

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

Red Lobster Management LLC, *et al.*,<sup>1</sup>  
(Jointly Administered)

Case No. 6:24-bk-02486-GER  
Chapter 11

Debtors.

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**RANDAZZO AND ONTIVEROS' MOTION FOR RELIEF FROM STAY TO  
PROCEED AGAINST AVAILABLE INSURANCE**

Melissa Randazzo (“Randazzo”) and David Ontiveros (“Ontiveros”), pursuant to 11 U.S.C. § 362, request the Court grant them relief from the automatic stay to proceed against available insurance. In support, Randazzo and Ontiveros state:

1. On January 26, 2020, Randazzo and Ontiveros dined at a Red Lobster restaurant located in Monrovia, CA. While eating, a thrown serving tray struck Randazzo in the head. She suffered traumatic brain and cervical spine injuries.

2. Thereafter, Randazzo and Ontiveros brought claims against RFP Red Lobster, LLC, Red Lobster Hospitality, LLC, Red Lobster Management, LLC, and Terry Bainbridge (together, “Defendants”) in Los Angeles Superior Court (the “California Litigation”). Randazzo asserted claims for premises liability and general negligence. Ontiveros asserted claims for loss of consortium as Randazzo’s husband.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are Red Lobster Management LLC (6389); Red Lobster Sourcing LLC (3075); Red Lobster Supply LLC (9187); RL Kansas LLC (2396); Red Lobster Hospitality LLC (5297); Red Lobster Restaurants LLC (4308); RL Columbia LLC (7525); RL of Frederick, Inc. (91 S ); RL Salisbury, LLC (7836); RL Maryland, Inc. (71 85); Red Lobster of Texas, Inc. (1424); Red Lobster of Bel Air, Inc.(2240); RLSV Inc. (6180); Red Lobster Canada, Inc. (4569); and Red Lobster International Holdings LLC (4661). The Debtors' principal offices are located at 450 S. Orange Avenue, Suite 800, Orlando, FL 32801.

3. Following three years of litigation, Randazzo and Ontiveros entered into a settlement (the “Settlement”) with Defendants’ and their insurers on May 17, 2024. The terms and conditions of the Settlement are confidential. Further details of the settlement are available if necessary.

4. On May 19, 2024, the Debtors filed the petitions initiating these bankruptcy proceedings.

5. On June 21, 2024, Red Lobster Management and Red Lobster Hospitality filed a suggestion of bankruptcy in the California litigation.

6. The estate holds a general commercial liability policy from Zurich American Insurance Company (“Zurich”), policy number GLO 0176236-05, which provides \$20 million in aggregate coverage and \$1 million in personal injury coverage per claimant for the applicable coverage period.

### **Relief Requested**

7. Randazzo and Ontiveros seek relief from the automatic stay to enforce the Settlement against available insurance for cause pursuant to 11 U.S.C. § 362(d)(1). In the alternative, the Court should grant stay relief because the Debtors have no equity in the insurance proceeds and the proceeds are not necessary for an effective reorganization pursuant to 11 U.S.C. § 362(d)(2). Randazzo and Ontiveros will not seek recovery from the Debtors’ estates except to the extent that a deficiency exists after exhaustion of all available insurance proceeds.

8. The automatic stay prohibits the “commencement or continuation” of actions against the debtor, “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate,” and acts to collect on prepetition debts. 11 U.S.C. § 362(a).

***Cause Exists to Grant Relief from the Automatic Stay***

9. While the automatic stay prevents Randazzo and Ontiveros from furthering their claims, “the Court shall grant relief from the stay ... for cause.” 11 U.S.C. § 362(d). “The term ‘cause’ is not defined in § 362(d)(1) or elsewhere in the Bankruptcy Code.” *In re Feingold*, 730 F.3d 1268, 1276 (11th Cir. 2013). Instead, courts apply a case-specific analysis to determine whether to grant stay relief. *Id.* at 1277. That analysis leaves the decision to modify the stay to the discretion of the bankruptcy judge. *See In re Holtkamp*, 669 F.2d 505, 507 (7th Cir. 1982).

10. In the context of requests to resume prepetition litigation, courts consider “1. Whether any great prejudice to either the bankruptcy estate or the debtor will result from continuation of the civil suit; 2. Whether the hardship to the non-bankruptcy party by maintenance of the stay considerably outweighs the hardship to the debtor; and 3. The probability of the creditor prevailing on the merits.” *In re SCO Grp, Inc.*, 395 B.R. 852, 857 (Bankr. D. Del. 2007) (quoting *In re Rexene Prods. Co.*, 141 B.R. 574, 576 (Bankr. D. Del. 1992); *see also, In re D/C Distribution, LLC*, 617 B.R. 600, 611 (Bankr. N.D. Ill. 2020). Courts in this district have granted stay relief in the specific circumstance where the movant seeks to collect only against insurance. *See In re Scott Wetzel Srvcs., Inc.*, 243 B.R. 802 (Bankr. M.D. Fla. 1999).

11. The *SCO Group* factors all weigh in favor of granting the relief requests. As to the first and second factors, the bankruptcy estate will not suffer any prejudice or hardship from granting this Motion because Randazzo and Ontiveros seek to collect only against applicable insurance policies and the parties settled the litigation prepetition. In contrast, Randazzo and Ontiveros will suffer extreme prejudice and hardship from the unnecessary delay of the end of three years of litigation for which they have yet to receive any compensation for their injuries. As to success on the merits, Randazzo and Ontiveros are already successful on the merits as a result

of the settlement of their prepetition lawsuit. Accordingly, the Court should grant Randazzo and Ontiveros relief from the automatic stay for cause to pursue insurance proceeds.

***The Debtors Lack Equity in the Insurance Proceeds and the Proceeds Are Not Necessary for an Effective Reorganization***

12. 11 U.S.C. § 362(d)(2) provides that courts shall grant relief from the automatic stay where the

13. Whether insurance proceeds are property of the bankruptcy estate turns on whether a debtor has the right to retain the proceeds in the absence of a bankruptcy proceeding. *See In re Edgeworth*, 993 F.2d 51, 55 (5th Cir. 1993).”For instance, casualty, fire, or theft insurance proceeds have been held to be property of the estate because the debtor directly receives the proceeds as merely a change in form of estate property.” *In re Scott Wetzel Srvcs, Inc.*, 243 B.R. at 804-805. In the context of liability policies, the proceeds are not property of the estate because the proceeds are payable to injured parties and not the insureds. *Id.* at 805; *In re Edgeworth*, 993 F.2d at 56.

14. Here, Randazzo and Ontiveros seek to recover under a liability policy. Accordingly, the proceeds of the Zurich policy are not property of the bankruptcy estate. As the Debtors have no rights to the proceeds, their estates have no equity in the proceeds. *In re D/C Distribution, LLC*, 617 B.R. at 616. Logically, the proceeds cannot be necessary to reorganization as the Debtors have no rights in them. More so, the Debtors filed these chapter 11 cases as a result of flagging revenues, inflating costs, above-market leases, and poor management decisions. *See* Decl. of Jonathan Tibus, ECF No. 6, ¶¶ 31-42. This is not a mass tort case where the resolution of issues relating to personal injury liability insurance proceeds are necessary to reorganization. The Debtors have also sought approval to sell substantially all assets pursuant to 11 U.S.C. § 363. ECF No. 49. Accordingly, the

Debtors will be filing a plan of liquidation rather than reorganization. Where the Debtors seek to liquidate, no property is necessary for an effective reorganization.

WHEREFORE, the Randazzo and Ontiveros request a Court order (i) granting this Motion; (ii) modifying the automatic stay such that they can take appropriate action to enforce the Settlement solely against available insurance, including taking action in the California Litigation; and (iii) waiving the 14-day stay of an order granting this Motion pursuant to Fed. R. Bankr. P. 4001(a)(3).

Respectfully submitted,

**SHRAIBERG PAGE P.A.**

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished via Notice of Electronic Filing by CM/ECF to all parties registered to receive such service in this case on July 19, 2024.

By: /s/ Samuel W. Hess