

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

In re NPC INTERNATIONAL, INC., <i>et al.,</i> <div style="text-align: right;">Debtors.¹</div>	§ § § § § § §	Chapter 11 Case No. 20–33353 (DRJ) (Jointly Administered)
--	---------------------------------	--

**OMNIBUS OBJECTION OF DEBTORS
TO MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY**

NPC International, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully represent as follows in support of this omnibus objection (the “**Objection**”) to the motions of (i) Jessica Edwards filed on August 12, 2020 [Docket No. 405] (the “**Edwards Motion**”); and (ii) Hollie Mackellar filed on August 7, 2020 [Docket No. 383] (the “**Mackellar Motion**” and, together with the Edwards Motion, the “**Motions**” and the moving parties thereunder, the “**Movants**”). In support of this Objection, the Debtors state as follows.

Preliminary Statement

1. Pursuant to the Motions, each of the Movants seek relief from the automatic stay under section 362 of title 11 of the United States Code (the “**Bankruptcy Code**”) to continue to prosecute various prepetition actions pending against the Debtors (collectively, the “**Prepetition Actions**”), liquidate the claims associated with the Prepetition Actions, and collect on account of such claims from any applicable insurance policy. Movants assert that they will suffer substantial

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are NPC International, Inc. (7298); NPC Restaurant Holdings I LLC (0595); NPC Restaurant Holdings II LLC (0595); NPC Holdings, Inc. (6451); NPC International Holdings, LLC (8234); NPC Restaurant Holdings, LLC (9045); NPC Operating Company B, Inc. (6498); and NPC Quality Burgers, Inc. (6457). The Debtors’ corporate headquarters and service address is 4200 W. 115th Street, Suite 200, Leawood, KS 66211.

harm if the automatic stay prevents continued prosecution of the Prepetition Actions during the pendency of these chapter 11 cases, and further assert that relief is warranted because any recovery in the Prepetition Actions would be limited to available proceeds under the Debtors' applicable insurance policies.

2. Movants, however, have failed to satisfy their burden to establish cause to lift the automatic stay because mere delay is not, by itself, sufficient cause to lift the stay. Moreover, the Motions seek relief from the automatic stay to proceed against the Debtors' insurance policies provided by Old Republic Insurance Company ("**Old Republic**" or the "**Insurer**"), which cover liability associated with automobiles owned and driven by the Debtors' delivery drivers for the 2018-19 and 2019-20 policy years (collectively, the "**Insurance Policies**"). But, each of the Insurance Policies carries a self-insured retention of \$1,000,000 (the "**SIR**")—the amount that the Debtors must bear before any insurance proceeds become available to cover losses on account of a Prepetition Action.

3. Additionally, the Insurance Policies require the Debtors, and not the Insurer, to bear the cost of defense of the Prepetition Actions, either by directly paying those costs of reimbursing Insurer for the same.

4. Further, on top of the SIRs, each policy requires the Debtors to pay a \$1,000,000 aggregate deductible (each a "**Deductible**" and, collectively, the "**Deductibles**") prior to insurance proceeds becoming available. The full \$1,000,000 Deductible remains on the 2018-19 insurance policy, and \$1,000,000 of the Deductible remains for the 2019-2020 insurance policy to be paid by the Debtors.

5. In each of the Prepetition Actions' applicable insurance policy, the Debtors' SIR and Deductible amounts are nowhere near exhaustion. As of the Petition Date, the Debtors

had paid approximately \$3,000 in defense costs as to the Edwards Action (as defined below), and approximately \$118,000 in defense costs as to the Mackellar Action (as defined below). Collectively, if the Motions were granted, the Debtors would have to first pay approximately \$3,879,000 in the aggregate out of estate funds towards the applicable SIRs and Deductibles before the Movants would begin to recover from insurance proceeds. Further, it is unclear whether the Debtors' potential exposure in either of these cases would exceed the applicable SIR or Deductibles; therefore, there may not be any amounts to recover from insurance proceeds. Moreover, each of these matters represent prepetition claims that can and will be addressed through the claims administration process in these cases.

6. By lifting the stay now and allowing any of the Prepetition Actions to proceed, significant assets of the Debtors would be wasted on defending litigation that has little or no chance of resulting in a recovery of insurance proceeds for the Movants. In addition to transferring assets out of the Debtors' estate to the detriment of other creditors at these early stages in these chapter 11 cases, the Debtors would be forced to engage in prolonged litigation while also simultaneously working to restructure in these chapter 11 proceedings, splitting the Debtors' management's limited capacity and finite resources. In either event, lifting the stay would undoubtedly prejudice the Debtors' ability to successfully emerge from chapter 11 and deprive the Debtors of the much needed "breathing spell" provided by chapter 11. Accordingly, and for the reasons set forth herein, the Motions should be denied.

Background

7. On July 1, 2020 (the "**Petition Date**"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. The Debtors' chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 1015-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "**Local Rules**").

9. On July 13, 2020, the United States Trustee for Region 7 (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Creditors' Committee**"). No trustee or examiner has been appointed in these chapter 11 cases.

10. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Eric Koza in Support of the Debtors' Chapter 11 Petitions and First Day Relief*, sworn to on July 1, 2020 (Docket No. 4) (the "**Koza Declaration**").²

Jurisdiction

11. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The Prepetition Actions

12. On March 6, 2020, Ms. Edwards commenced an action in the Circuit Court for Multnomah County, Oregon, with the case caption *Jessica Edwards v. Yum! Brands, Inc., et al.*, Case No. 20CV12456 (the "**Edwards Action**"), seeking damages arising out of alleged personal injuries sustained as a result of a pedestrian versus motor vehicle accident involving an NPC delivery driver on February 26, 2020. By the Edwards Motion, Ms. Edwards seeks relief from the automatic stay "(1) to liquidate her personal injury tort claim in the State Court; (2) to

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Koza Declaration.

pursue and collect any applicable insurance proceeds, and (3) to amend her proof of claim in the chapter 11 cases with the liquidated sum determined by the State Court.” Edwards Mot. ¶ 8.

13. On November 20, 2018, Ms. Mackellar commenced an action in the Circuit Court of Baldwin County, Alabama, with the case caption *Hollie Mackellar v. NPC International, Inc.*, Case No. 2018-901535-JCS (the “**Mackellar Action**”), seeking damages arising out of an alleged motor vehicle accident with an NPC delivery driver that occurred on November 2, 2018. Ms. Mackellar filed the Mackellar Motion seeking relief to “proceed with the state law claims of personal injury on behalf of herself and her minor children against the Debtor and for such other and further relief that will be just and fair in the premises.” Mackellar Mot. ¶ 9.

Objection

A. Automatic Stay is a Fundamental Debtor Protection Subject to Narrow Exceptions

14. The automatic stay, as set forth in section 362 of the Bankruptcy Code, is integral to both the bankruptcy court’s jurisdiction and the protections provided to debtors in chapter 11. In particular, section 362(a)(1) of the Bankruptcy Code provides, in relevant part, that:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302 or 303 of this title . . . operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

15. Indeed, the automatic stay affords a debtor fundamental protections under the bankruptcy laws. H.R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 49 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5840-41, 5963. The legislative

history of section 362 indicates that Congress intended the scope of the automatic stay to be sweeping to effectuate its protective purposes on behalf of both debtors and creditors:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

Id.; see also *Midlantic Nat'l Bank v. N.J. Dept. of Env't'l Protection*, 474 U.S. 494, 503 (1986) (“The automatic stay provision of the Bankruptcy Code . . . has been described as one of the fundamental debtor protections provided by the bankruptcy laws.”) (internal quotations and citations omitted); *In re Timbers of Inwood Forest Assocs., Ltd.*, 793 F.2d 1380, 1409 (5th Cir. 1986, *on reh'g*, 808 F.2d 363 (5th Cir. 1987), *aff'd sub nom.*, *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988) (citations omitted) (same). The automatic stay is designed to give the debtor a “breathing spell” after the commencement of a chapter 11 case, shielding debtors from creditor harassment and a multitude of litigation in a variety of forums at a time when the debtor’s personnel should be focusing on restructuring. See, e.g., *In re Commonwealth Oil Ref. Co., Inc.*, 805 F.2d 1175, 1182 (5th Cir. 1986) (stating that the purpose of the automatic stay is “to give the debtor a ‘breathing spell’ from [its] creditors, and also, to protect creditors by preventing a race for the debtor’s assets”).

16. The automatic stay broadly extends to all matters which may have an effect on a debtor’s estate, enabling bankruptcy courts to ensure that debtors have the opportunity to rehabilitate and reorganize their operations. See, e.g., *S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1146 (5th Cir. 1987) (stating that the automatic stay “imposes a moratorium on all actions against the debtor or its property and assets” and thereby “ensures a respite for the debtor so that it may attempt to reorganize or decide to

liquidate and promotes the overriding policy of equal distribution of a debtor's assets among creditors"); *see also Fidelity Mortgage Inv. v. Camelia Builders, Inc.*, 550 F.2d 47, 53 (2d Cir. 1976) ("Such jurisdiction is necessary 'to exclude any interference by the acts of others or by proceedings in other courts where such activities or proceedings tend to hinder the process of reorganization.'").

B. The Party Seeking Relief from Automatic Stay Has the Burden to Show Cause

17. Section 362(d)(1) of the Bankruptcy Code provides that a court shall grant relief from the automatic stay "for cause." 11 U.S.C. § 362(d)(1). The Bankruptcy Code does not define "cause." *See, e.g., In re Reitnauer*, 152 F.3d 341, 343 n. 4 (5th Cir. 1998) ("Because [section] 362 does not offer guidance as to what constitutes 'cause,' reviewing courts must determine whether cause existed on a case-by-case basis."); *In re Mendoza*, 111 F.3d 1264, 1271 (5th Cir. 1997) ("The Bankruptcy Act does not specify what constitutes cause to modify a stay, other than 'lack of adequate protection of an interest in property of such party in interest.'"). As one court has stated, however, even slight interference with the administration [of the Debtors' estates] may be enough to preclude relief." *In re U.S. Brass Corp.*, 173 B.R. 1000, 1006 (Bankr. E.D. Tex. 1994).

18. Although the Fifth Circuit has not imposed a firm standard for determining whether cause exists to lift the automatic stay, courts in this Circuit have relied upon a series of factors relevant to that assessment. The most commonly applied test when considering whether to lift the stay to allow litigation against a debtor to proceed in another forum, considers the so-called "Sonnax Factors," including:

- (1) whether the relief will result in a partial or complete resolution of the issues;
- (2) lack of any connection or interference with the bankruptcy case;

- (3) whether the other proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal has been established to hear the particular cause of action;
- (5) whether the debtor's insurer has assumed full responsibility;
- (6) whether the action primarily involves third parties;
- (7) whether litigation in the other forum would prejudice the interests of other creditors;
- (8) whether the judgment claim arising from the other action is subject to equitable subordination;
- (9) whether movant's success would result in a judicial lien avoidable by the debtor;
- (10) interests of judicial economy and the expeditious and economical resolution of litigation;
- (11) whether the proceedings have progressed to the point that parties are ready for trial; and
- (12) impact of the stay on the parties and the balance of harm.

See In re Xenon Anesthesia of Tex., PLLC, 510 B.R. 106, 112 (Bankr. S.D. Tex. 2014) (citing, among other cases, *Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2d Cir. 1990)).

19. All factors may not be relevant in a given case and only the relevant factors need to be considered. *See Sonnax*, 907 F.2d at 1286. Further, “[i]f the movant fails to make an initial showing of cause, [] the court should deny relief without requiring any showing from the debtor that it is entitled to continued protection.” *Id.* at 1285; *see also In re Gramercy Court, Ltd.*, Nos. 07-80177-G3-11, 2007 WL 2126493, at *5 (Bankr. S.D. Tex. July 19, 2007).

C. Movants Failed to Meet Their Burden to Demonstrate Cause Exists

20. A review of the *Sonnax* Factors demonstrates that lifting the automatic stay as requested in the Motions is not warranted. Indeed, despite Movants' erroneous statements that

the Debtors will suffer no harm if the Motions are granted, as discussed more fully below, lifting the stay would materially prejudice the Debtors and their restructuring efforts. In contrast, the only purported harm Movants would suffer if the stay remains in place is a limited delay in prosecuting the Prepetition Actions, which is not, itself, a sufficient basis to lift the automatic stay.

1. *Sonnax* Factors 1 and 10: Relief Will Not Fully Resolve the Issues/Judicial Economy

21. Lifting the stay will not result in the complete resolution of the issues because Movants will have to return to this Court to seek to have their respective claims allowed and determine the treatment of their claims through the chapter 11 process. Courts have routinely denied lift stay motions in analogous circumstances. *See, e.g., Residential Capital, LLC*, 2012 WL 3249641 at *4 (finding that the first *Sonnax* factor weighed against lifting the stay because the movants would be required to go through the bankruptcy court claims process to collect on any judgment). “Claims for damages against [debtors] are the usual grist for the bankruptcy claims allowance process and absent unusual circumstances the bankruptcy court remains the appropriate forum to resolve such claims.” *Id.* at *4.

22. Additionally, even if the Movants successfully liquidated their respective claims in the Prepetition Actions in an amount exceeding the applicable SIR and Deductible, Old Republic would likely refuse to pay out under the applicable policy on the contention that the Debtors’ SIR and Deductible must first be exhausted prior to any obligation of the insurers to pay under the Insurance Policies. Thus, lifting the automatic stay and allowing the Prepetition Actions to proceed will not fully resolve the underlying issues, regardless of the outcome.

2. *Sonnax* Factor 2: Relief Will Interfere with Bankruptcy Case

23. The Prepetition Actions are each at various stages in the litigation process, but neither of these actions are close to obtaining a judgment against the Debtors. For example,

the complaint in the Edwards Action was filed on March 16, 2020, mere months before the Petition Date. Edwards Mot. ¶ 1. No discovery has taken place in the Edwards Action, and discovery is still ongoing in the Mackellar Action with key depositions still to be taken. Courts have routinely denied lift stay motions in such preliminary procedural postures. *See In re Sonmax Indus.*, 907 F.2d at 1287 (declining to lift stay in part because “the litigation in state court has not progressed even to the discovery stage.”); *Arnold Dev., Inc., v. Collins (In re Collins)*, 118 B.R. 35, 38 (Bankr. D. Md. 1990) (declining to lift stay where parties in state court proceeding had not yet begun discovery). Lifting the stay as requested in the Motions would subject the Debtor to extended litigation in other jurisdictions, creating an unnecessary distraction as they seek to reorganize.

24. The Debtors are currently focused on administering their chapter 11 cases; specifically, at this early juncture in these cases, the Debtors have just launched their sales processes for the Wendy’s and Pizza Hut Assets, as provided for under the Restructuring Support Agreement. Any distraction from these goals, particularly in these critical weeks is unwarranted and contrary to the best interests of the Debtors’ estates and their creditors.

25. Further, as of the Petition Date, the Debtors have numerous lawsuits pending in courts encompassing a wide variety of claims. Other litigants—some of whom have also filed substantially identical motions seeking to lift the automatic stay based on the purported availability of insurance proceeds—would be more likely to follow suit if the Motions are granted at this time. *See Lawrence v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, No. 09-50026 REG, 2010 WL 4630327, at *5 (S.D.N.Y. Nov. 8, 2010) (noting that the potential for opening floodgates to “other litigants with garden variety claims” is “the very state of affairs the automatic stay was enacted to prevent”). Lifting the stay and requiring the Debtors to defend other prepetition litigation at this early and critical stage of these cases would prejudice the Debtors’

restructuring efforts and undercut the core rationale for the automatic stay. *See In re Mirant Corp.*, 316 B.R. 234, 241 (Bankr. N.D. Tex. 2004) (finding that “[l]iquidation of numerous claims through various arbitration proceedings would [] subject [d]ebtors and creditors to piecemeal litigation” contrary to [a] core purpose of the Bankruptcy Code). Authorizing the stay relief requested in the Motions will significantly and negatively affect the Debtors, their estates, and, potentially, other general unsecured creditors with no benefit to the Debtors. Accordingly, the second *Sonnax* factor weighs in favor of denying the Motion.

3. *Sonnax* Factor 5: Insurance Would Not Cover the SIR Amount, Deductible, or Cost of Liquidating Claims in the Prepetition Actions

26. Lifting the automatic stay would prejudice the interests of other creditors because the Insurance Policies do not cover the liability associated with the Prepetition Actions until the applicable SIR and Deductible (which are the Debtors’ obligation) are exhausted, and further, the Debtors would bear the costs of litigating the Prepetition Actions, either by directly paying those costs or reimbursing the Insurer for the same. The Debtors have a duty to maximize the value of their estates for the benefit of all creditors. Accordingly, allowing Movants to lift the automatic stay would, among other things, force the Debtors to expend estate resources defending against these Movants’ claims and there is no reason to permit these Movants to jump the line ahead of the Debtors’ other creditors.

27. Movants attempt to claim that they only seek to recover against the Debtors’ insurer, claiming explicitly or implicitly that the Debtors will be only “nominally” a defendant and that any recovery would fully come from the Insurer, or any carrier providing applicable excess coverage. Here, however, the Insurer has no obligation to fund any amounts to defend these lawsuits and is not obligated to pay for defense costs within the range of the applicable SIR and Deductible. *See, e.g., Pak-Mor Mfg. Co. v. Royal Surplus Lines Ins. Co.*, No. SA-05-CA-135-RF,

2005 WL 3487723, at *3-5 (W.D. Tex. Nov. 3, 2005) (holding that an insurer had no obligation to defend or indemnify unless and until the debtor-insured first satisfied the applicable self-insured retention by actual payment); *T.Y. Lin Int'l v. Hyundai Marine & Fire Ins. Co.*, No. C-97-1693 MHP, 1997 WL 703778, at *3 (N.D. Cal. Oct. 27, 1997) (determining that the self-insured retention has to be exhausted before the duty to defend or liability is triggered); *In the Matter of Federal Press Co., Inc.*, 104 B.R. 56, 60 (Bankr. N.D. Ind. 1989) (insurer has no duty to pay damages falling within the self-insured retention).

28. The Movants recognize that they cannot recover damages from the Debtors, but through the Motions seek to have Debtors incur significant costs that would not result in a monetary recovery for them unless they succeed in their respective suits. Lifting the stay would do nothing more than consume the Debtors' assets by forcing the Debtors to defend against litigation arising prepetition. This factor alone should be sufficient to warrant denial of the Motion.

4. Sonnax Factor 6: Debtor Entities or Indemnified Parties are the Sole Defendants in the Edwards Action

29. Each of the Prepetition Actions primarily involve claims against the Debtors. The Edwards Action asserts claims primarily against NPC International, Inc. but also names non-debtor defendants Pizza Hut, LLC (the "**Pizza Hut Franchisor**") and its parent company, Yum! Brands, Inc. ("**Yum!**") in the complaint. Both the Pizza Hut Franchisor and Yum! are contractually indemnified by Debtor NPC International, Inc. under the applicable franchise agreement. Therefore, the claims asserted against the Pizza Hut Franchisor and Yum in the Edwards Action are effectively claims against the Debtors.

30. Accordingly, lifting the automatic stay with respect to the Edwards Action would directly impact these chapter 11 cases because the Debtors would likely be required to defend the Prepetition Actions and bear all costs and expenses incurred by both the Pizza Hut

Franchisor and Yum! in defending, and indemnify both the Pizza Hut Franchisor and Yum! for any liability assessed against the defendants in the proceedings. Therefore, this factor also favors continuation of the automatic stay. *See City Ins. Co. v. Mego Int'l, Inc. (In re Mego Int'l)*, 28 B.R. 324, 326 (Bankr. S.D.N.Y. 1983) (denying motion to lift the automatic stay where the debtor was more than a mere conduit for the flow of proceeds and the action impacted the “property and administration of [the debtor’s] estate, suggesting that continuance of the [automatic] stay was proper.”).

5. *Sonnax* Factor 12: Balance of Harms Weighs in Favor of Maintaining Automatic Stay

31. The balance of the harms ultimately weighs against modifying the automatic stay. To the extent Movants have actual claims against the Debtors, these claims, like those of other creditors, must be pursued as proofs of claim that will be treated in the Debtors’ chapter 11 plan. *See In re Residential Capital*, No. 12-12020 (MG), 2012 WL 3249641, at *4 (Bankr. S.D.N.Y. Aug. 7, 2012) (noting that the creditor would merely have a general unsecured claim against the estate to be paid in accordance with a plan if the state court rendered a judgment against the debtor, which weighed against lifting the stay). There are many creditors currently awaiting recovery pursuant to a confirmed plan, and until such a time that a plan is confirmed and the Debtors emerge from chapter 11, the recoveries of general unsecured claims are unknown. Delaying Movants’ potential recovery on their claims undoubtedly inflict less harm on Movants than the harm the Debtors and their creditors will experience if Movants are given preferential treatment in the form of lifting the stay.

32. It is unclear whether the Court’s refusal to lift the automatic stay would have any impact on Movants aside from a limited delay while the Debtors progress towards confirmation of a chapter 11 plan. Such a delay is not sufficient cause to lift the automatic stay

(and may be inevitable in any event). *See In re Madison Hotel Assocs.*, 18 B.R. 218, 219 (Bankr. W.D. Wis. 1982) (“Relief from the automatic stay for ‘cause’ is not, nor was it intended by the drafters of the Bankruptcy Code, to encompass mere delay in the assertion of rights.”); *see also In re Bally Total Fitness of Greater New York, Inc.*, 402 B.R. 616, 624 (Bankr. S.D.N.Y.), *aff’d*, 411 B.R. 142 (S.D.N.Y. 2009) (“Whether awarded such claims sooner rather than later, [Movants] are no more prejudiced than any other potential creditor by what the Debtors anticipate will only be a short-term delay until a plan of reorganization is confirmed.”). Notably, neither of the Motions lists a concrete, substantiated harm that would be suffered aside from minor delay if the stay is not lifted. The McKellar Motion fails to articulate any harm that would be suffered, and the Edwards Motion only includes a blanket statement without any justification that in the event the stay is not lifted, Movant “may never recover from the Debtors’ insurance companies.” – which, as stated above, will likely not occur even if the stay is lifted given the SIRs and Deductibles.

Conclusion

33. For the foregoing reasons, cause does not exist to establish that Movant is entitled to relief from the automatic stay.

[Remainder of Page Intentionally Left Blank.]

WHEREFORE the Debtors respectfully request that the Court deny the relief requested in the Motions.

Dated: August 28, 2020
Houston, Texas

/s/ Alfredo R. Pérez
WEIL, GOTSHAL & MANGES LLP
Alfredo R. Pérez (15776275)
700 Louisiana Street, Suite 1700
Houston, Texas 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511
Email: Alfredo.Perez@weil.com

-and-

WEIL, GOTSHAL & MANGES LLP
Ray C. Schrock, P.C. (admitted *pro hac vice*)
Kevin Bostel (admitted *pro hac vice*)
Natasha Hwangpo (admitted *pro hac vice*)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Email: Ray.Schrock@weil.com
Kevin.Bostel@weil.com
Natasha.Hwangpo@weil.com

Attorneys for Debtors

Certificate of Service

I hereby certify that on August 28, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' claims, noticing, and solicitation agent.

/s/ Alfredo R. Pérez
Alfredo R. Pérez

EXHIBIT 1

Suggestion of Bankruptcy
Circuit Court for Multnomah County, Oregon
Case No. 20CV12456

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JESSICA EDWARDS,
Plaintiff,

v.

YUM! BRANDS, INC.; NPC
INTERNATIONAL, INC.; PIZZA HUT OF
AMERICA, INC.; PIZZA HUT OF OREGON,
INC., JEREMY OPRISH, and PIZZA HUT,
LLC.

Defendants.

Case No. 20CV12456

NOTICE OF BANKRUPTCY

Defendant NPC, International, Inc. hereby notifies the Court that it has filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court in the Southern District of Texas – Houston Division, Case No. 20-33353 (DRJ). The bankruptcy case was filed on July 1, 2020.

Dated: July 10, 2020

HITT HILLER MONFILS WILLIAMS LLP

By /s/ Alison R. Barber

Alison R. Barber, OSB No. 085581
Tomas F. Osborne, OSB No. 164484
Brian B. Williams, OSB No. 964594

Attorneys for Defendants

PAGE 1 - NOTICE OF BANKRUPTCY

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **NOTICE OF BANKRUPTCY** on:

John Coletti
Paulson Coletti
1022 NW Marshall, Suite 450
Portland, OR 97209
EMAIL: john@paulsoncoletti.com

Attorney for Plaintiff

by the following indicated method or methods:

- ☒ by **MAILING** a full, true, and correct copy thereof in a sealed first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- ☐ by causing a full, true, and correct copy thereof to be **HAND-DELIVERED** to the attorney at the attorney's last-known office address listed above on the date set forth below.
- ☐ by sending a full, true, and correct copy thereof via **OVERNIGHT COURIER** in a sealed, prepaid envelope, addressed to the attorney as shown above, at the last-known office address of the attorney, on the date set forth below.
- ☒ by **EMAILING** a full, true, and correct copy thereof to the attorney at the email address shown above, which is the last-known email address for the attorney, on the date set forth below.

Dated: July 10, 2020

HITT HILLER MONFILS WILLIAMS LLP

By /s/ Alison R. Barber

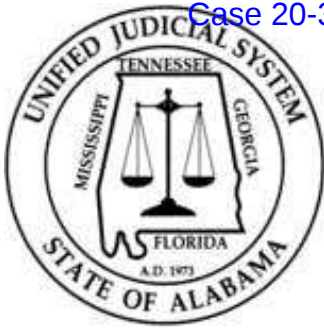
Alison R. Barber, OSB No. 085581

Brian B. Williams, OSB No. 964594

Attorneys for Defendants

EXHIBIT 2

Suggestion of Bankruptcy
Circuit Court of Baldwin County, Alabama
Case No. 2018-901535-JCS



AlaFile E-Notice

05-CV-2018-901535.00

Judge: J. CLARK STANKOSKI

To: JEFFREY BARTOW CANNON JR
bcannon@huielaw.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

HOLLIE MACKELLAR, INDIVIDUALLY ET AL V. NPC INTERNATIONAL, INC. ET AL
05-CV-2018-901535.00

The following matter was FILED on 7/15/2020 3:17:32 PM

D001 NPC INTERNATIONAL, INC.

MOTION TO STAY

[Filer: CANNON JEFFREY BARTOW JR.]

Notice Date: 7/15/2020 3:17:32 PM

JODY L. WISE
CIRCUIT COURT CLERK
BALDWIN COUNTY, ALABAMA
312 COURTHOUSE SQUARE
SUITE 10
BAY MINETTE, AL, 36507

251-937-9561
jody.wise@alacourt.gov

STATE OF ALABAMA

Revised 3/5/08

Cas

Unified Judicial System

05-BALDWIN

☐ District Court ☒ Circuit Court

CV20



ELECTRONICALLY FILED

7/15/2020 3:17 PM

05-CV-2018-901535.00

CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

JODY L. WISE, CLERK

HOLLIE MACKELLAR, INDIVIDUALLY ET AL V. NPC
INTERNATIONAL, INC. ET AL**CIVIL MOTION COVER SHEET**

Name of Filing Party: D001 - NPC INTERNATIONAL, INC.

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

JEFFREY BARTOW CANNON JR
3291 US HIGHWAY 280, SUITE 200
BIRMINGHAM, AL 35243

Attorney Bar No.: CAN017

☐ Oral Arguments Requested**TYPE OF MOTION****Motions Requiring Fee**

- ☐ Default Judgment (\$50.00)
Joinder in Other Party's Dispositive Motion
(i.e. Summary Judgment, Judgment on the Pleadings,
or other Dispositive Motion not pursuant to Rule 12(b))
(\$50.00)
- ☐ Judgment on the Pleadings (\$50.00)
- ☐ Motion to Dismiss, or in the Alternative
Summary Judgment (\$50.00)
- Renewed Dispositive Motion (Summary
Judgment, Judgment on the Pleadings, or other
Dispositive Motion not pursuant to Rule 12(b)) (\$50.00)
- ☐ Summary Judgment pursuant to Rule 56 (\$50.00)
- ☐ Motion to Intervene (\$297.00)
- ☐ Other _____
pursuant to Rule _____ (\$50.00)

*Motion fees are enumerated in §12-19-71(a). Fees
pursuant to Local Act are not included. Please contact the
Clerk of the Court regarding applicable local fees.

☐ Local Court Costs \$ 0 _____

Motions Not Requiring Fee

- ☐ Add Party
- ☐ Amend
- ☐ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during Trial)
- ☐ Disburse Funds
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☐ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Pendente Lite
- ☐ Plaintiff's Motion to Dismiss
- ☐ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Special Practice in Alabama
- ☒ Stay
- ☐ Strike
- ☐ Supplement to Pending Motion
- ☐ Vacate or Modify
- ☐ Withdraw
- ☐ Other _____
pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemporaneously
with this motion an Affidavit of Substantial Hardship or if you
are filing on behalf of an agency or department of the State,
county, or municipal government. (Pursuant to §6-5-1 Code
of Alabama (1975), governmental entities are exempt from
prepayment of filing fees) ☐

Date:
7/15/2020 3:13:45 PM

Signature of Attorney or Party
/s/ JEFFREY BARTOW CANNON JR

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.

**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.



IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

HOLLIE MACKELLAR, et al.

Plaintiffs,

v.

NPC INTERNATIONAL, INC., et al.

Defendants.

Civil Action No.: CV-2018-901535

SUGGESTION OF BANKRUPTCY AND NOTICE OF AUTOMATIC STAY

COMES NOW, the Defendant, NPC INTERNATIONAL, INC., by and through its undersigned attorney, hereby informs this Honorable Court that NPC INTERNATIONAL, INC. has filed bankruptcy pursuant to Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas, Case No. 20-33353, on July 1, 2020, Pursuant to 11 U.S.C. §362, the proceedings in the above-styled case as related to NPC International Inc. are automatically stayed as of the date of the filing.

/s/ J. Bart Cannon

J. Allen Sydnor, Jr. (SYD002)

J. Bart Cannon (CAN017)

Madison D. Morrison (DAV220)

Attorneys for Defendant,

NPC International, Inc.

OF COUNSEL:

HUIE, FERNAMBUCQ & STEWART, LLP

3291 US Highway 280, Suite 200

Birmingham, AL 35243

Telephone: 205-251-1193

Facsimile: 205-251-1256

asydnor@huilaw.com

bcannon@huilaw.com

mmorrison@huilaw.com

CERTIFICATE OF SERVICE

I certify that on the 15th day of July, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Desmond V. Tobias
Jason S. McCormick
Bryan E. Comer
TOBIAS, McCORMICK & COMER, LLC
1203 Dauphin Street
Mobile, Alabama 36604
desi@tmclawyers.com
jason@tmclawyers.com
bryan@tmclawyers.com
Attorneys for Plaintiffs

Kyle Morris
CABANISS, JOHNSTON, GARDNER,
DUMAS & O'NEAL LLP
PO Box 2906
Mobile, Alabama 36652
wkm@cabaniss.com
***Attorney for Defendant Safeco Insurance
Company***

Steven P. Savarese, Jr.
Dennis McKenna
HOLTSFORD GILLILAND HIGGINS
HITSON & HOWARD, P.C.
29000 U.S. Highway 98, Suite B-101
Daphne, AL 36526
ssavarese@hglawpc.com
dmckenna@hglawpc.com
Attorneys for John Hartenburg Cornelison

/s/ J. Bart Cannon