunctive relief.

17. As previously stated, the Debtors have failed to produce sufficient evidence by which the Florida Plaintiffs, this Court, or any other parties can understand the degree to which the Debtors will be harmed, if at all, if the Florida Litigation is permitted to proceed.

[4] Having failed to raise this argument in the Motion, the Debtors should not be permitted to raise it for the first time in their reply.

18. The Debtors allege that they will be harmed because they are required to indemnify HCN. As noted above, to the extent HCN is independently found liable in tort, those claims would not be subject to the indemnification provision identified by the Debtors. Moreover, the Debtors admit that they would only be responsible to indemnify HCN in the event a judgment is entered against it. Motion, at ¶23. Because the Motion effectively seeks a 90-day stay of the Non-Debtor Litigation, the likelihood of a judgment being entered against HCN, or any other Non-Debtor Defendant, during this period is minimal.

19. Generally speaking, while it is true that the "automatic stay may be extended beyond direct actions against the debtor to lawsuits against non-debtors where an identity of interest exists between the debtor and the non-debtor defendants," the burden is on the debtor to prove that the identity of interests is "such that the debtor is the real party defendant and the litigation will directly affect the debtor and, more particularly, the debtor's assets or its ability to pursue a successful plan of reorganization under Chapter 11." *Matter of Rickel Home Centers, Inc.*, 199 B.R. 498, 500–501 (Bankr. D. Del. 1996). Other cases have held similarly. *See In re Forever 21, Inc.*, 623 B.R. 53, 63 (Bankr. D. Del. 2020) ("where there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.") (internal citations omitted); *see also McCartney v. Integra Nat. Bank N.*, 106 F.3d 506, 510 (3d Cir. 1997).

20. In light of the case law and fact, Debtors' assertion is perplexing to most, if not all, of the Florida Plaintiffs. This is because HCN has asserted to multiple circuit courts in Florida within sworn pleadings and motion papers ***that such an identity of interests in fact does not exist***. HCN has filed answers, motions to dismiss, and motions for summary judgment in state court

personal injury lawsuits asserting the opposite contention. Again and again, when the circumstances presented were inapposite—*i.e.*, where HCN's self-interest was served best by denying the exact relationship Debtors now assert exists, in an effort to avoid liability—HCN has argued vehemently against any assertion that it shares an identity of interest with any of the Debtors. The Motion itself, therefore, smacks of a bad faith attempt to shoehorn a non-debtor entity into the protections of the automatic stay based on an asserted relationship that has otherwise been denied up to this point in front of countless state courts. This Court, in the exercise of its equitable powers, should not condone or reward such behavior; rather, the Court should hold HCN and the Debtors to HCN's prior assertions on the topic and reject this asserted basis for the relief requested in the Motion.

21. Furthermore, the Debtors fail to address the distinctions between the Tort Claimants and the Breach of Contract Claimants on these points. The Breach of Contract Claimants have liquidated claims against HCN arising from a contract HCN voluntarily entered into with the respective Breach of Contract Claimants. Whether the Debtors owe duties to indemnify HCN under certain situations is irrelevant when analyzing whether the Breach of Contract Claimants' claims against HCN should be enjoined as requested. The Breach of Contract Claimants fail to see how their claims against HCN to enforce a contractual liability HCN voluntarily assumed to each of them respectively could ever have any effect on this bankruptcy proceeding. To the extent that the Debtors fear HCN will pursue claims against the Debtors for contribution or indemnity or the like, arising in turn from the Breach of Contract Claimants' claims, then such would not be sufficient justification to enter the injunction sought. Instead, if that were to come to pass, the Debtors would simply be exchanging one creditor for another by replacing HCN as the claimant in the stead of each of the Breach of Contract Claimants. *See, e.g., Sabratek Corp. v. LaSalle*

Bank, N.A. (In re Sabratek), 257 B.R. 732, 735 (Bankr. D. Del. 2000) (denying entry of an injunction where the necessary adverse impact on the bankruptcy estate was not demonstrated by the debtors since the defendant-bank's action to collect on a letter of credit in state court would simply substitute one creditor for another on the already-existing claim arising from such letter of credit.).

22. The same analysis would apply equally to the Tort Claimants, albeit with some slightly different nuances. The Tort Claimants have each asserted personal injury claims against the Debtors, along with certain non-debtors, already. To the extent any non-debtors have claims for indemnity against the Debtors arising from such claims, the claims for indemnity already exist. The argument that permitting the Tort Claimants to proceed against the non-debtors would have an adverse effect on the bankruptcy estate by increasing the claims against it is a red herring; the claims for indemnity arising from the Tort Claimants' claims already exist, if they exist at all. They are simply not liquidated and remain contingent at this point—but they exist. Permitting the Tort Claimants to move forward against the non-debtor defendants in those cases will not, therefore, increase the claims against the bankruptcy estate.

23. The Debtors also allege that allowing the Non-Debtor Litigation to proceed will interfere with their restructuring efforts. As it relates to the Florida Litigation, there are no claims against directors or officers involved in the management of the bankruptcy proceeding; rather the Non-Debtor Defendants in the Florida Litigation are the Debtors' non-debtor affiliates and the physicians and other employees alleged to be responsible for the injuries suffered by the Florida Plaintiffs. These parties are not essential parties to the Debtors' restructuring efforts, and generally have no role in the bankruptcy case other than the manufactured obligations created by the RSA. To the extent the Debtors assert that the Non-Debtor Litigation adversely affects their employees'

ability to assist with resident care, those assertions must be rejected, as the bankruptcy does not place any greater burdens on those employees who were already defending against the Non-Debtor Litigation prior to the bankruptcy while still providing proper resident care. Any assertion that the Debtors' former employees are crucial to the Debtors' bankruptcy efforts must be rejected on their face.

24. Likewise, the RSA was entered into after the litigation had already been commenced by the Florida Plaintiffs, and the Debtors cannot rely on this post facto agreement to shield the Non-Debtor Defendants with the protections of the automatic stay. The fact that pre-existing litigation may make it more difficult for the Debtors to implement their proposed scheme, does not vest this Court with subject matter jurisdiction over a dispute between two non-debtors. If the existence of the RSA is sufficient to justify entry of an injunction in this matter, what is to stop all debtors in the future from entering into agreements with their sister companies, which have not filed for bankruptcy protection, simply for the purpose of obtaining the windfall that is the protection of the automatic stay provisions under the Bankruptcy Code? "Unusual circumstances" would no longer hold any meaning. For these reasons the Motion should be denied.

3. The Florida Plaintiffs will suffer from an injunction, and the harm to the Florida Plaintiffs outweighs any harm to the Non-Debtor Defendants.

25. The Florida Plaintiffs will be greatly harmed if the automatic stay is extended to the Non-Debtor Defendants. The Tort Claimants have been pursuing compensation for personal injuries through the Florida Litigation for years now, injuries they suffered as a result of the independent negligence of certain of the Non-Debtor Defendants. The Tort Claimants are relying on proceeds from the Florida Litigation to cover the costs of immediate medical treatment that is necessary as a result of their injuries. Any further delay will inflict very real financial harm on the lives of people who are already injured at the hands of the Debtors and the Non-Debtor Defendants.

Likewise, the Breach of Contract Claimants have claims against HCN pursuant to their contracts with HCN, and those claimants should not be forced to bear the brunt of HCN's failure to live up to its voluntarily assumed contractual obligations when HCN itself is not a debtor in these proceedings.

26. The Debtors here are essentially asking the Court to delay the Florida Litigation. The Debtors conceded that the Florida Plaintiffs will be allowed to pursue the Florida Litigation after the effective date of the Plan. Motion, at ¶20 ("[T]o the extent the parties decline to vote in favor of the Plan and the Non-Debtor [Defendants] are not released under the Plan, the plaintiffs involved with the [Non-Debtor] Litigation may pursue claims and causes of action against the Non-Debtor [Defendants] after the effective date of the Plan. . . ."). The Florida Litigation has been pending longer than these bankruptcy cases, and requiring the Florida Plaintiffs to delay their trials against the Non-Debtor Defendants *solely* due to the Debtors' intervening bankruptcy proceeding is prejudicial. Because the Florida Plaintiffs can avoid granting third-party releases of their independent claims against the Non-Debtor Defendants simply by voting no on the Plan,[5] they will ultimately be entitled to a trial on the merits, and that trial should not be needlessly delayed.

4. The public interest favors denying the requested injunctive relief.

27. As previously stated, the Florida Plaintiffs are all patients who were allegedly injured as a result of the negligence of the Non-Debtor Defendants. In a time where so many are struggling financially as a result of the Covid-19 pandemic, delaying the Florida Plaintiffs' ability

[5] *See* Plan, at §1.169 (defining "Third-Party Releasing Parties" as "Holders of Claims who vote to accept the Plan"). Given the lack of recovery to unsecured creditors under the Plan, the Florida Plaintiffs presently anticipated voting to reject the proposed Plan.

to seek recourse and necessary compensation for their injuries would not serve the public. The public is not served by providing cover to those who negligently cause injury.

28. The balancing of the relative harms overwhelmingly weighs in favor of the Florida Plaintiffs and against extending the automatic stay and issuing an injunction under section 105 of the Bankruptcy Code. The salutary effect of allowing the Florida Litigation to continue is obvious because it is likely to be the only source of recovery for the Florida Plaintiffs. No irreparable harm to the Non-Debtor Defendants has been or can be established and, in the absence of the same, there is simply no reason to prohibit the Florida Litigation from proceeding against the Non-Debtor Defendants. For all these reasons and the arguments detailed below, the Motion must be denied.

JOINDER AND RESERVATION OF RIGHTS

29. The Florida Plaintiffs incorporate by reference and hereby joins in, to the extent not inconsistent with this Objection, all arguments set forth in any other objection filed to the Motion.

30. The Florida Plaintiffs expressly reserve, and do not waive, their right to amend, modify, or supplement this Objection and to object to the Motion on any grounds that governing law permits. The Florida Plaintiffs further reserve the right to participate in the hearing on the Motion, including to make argument and examine witnesses.

31. In addition, nothing set forth in this Objection, or in any resolution(s) with respect to such objection, should be deemed a waiver of any objections or arguments that the Florida Plaintiffs identified herein may have with respect to any other motion filed the Debtors.

CONCLUSION

WHEREFORE, for the reasons set out above, the Florida Plaintiffs respectfully request that the Court enter an Order denying the Motion and for such other and further relief as the Court deems just and proper.

Dated: November 16, 2021
Wilmington, Delaware

Respectfully submitted,

/s/ R. Stephen McNeill

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