

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

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In re:  
**BIRD GLOBAL, INC., aka  
BIRD RIDES, INC.**

**Case No: 23-20514-CLC**

**Chapter 11**

Debtor.

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**CREDITOR LAW OFFICES OF LEE W. DAVIS, ESQ.'S MOTION FOR RELIEF FROM  
STAY AND MOTION TO PURSUE INSURANCE PROCEEDS IN UNDERLYING  
STATE COURT ACTION AGAINST DEBTOR**

COME NOW, the Creditor, ALESIA TRUXELL, ADMINISTRATRIX OF THE ESTATE OF LAWRENCE CHERTIK, III, AND LAWRENCE J. CHERTIK, JR., JACOB SPELLER AND JENNIFER VINING, C/O LAW OFFICES OF LEE W. DAVIS, ESQ. ("Creditor"), by and through the undersigned counsel, and hereby files this motion for relief from stay and motion to pursue insurance proceeds in underlying state court action against Debtor, BIRD GLOBAL, INC. A/K/A BIRD RIDES, INC. ("Debtor"), and as grounds in support thereof state that:

**BRIEF STATEMENT OF FACTS**

1. On December 20, 2023, the Debtor filed a Voluntary Chapter 11 Petition in the United States Bankruptcy Court for the Southern District of Florida, Miami Division, thereby commencing a Chapter 11 bankruptcy case (the "Bankruptcy Case") that is jointly administered under Lead Case No. 23-20514-CLC.
2. Creditor is actively defending the underlying state court lawsuit in Allegheny County, Pennsylvania, Civil Division, Case No. GD-23-010483, until Debtor filed its

suggestion of bankruptcy on January 3, 2024.

3. Debtor is insured with Broadspire Insurance Company.
4. Good cause exists to lift the automatic stay to permit Creditor to continue the underlying state court action and pursue the insurance proceeds available.

### **STATEMENT OF LAW**

Section 362(d)(1) of the Bankruptcy Code permits a bankruptcy court to terminate, annul, modify, or condition the stay for "cause." The party opposing stay relief has the ultimate burden of disproving the existence of "cause." 11 U.S.C. § 362(g)(2). However, the movant has the initial burden to show that "cause" exists. Section 362(d)(1) does not define "cause," so a bankruptcy court must determine "cause" based on the totality of the circumstances. *In re George*, 315 B.R. 624, 628 (Bankr. S.D. Ga. 2004) (Davis, J.).

To determine whether to lift the automatic stay so that a party may continue litigation in another forum, most courts balance the hardship to the creditor if the creditor is not allowed to proceed with the lawsuit, against the potential prejudice to the debtor, the debtor's estate, and other creditors. E.g., *In re Carraway Methodist Health Sys.*, 355 B.R. 853, 854 (Bankr. N.D. Ala. 2006). In applying this balancing test, courts have considered numerous factors, such as:

- (1) whether relief would result in a partial or complete resolution of the issues;
- (2) lack of any connection with or interference with the bankruptcy case;
- (3) whether the other proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
- (5) whether the debtor's insurer has assumed full responsibility for defending it;
- (6) whether the action primarily involves third parties;
- (7) whether litigation in another 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 in the other proceeding would result in a judicial lien avoidable by the debtor;

(10) the interests of judicial economy and the expeditious and economical resolution of litigation;

(11) whether the parties are ready for trial in the other proceeding; and

(12) impact of the stay on the parties and the balance of harms.

*In re R.J. Groover Constr., L.L.C.*, 411 B.R. 460, 464 (Bankr. S.D. Ga. 2008)

(Davis, J.).

In addition, although a more convenient forum is not one of the enumerated grounds for relief from stay in § 362(d), the legislative history of the section suggests that such a forum is cause under § 362(d)(1):

[I]t will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from any duties that may be handled elsewhere.

*In re Johnson*, 153 B.R. 49, 51 (Bankr. D. Idaho 1993) (quoting S. Rep. No. 989, 95th Cong., 2d Sess. 50, reprinted in 1978 U.S.C.C.A.N. 5787, 5836).

On balance, here, many of these factors weigh in favor of granting stay relief. For example, the state court is a tribunal with the necessary expertise to conduct a jury trial involving a products liability accident, like the one at issue here. Secondly, there would be no interference with the bankruptcy case since the insurance policy proceeds have nothing to do with the bankruptcy proceedings. Thirdly, there is no significant burden on Debtor that outweighs the interests of

Creditor in having their tort claims resolved.

The interests of judicial economy weigh in favor of proceeding to trial in state court first to see if Creditor even have a claim against Debtor to be excepted from discharge. A defense verdict would accord complete relief of the issues, as would a verdict for Creditor within the policy limits. A verdict in excess of the policy limits would accord complete relief of the issues as well depending on the non-dischargeability determination in the bankruptcy case.

Finally, the interests of other creditors will not be adversely affected in the least since they have no claim or rights under the subject Broadspire insurance policy.

Since the Debtor's insurer bears responsibility for defending Debtor in the underlying state court action, there is sufficient cause to lift the automatic stay to pursue any potentially applicable insurance proceeds. See *In re Abeinsa Holding, Inc.*, 2016 WL 5867039, at \*3 (Bankr. D. Del. Oct. 6, 2016).

Therefore, it is necessary and appropriate for this Court to grant this motion, to lift the automatic stay, and permit Creditor to proceed with the underlying state court case for the sole purpose of allowing Creditor to continue against the Debtor and collect proceeds from his Broadspire insurance policy that will cover any resulting judgment. See *Bruch v. Hall (In re Hall)* 2014 LEXIS 3550 (Bankr. S.D. Ga. Aug. 19, 2014) (granting relief from automatic stay in underlying car accident state court case for the reasons enunciated above and herein); see also *In re Calsol, Inc.*, 419 F. App'x 753 (9th Cir. 2011); *Baez v. Med. Liab. Mut. Ins. Co.*, 136 B.R. 65, 68 (S.D.N.Y. 1992); *In re Fernstrom Storage & Van Co.*, 100 B.R. 1017, 1023 (Bankr. N.D. Ill.

1989), *aff'd*, 938 F.2d 731 (7th Cir. 1991).

**WHEREFORE**, the Creditor respectfully request this Honorable Court grant the motion in its entirety and permit Creditor to continue the underlying state court action against Debtor for the Broadspire insurance proceeds.

I hereby certify that I am admitted to the Bar of the United States District Court for the Southern District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in the court set forth in Local Rule 2090-1(A).

Respectfully Submitted,  
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