

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

In re:)	
)	
RANDOLPH HOSPITAL, INC.,)	Chapter 11
)	
Debtor.)	Case No. 20-10247
)	

**AMENDED CONSENT MOTION FOR RELIEF FROM STAY TO PERMIT
PROSECUTION OF PERSONAL INJURY CLAIM**

NOW COME David Pishko, as Guardian Ad Litem for MSJ, a minor, Charity Inlow and Brandon Jennings (Collectively “Plaintiffs”) and Randolph Hospital, Inc. (“Debtor”), by and through their respective counsel, and move the Court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d) and Federal Rule of Bankruptcy Procedure 4001 to allow certain claims against the Debtor to be litigated in a North Carolina Superior Court proceeding involving the Debtor and other non-debtor parties. Plaintiffs and Debtor show as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue of this contested matter is proper in this Court pursuant to 28 U.S.C. § 1409.
2. Although the underlying civil lawsuit is not a core proceeding, this Motion for Relief from Stay is a core proceeding under 28 U.S.C. § 157.

INTRODUCTION

3. Plaintiffs filed a personal injury/medical negligence action in North Carolina Superior Court on August 20, 2018 (the “Action”). The Action arises out of the birth of MSJ, a minor, on August 21, 2015 at Randolph Hospital. In the Action, Plaintiffs have alleged that MSJ was injured during her birth at Randolph Hospital due to the negligence of agents and employees of Randolph Hospital as well as other non-debtor parties. David Pishko is the duly appointed Guardian Ad Litem for MSJ, a minor, while Charity Inlow and Brandon Jennings are the natural parents of MSJ.

4. Plaintiffs recently learned of the filing of this bankruptcy proceeding and, on April 17, 2020, filed their proof of claim. The purpose of this motion is to request that the automatic bankruptcy stay be lifted to the extent that there is liability insurance available to Debtor to cover Plaintiffs’ civil claims for personal injuries suffered by MSJ.

FACTUAL BACKGROUND

5. Plaintiffs allege in the Action that on August 21, 2015, MSJ was profoundly and severely injured at the time of her birth at Randolph Hospital. In the Action, Plaintiffs allege that MSJ experienced hypoxic ischemic encephalopathy during the labor and delivery phases of her birth due to the negligence of Randolph Hospital by and through its agents/employees, as well as other non-debtor parties. Further, Plaintiffs allege that MSJ has been diagnosed with severe spastic quadriplegic cerebral palsy and her injuries are severe and permanent, both physically and mentally, and will require twenty-four-hour care and assistance throughout her life.

6. On March 6, 2020, Debtor filed a petition for bankruptcy under Chapter 11 of the United States Bankruptcy Code.

7. As a result of the automatic stay granted by 11 U.S.C. § 362(a) upon the filing of this bankruptcy action, Plaintiffs are prohibited from pursuing their claims against Debtor in the Action absent an Order from this Court.

8. Based on discovery in the underlying Action, Plaintiffs understand that Randolph Hospital at the time of MSJ's birth, had one liability insurance policy in effect. Said insurance policy was provided by National Fire & Marine Insurance Company ("National Fire"). Plaintiffs contend, upon information and belief, that the limits of insurance under this insurance policy clearly provide liability and excess coverage for the birth injury to MSJ that gives rise to Plaintiffs' pending personal injury claim. Plaintiffs have been informed by counsel for Randolph Hospital in the Action that 1) there are no other insurance policies that may be applicable to Plaintiffs' pending personal injury claim except as referenced above; and 2) that there are no known pending or potential claims against Randolph Hospital that would affect the insurance available to Randolph Hospital in the underlying case.

RELIEF REQUESTED

9. Plaintiffs request a "for cause" grant of relief of the automatic stay imposed by 11 U.S.C. § 362(d)(1). Specifically, Plaintiffs request this Court allow them to pursue a civil judgment in North Carolina Superior Court and to collect the judgment from Debtor's liability insurer to the extent Plaintiffs' request will not prejudice Debtor's other creditors. Plaintiffs will not seek recovery from Debtor beyond the available insurance to Debtor. Plaintiffs contend that the balancing of interests favors the grant of Plaintiffs' motion for relief from the automatic stay.

10. Counsel for Randolph Hospital in the underlying personal injury case, and counsel for the Debtor, do not oppose and consent to this motion on the condition that any judgment entered resolving the Randolph County Superior Court litigation would not be a lien on any property of the Debtor's estate and that any recovery against the Debtor would be limited to insurance proceeds. A further condition of the Debtor's consent is that the Debtor shall have no obligation to participate in, respond to pleadings, or respond to discovery requests in any such civil action, except to the extent authorized by the bankruptcy court. However, defense counsel appointed by National Fire will participate in the litigation. This shall include all law and motion

matters and responding to any offers to settlement pursuant to the North Carolina Rules of Civil of Civil Procedure.

11. Notice of this Motion has been provided by electronic mail or overnight delivery to: (a) the Bankruptcy Administrator for the Middle District of North Carolina; (b) the Official Committee of Unsecured Creditors, c/o Andrew H. Sherman, One Riverfront Plaza Newark, NJ 07102, and Rayford K. Adams, III, 110 Oakwood Drive, Suite 500, Winston-Salem, NC 27103; (c) those persons who have formally appeared in this Chapter 11 Case and requested service pursuant to Bankruptcy Rule 2002; (d) all applicable government agencies to the extent required by the Bankruptcy Rules and the Local Rules; (e) Bank of America, c/o McGuire Woods, LLP, Attn: Scott Vaughn, 201 North Tryon Street, Suite 3000, Charlotte, NC 28202; and (f) any other entities directly affected by the Motion. A copy of the Motion has been made available on the website of the Debtors' claims and noticing agent, Epiq Corporate Restructuring, LLC, at <https://dm.epiq11.com/RandolphHealth>. In light of the nature of the relief requested herein, the parties submit that no other or further notice is required.

12. WHEREFORE, Plaintiffs David Pishko, as Guardian Ad Litem for MSJ, a minor, Charity Inlow and Brandon Jennings respectfully pray that the stay afforded by 11 U.S.C. § 362 be lifted or modified so as to permit Plaintiffs to pursue their claims for personal injury to MSJ against Randolph Hospital, Inc. to the extent covered by Randolph Hospital, Inc.'s liability insurance under North Carolina law.

This the 4th day of June, 2020.

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing **AMENDED CONSENT MOTION FOR RELIEF FROM STAY TO PERMIT PROSECUTION OF PERSONAL INJURY CLAIM** was served this day by CM/ECF electronic mail services or by placing a copy thereof in a depository under the exclusive care and custody of the United States Postal Service in a postage prepaid envelope and properly addressed as follows:

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In addition, please see attached Exhibit A for Master Service List (as of May 7, 2020).

This the 4th day of June, 2020.

/s/ John Kenneth Moser
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EXHIBIT A

MASTER SERVICE LIST

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

In Re:)
) Chapter 11
)
Randolph Hospital, Inc. d/b/a Randolph Health,) Case No. 20-10247 (LMJ)
)
)
Debtors^[1]) **(Jointly Administered)**
)
)
) **Ref. Docket Nos. 134**

MASTER SERVICE LIST
(as of May 7, 2020)

PLEASE TAKE NOTICE THAT attached hereto is the current version of the Master Service List. There were no changes made to the Master Service List during the period of April 30, 2020 through May 7, 2020.

^[1] The Debtors are Randolph Hospital, Inc. d/b/a Randolph Health, Case No. 20-10247; Randolph Specialty Group Practice, Case No. 20-10248; and MRI of Asheboro, LLC d/b/a Randolph MRI Center, Case No. 20-10249.

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