

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**
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In Re:

Chapter 11 Cases

RED LOBSTER MANAGEMENT LLC,

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

RED LOBSTER RESTAURANTS LLC,
RLSV, INC.,
RED LOBSTER CANADA, INC.,
RED LOBSTER HOSPITALITY LLC,
RL KANSAS LLC,
RED LOBSTER SOURCING LLC,
RED LOBSTER SUPPLY LLC,
RL COLUMBIA LLC,
RL OF FREDERICK, INC.,
RED LOBSTER OF TEXAS, INC.,
RL MARYLAND, INC.,
RED LOBSTER OF BEL AIR, INC.,
RL SALISBURY, LLC,
RED LOBSTER INTERNATIONAL HOLDINGS LLC,

Jointly Administered with
Case No. 6:24-bk-02487-GER
Case No. 6:24-bk-02488-GER
Case No. 6:24-bk-02489-GER
Case No. 6:24-bk-02490-GER
Case No. 6:24-bk-02491-GER
Case No. 6:24-bk-02492-GER
Case No. 6:24-bk-02493-GER
Case No. 6:24-bk-02494-GER
Case No. 6:24-bk-02495-GER
Case No. 6:24-bk-02496-GER
Case No. 6:24-bk-02497-GER
Case No. 6:24-bk-02498-GER
Case No. 6:24-bk-02499-GER
Case No. 6:24-bk-02500-GER

Debtors.

**CLAIMANT TARA RICHARDSON’S MOTION FOR RELIEF
FROM THE AUTOMATIC STAY AND MOTION TO PROCEED
AGAINST AVAILABLE LIMITS OF INSURANCE COVERAGE**

Claimant Tara Richardson (“Claimant”) hereby moves this Court for entry of an order terminating or modifying the automatic stay to allow for the continuation of a personal injury lawsuit against Red Lobster Hospitality LLC (the “Applicable Debtor”), to the extent of any applicable insurance coverage of the Applicable Debtor, and in support thereof, states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C.

§§ 1408 and 1409. The statutory predicate for the relief sought in this Motion is 11 U.S.C. § 362(d), Fed. R. Bankr. P. 4001(a), and FLMB Local Rule 4001-1.

PROCEDURAL BACKGROUND

2. On May 19, 2024 (the “Petition Date”), the Applicable Debtor filed its voluntary petition under chapter 11 of the Bankruptcy Code, thereby instituting Case No. 6:24-bk-02490-GER (the “Applicable Case”). [Applicable Case, Doc. No. 1]

3. On May 20, 2024, the Bankruptcy Court entered its *Order Granting Debtors’ Ex Parte Motion for Joint Administration*, directing joint administration of the above-captioned chapter 11 bankruptcy cases and designating the above-captioned case for Red Lobster Restaurants, LLC, Case No. 6:24-bk-02486 as the lead bankruptcy case (the “Lead Case”). [Doc. No. 8].

4. On June 21, 2024, the Applicable Debtor filed its bankruptcy schedules (“Schedules”) and Statement of Financial Affairs (“SOFA”). [Applicable Case, Doc. No. 9].

5. The Applicable Debtor’s Schedules E/F list Claimant as having a nonpriority claim in an “undetermined” amount, and list the claim as being contingent, unliquidated, and disputed. [*Id.* at p. 746].

6. The Applicable Debtor’s SOFA lists Claimant’s Lawsuit (defined below) as pending. [*Id.* at p. 1170].

7. On July 23, 2024, Claimant filed her Proof of Claim in the Amount of \$250,000.00. [Claim No. 0000011233].

CLAIMANT’S LAWSUIT

8. On February 4, 2022, Claimant filed a personal injury lawsuit in the County Court at Law for Gregg County, Texas, Cause No. 2022-166-CCL2 (the “Lawsuit”) against the

Applicable Debtor.

9. Claimant filed *Plaintiff's First Amended Petition* on June 29, 2023, a true and correct copy of which is attached hereto as **Exhibit A** and incorporated herein by reference.

10. The Lawsuit was pending as of the Petition Date.

11. In the Lawsuit, Claimant alleges that, on or about May 29, 2021, Claimant was a legal invitee at the Applicable Debtor's restaurant located at 3515 McCann Road, Longview, Gregg County, Texas (the "Restaurant") when she slipped and fell in a large puddle of standing water that covered the entire floor of the restroom, causing severe and debilitating injuries to Claimant. The Applicable Debtor owed a duty to business invitees, including Claimant, to conduct its business in a reasonably safe manner so as not to cause injury to its business invitees.

12. As a result, Claimant filed the Lawsuit to pursue recovery for damages caused by the negligent actions of the Applicable Debtor.

13. At the time Claimant was injured, the Applicable Debtor was covered by a commercial general liability insurance policy (the "Policy") issued by Zurich Services Corporation ("Zurich"). Zurich is aware of Claimant's injuries, and assigned to the incident "Claim Number: 9720155991."

14. On or about June 3, 2024, the Applicable Debtor filed its *Notice of Bankruptcy and Automatic Stay* in the County Court at Law for Gregg County, Texas. As of today's date, the Lawsuit remains stayed.

SUMMARY OF RELIEF REQUESTED

15. Claimant respectfully requests entry of an order: (a) terminating or modifying the automatic stay pursuant to 11 U.S.C. § 362(a) to permit Claimant to proceed with the Lawsuit for the purpose of seeking recovery against the Applicable Debtor's available insurance; (b)

shortening the applicable notice periods required by Fed. R. Bankr. P. 4001(d) for termination or modification of the automatic stay; and (c) waiving the 14-day period pursuant to Fed. R. Bankr. P. 4001(a)(3).

ARGUMENT

16. Claimant requests relief from the automatic stay under § 362(d)(1) of the Bankruptcy Code for “cause” to pursue the Lawsuit for damages resulting from the negligence of the Applicable Debtor, but only against any applicable insurance coverage.

17. Section 362(d)(1) of the Bankruptcy Code authorizes the Court to grant relief from the automatic stay for “cause.” The Bankruptcy Code does not define the term “cause,” but there are several factors courts consider when determining whether “cause” exists, including (a) whether the Debtor has acted in bad faith, (b) the “hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code,” and (c) “pending state court proceedings” See *In re Feingold*, 730 F.3d 1268, 1277 (11th Cir. 2013); *In re Murray Indus., Inc.*, 121 B.R. 635, 637 (Bankr. M.D. Fla. 1990). Courts can also consider the existence of insurance coverage which would result in payment to the claimant if the claim can be liquidated. See *In re Holtkamp*, 669 F.2d 505 (7th Cir. 1982).

18. Where the prepetition action concerns a personal injury lawsuit, the case law overwhelmingly supports relief from the stay to permit the personal injury claim to be liquidated, as opposed to collection against a debtor. *Id.*, at 508; *In re Fowler*, 259 B.R. 856 at 858 (Bankr. E.D. Tex. 2001); *In re McGraw*, 18 B.R. 140, 142 (Bankr. W.D. Wis. 1982) (“no ‘great prejudice’ resulted to the bankruptcy estate from the 11 U.S.C. § 362(a) modification because the bankruptcy court’s modification order only allowed the state court to determine the debtor’s liability”).

19. Bankruptcy courts routinely grant relief from the automatic stay to creditors to

seek recovery against insurance in state court, particularly in the vast majority of cases in which insurance proceeds are not property of the estate. “Whether the proceeds of an insurance policy are property of the estate must be analyzed in light of the facts of each case.” *In Re Scott Wetzel Servs., Inc.*, 243 B.R. 802 at 804 (Bankr. M.D. Fla. 1999). “The overriding question when determining whether insurance proceeds are property of the estate is whether the debtor would have a right to receive and keep those proceeds when the insurer paid on the claim. When a payment by an insurer cannot inure to the debtor's pecuniary benefit, then that payment should neither enhance nor decrease the bankruptcy estate.” *Id.* (citing *Matter of Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993)).

20. In addition, where a debtor has insurance in place covering the personal injury claim, “continuation of the civil action should be permitted since hardship to the debtor is likely to be outweighed by hardship to the plaintiff.” *In re Turner*, 55 B.R. 498, 501-02 (Bankr. N.D. Ohio 1985); *see also In re Edgeworth v. Edgeworth*, 993 F.2d 51 (5th Cir. 1993); *In re Fowler*, 259 B.R. 856 at 858 (Bankr. E.D. Tex. 2001) (noting that “[t]his Court, like all bankruptcy courts, routinely lifts the stay to allow tort suits to go forward in state court to determine the liability, if any, of the Debtor”).

21. Bankruptcy Courts commonly look to the twelve factors set forth in *In Re Sonnox* (the “Sonnax Factors”) to assist in determining whether cause exists to lift the automatic stay to allow a party to pursue pending litigation outside of the Bankruptcy Court. *In re Sonnox Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990). The Sonnox Factors are “(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.” *Id.* at 1286.

22. Here, analysis under the relevant Sonnax Factors weighs strongly in favor of terminating the stay to allow Claimant to pursue the Lawsuit. Stay relief would result in the complete resolution of Claimant’s claim; Claimant and the Lawsuit have no connection to the Bankruptcy Case; Debtor’s insurer has acknowledged responsibility by issuance of a Claim Number; the Lawsuit will in no way prejudice the interests of other creditors; and most importantly, relief from the automatic stay is the only way for justice to be done, and for Claimant to be made whole.

23. Based on the foregoing, Claimant has shown cause exists pursuant to 11 U.S.C. § 362(d)(2)(A) and (B) for the automatic stay to be lifted and requests this Court issue an Order accordingly.

WHEREFORE, Claimant respectfully requests entry of an order: (a) terminating or modifying the automatic stay pursuant to 11 U.S.C. § 362(a) to permit Claimant to proceed with the Lawsuit for the purpose of seeking recovery against the Applicable Debtor’s available insurance; (b) shortening the applicable notice periods required by Fed. R. Bankr. P. 4001(d) for termination or modification of the automatic stay; (c) waiving the 14-day period pursuant to

Fed. R. Bankr. P. 4001(a)(3); and for all such other and further relief to which Claimant may be entitled.

Dated: August 26, 2024

/s/ Ravi Patrick Ratnala

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2024, a true and correct copy of the foregoing, along with its attachments, was filed via the Court's CM/ECF system, which will provide electronic notice of filing to all parties in interest receiving CM/ECF electronic noticing, including the office of the **United States Trustee**, the **Debtors' Attorneys**, and **Counsel for the Committee**, all of whom are registered and have consented to receive electronic notices in this case.

I further certify that on August 26, 2024, I cause a true and correct copy of the foregoing to be served via First Class Mail upon **Red Lobster Hospitality LLC**, 450 S Orange Ave, Ste 800, Orlando, FL 32801.

/s/ Ravi Patrick Ratnala
Ravi Patrick Ratnala

Label Matrix for local noticing
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Note: Entries with a '+' at the end of the
name have an email address on file in CMECF

EXHIBIT A

CAUSE NO. 2022-166-CCL2

TARA RICHARDSON	§	IN THE COUNTY COURT AT LAW
	§	
	§	
VS.	§	NO. 2
	§	
	§	
RED LOBSTER HOSPITALITY LLC	§	GREGG COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION

TO THIS HONORABLE COURT:

COMES NOW Tara Richardson, Plaintiff, complaining of Red Lobster Hospitality LLC, Defendant, and would respectfully show:

1. Discovery Control Plan

1.1 Discovery is intended to be conducted under Level 1 as provided for by Rule 190 of the Texas Rules of Civil Procedure.

1.2 Plaintiff seeks maximum monetary relief aggregating \$75,000.00 or less, excluding interest, statutory or punitive damages and penalties, attorney fees, and costs.

2. Parties

2.1 Plaintiff Tara Richardson is a resident of Henderson County, Texas.

2.2 In accordance with TEX. CIV. PRAC. & REM. CODE § 30.015, Plaintiff discloses that Plaintiff's address is 3675 County Road 4804, Athens, TX 75752.

2.3 In accordance with TEX. CIV. PRAC. & REM. CODE § 30.014, Plaintiff discloses that the last three (3) numbers of Plaintiff's driver's license number are 833 and that the last three (3) numbers of Plaintiff's Social Security number are 184.

2.4 Defendant Red Lobster Hospitality LLC is Delaware corporation doing business in Texas.

2.5 Defendant Red Lobster Hospitality LLC may be served with process through its registered agent for service of process in Texas, Corporate Creations Network, Inc., at 5444 Westheimer, #1000, Houston, Texas 77056, or wherever said agent may be found.

3. Jurisdiction

3.1 Defendant Red Lobster Hospitality LLC does business in Texas and is subject to the jurisdiction of this Court.

3.2 Plaintiff's damages are within the jurisdictional limits of this Court.

4. Venue

4.1 All or a substantial part of the events or omissions giving rise to Plaintiff's causes of action occurred in Gregg County, Texas.

4.2 As set forth below, Plaintiff's causes of action arise out of a slip and fall incident in Gregg County, Texas wherein the acts or omissions of Defendant in Gregg County, Texas were a proximate cause of the incident and Plaintiff's damages resulting from the occurrence in question.

4.3 Venue is therefore proper in Gregg County, Texas pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

5. Facts of Case

5.1 On or about May 29, 2021, Plaintiff was a customer at the Red Lobster restaurant located at 3515 McCann Road, Longview, Gregg County, Texas ("Red Lobster" or "the restaurant"). The restaurant is owned and operated by Defendant Red Lobster Hospitality

LLC. At all times pertinent hereto, the premises were owned and otherwise under the control of Defendant Red Lobster Hospitality LLC.

5.2 At all times Plaintiff was a business invitee – she was on the premises of Red Lobster with Defendant’s knowledge and permission for their mutual benefit.

5.3 On the day of the subject incident, Plaintiff arrived at the restaurant and immediately entered the ladies’ restroom. Another customer who was entering the ladies’ restroom at the same time held the door open for her to enter. Immediately upon entering the restroom, Plaintiff slipped and fell in a large puddle of standing water that covered the entire floor of the restroom, causing severe and debilitating injuries to Plaintiff.

5.4 At the time of the subject incident, there were no caution signs visible from the doorway of the restroom where Plaintiff fell.

6. Causes of Action

6.1 Plaintiff’s causes of action are based in part upon premises-liability.

6.2 Because Plaintiff was a business invitee on the premises, Defendant owed her a duty to exercise ordinary care to keep the premises in a reasonably safe condition, give adequate warning of any known dangers, inspect the premises to discover any latent defects and make safe all such defects. Defendant failed to exercise ordinary care to keep the premises in a reasonably safe condition and this failure was a proximate cause of the occurrence in question and Plaintiff’s resulting injuries.

6.3 Plaintiff would show that the condition of the premises in question posed an unreasonable risk of harm, that Defendant knew or reasonably should have known of the danger, and that Defendant failed to exercise ordinary care to protect Plaintiff from the danger,

by both failing to adequately warn Plaintiff of the condition and failing to make that condition reasonably safe, which was a proximate cause of the occurrence or injuries in question and Plaintiff's damages resulting from the occurrence or injuries in question.

6.4 Whenever it is alleged in this petition that Defendant did any act or thing, it is meant that Defendant's officers, agents, servants, employees, or representatives may have done such act or thing, and when such act or thing was done, it was done with the full authorization or ratification of Defendant in the furtherance of its business affairs or in the normal and routine course and scope of employment.

6.5 All conditions precedent to the filing of this lawsuit and bringing said cause of action have been performed or have occurred.

7. Damages

7.1 Plaintiff has suffered damages in the past as well as in the future.

7.2 These damages include those damages resulting to Plaintiff conditioned as she was at the time of the occurrence in question, or which resulted from the activation of any condition which may have existed at the time of the occurrence in question.

7.3 These damages include physical pain, physical impairment, disfigurement, mental anguish, mental impairment, loss of enjoyment of life, and reasonable expenses for necessary health care, including rehabilitative services and devices resulting from the injuries sustained in the occurrence in question.

7.4 These damages include any subsequent aggravation of the injuries sustained in the occurrence in question.

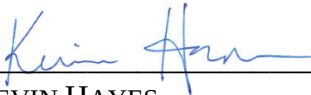
8. Prayer for Relief

8.1 Plaintiff seeks relief as specified by Rule 47(c)(1) of the Texas Rules of Civil Procedure.

8.2 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for judgment against Defendant for all damages to which Plaintiff is entitled by law, pre-judgment and post-judgment interest, costs of court, and such other and further relief, general and special, legal and equitable, to which Plaintiff is justly entitled.

Respectfully submitted,

ROBERTS & ROBERTS

BY: _____

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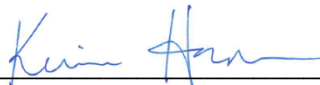
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

We do hereby certify that a copy of this instrument has been provided to all parties or their counsel of record in accordance with the provisions of TEX. R. CIV. P. 21 & 21a on June 29, 2023.

_____
ROBERTS & ROBERTS