

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

In re:

WELLPATH HOLDINGS, INC. et al.,¹

Debtor.

)
) Chapter 11
)

) Case No. 24-90533 (ARP)
)
)

**OBJECTION TO DEBTORS' EMERGENCY MOTION FOR ENTRY OF AN ORDER (I)
AUTHORIZING THE DEBTORS TO (A) HONOR AND INCUR OBLIGATIONS TO
PROFESSIONAL CORPORATIONS AND (B) OBTAIN NEW PROFESSIONAL
CORPORATION CONTRACTS, (II) EXTENDING STATUTORY PROTECTIONS TO
PROFESSIONAL CORPORATIONS, AND (III) GRANTING RELATED RELIEF AND
ORDER GRANTING SAME**

[Relates to ECF Nos. 15 and 91]

Jordan Deppe, Deceased, by and through his Successor in Interest, Michael Deppe; and Michael Deppe, Individually ("Deppe Plaintiff"); and John Adena, Deceased, by and through his Co-Successors in Interest, Circe Adena and Richard Adena; Circe Adena, Individually, and Richard Adena, Individually ("Adena Plaintiffs," and together with Deppe Plaintiff, the "Claimants"), civil rights claimant-creditors of certain Debtors in the above-captioned chapter 11 case, file this objection ("Objection") to *Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Honor and Incur Obligations to Professional Corporations and (B) Obtain New Professional Corporation Contracts, (II) Extending Statutory Protections to Professional Corporations, and (III) Granting Related Relief* [ECF No. 15] (the "PC Motion")² and the order granting the PC Motion [ECF No. 91] (the "PC Order") and state as follows:

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/Wellpath>.

² Capitalized terms used but not defined herein have the meanings ascribed to such terms in the PC Motion.

SUMMARY

Claimants are parents of young men who died while pretrial detainees in the Shasta County, California jail. They have waited years to obtain justice. The PC Motion seeks to extend the automatic stay beyond the scope of section 362(a) and Fifth Circuit law to non-debtor entities and individuals. Claimants' litigation against the Debtor Defendants (as defined below) also includes several non-debtor parties who are not employed or owned by the Debtor Defendants. Staying all the Claimants' litigation through a date uncertain while the Debtors pursue their chapter 11 case creates an extreme hardship on the Claimants. Claimants are willing to sever out or dismiss Debtor Defendants from their litigation and proceed with their claims against the non-debtor entities and individuals.

Based on disclosures in the Claimants' litigation, there are insurance policies covering the non-debtor parties, which are separate and distinct from the Debtors' own coverage. Contrary to representations made by the Debtors, the professional service contracts between the Debtors and non-debtor defendants in the Claimants' litigation do not contain indemnity obligations affecting the Debtors. If a final order extending the stay to Professional Corporations is entered, Claimants' ability to vindicate their rights in the litigation and obtain compensation from the non-debtor entities and individuals via insurance policies is hindered. Claimants request that the Court deny the stay provisions in paragraph 4 of the PC Order on a final basis, or alternatively, Claimants request that the Court exercise its discretion to tailor any final order to allow Claimants to sever or dismiss the Debtor Defendants from litigation and proceed with their cases.

BACKGROUND

A. Claimants' Cases

1. Claimants are the plaintiffs in two wrongful death cases pending in the United States District Court for the Eastern District of California. The cases are entitled *Deppe v. Shasta County, et al.*, E.D. Cal. Case No. 2:22-CV-00187-DAD-JDP (the “Deppe Case”), and *Adena v. Shasta County, et al.*, E.D. Cal. Case No. 2:21-CV-00770-DC-DMC (the “Adena Case,” and together with the Deppe Case, “Claimants' Cases”).

2. Claimants are represented by the law firm of Haddad & Sherwin LLP in Oakland, California.

3. Claimants previously filed their *Response in Opposition to Debtors' Emergency Motion for Entry of Interim and Final Orders to Enforce the Automatic Stay or in the Alternative Extend the Automatic Stay to Non-Debtor Defendants* [ECF No. 314] (“Stay Objection”), which Claimants incorporate into this Objection, including the exhibits (Exhibit 1 to the Stay Objection is the Declaration of Julia Sherwin, and as Exhibit 2 to the Stay Objection is the Declaration of Michael J. Haddad).

4. Two of the Debtors in this jointly administered bankruptcy case, Wellpath LLC and Wellpath Management, Inc. (together, “Wellpath Defendants”), are defendants in the Claimants' Cases. However, there are several non-debtor parties as defendants in each case. In the Deppe Case, non-debtor defendants include:

- i. Shasta County, California;
- ii. Shasta County Sheriff-Coroner Eric Magrini;
- iii. Shasta County Captain Gene Randall;
- iv. Shasta County Lieutenant Dale Marlar;

v. California Forensic Medical Group, Inc. (“CFMG”);

vi. Sanaz Parsa, M.D.;

vii. Traci Lewis, L.M.F.T.;

viii. Shea Phinney, L.M.F.T.; and

ix. Daniel Dellwo P.A.

5. In the Adena Case, non-debtor defendants include:

i. Shasta County, California;

ii. Shasta County Deputy Joseph Grady;

iii. Shasta County Deputy Nathaniel Neves;

iv. Shasta County Deputy Hector Cortez;

v. CFMG;

vi. Traci Lewis, L.M.F.T.;

vii. Pam Johansen, L.C.S.W.;

viii. Daniel Dellwo, P.A.; and

ix. Amanda Ream, R.N.

6. The Deppe Case involves the jail suicide of 25-year-old military veteran Jordan Deppe at the Shasta County, California, jail on January 7, 2021. (Deppe Case ECF No. 73, First Amended Complaint). Mr. Deppe was severely mentally ill, had been diagnosed with schizophrenia, schizoaffective disorder, and major depression, and had a long history of multiple suicide attempts, suicidal gestures, and suicidal ideation. The Deppe Plaintiff is Jordan Deppe’s father individually and as successor-in-interest. The case was filed on January 28, 2022. Stay Obj. Ex. 1, ¶ 6.

7. In the Deppe Case, non-expert discovery is complete and expert disclosures were originally due December 13, 2024. The parties completed extensive voluminous written discovery and 12 depositions. The Deppe Plaintiff incurred significant expense in expert work to prepare for timely expert disclosures and reports for the original deadline. All motions, including dispositive motions, are due June 13, 2025, and all pretrial filings are due August 19, 2025. The final pretrial conference is August 26, 2025; and trial is October 27, 2025. Stay Obj. Ex. 1, ¶ 7.

8. The Adena Case involves the severe beating of John Adena by jail deputies, causing extensive internal hemorrhaging, a Common Carotid Artery dissection, polydipsia and hyponatremia, resulting in the death of 31-year-old John Adena at the Shasta County, California jail on September 21, 2019. The Adena Plaintiffs are John Adena's parents individually and as successors-in-interest. The case was filed on April 29, 2021. Stay Obj. Ex. 1, ¶ 8.

9. In the Adena Case, fact discovery is almost complete, and the close of fact discovery is January 17, 2025. The parties have completed 33 depositions and exchanged many thousands of pages of documents. Expert disclosures are due March 14, 2025, and the Adena Plaintiffs have already incurred significant expense in experts' work to prepare their reports. Stay Obj. Ex. 1, ¶ 9.

10. Haddad & Sherwin LLP has handled several cases against the Wellpath Defendants, and their affiliates and predecessors, over many years in the State of California. Since the founding of "Wellpath" after the merger of Correctional Medical Group Companies ("CMGC") and Correct Care Solutions ("CCS"), Wellpath has asserted that the correctional healthcare it provides in California jails is provided by CFMG, a California corporation which is one of the named defendants in each of the Claimants' Cases. The contract for the provision of

correctional healthcare with Shasta County, California is signed by CFMG. CFMG has not filed bankruptcy. Stay Obj. Ex. 1, ¶ 10.

11. At the time of the deaths of Jordan Deppe and John Adena, Shasta County had a contract with CFMG that was in effect. Stay Obj. Ex. 1, ¶ 11.

12. The contract required CFMG to maintain at least \$2,000,000 in professional liability insurance coverage for each occurrence. The contract further required that any deductible or self-insured retention exceeding \$100,000 must be disclosed to Shasta County and is subject to Shasta County's approval. The contract also required that Shasta County and its employees be additional insureds. Stay Obj. Ex. 1, ¶ 12.

13. In the Claimants' Cases, the Wellpath Defendants have asserted that the healthcare in Shasta County jail is provided by CFMG and its employees, and not by Wellpath. Stay Obj. Ex. 1, ¶ 13.

14. In the Claimants' Cases, the defendants have claimed that Eliud Garcia, M.D., and Defendants Daniel Dellwo, Traci Lewis, L.M.F.T., Shea Phinney, L.M.F.T., Pam Johansen, L.C.S.W., and Sanaz Parsa, M.D. are all employed or contracted by CFMG or other non-debtor entities. Stay Obj. Ex. 1, ¶¶ 14-19.

15. On November 18, 2024, the United States District Court in the Deppe Case issued a minute order staying only the claims against Debtor Wellpath LLC. Stay Obj. Ex. 1, ¶ 20.

16. On November 25, 2024, the United States District Court in the Adena Case issued a minute order staying the claims against Wellpath LLC and also non-debtor CFMG's employees based on Wellpath's representations to the Court, and without allowing a response from Claimants. Stay Obj. Ex. 1, ¶ 21.

17. Both cases currently are in a posture where the parties typically would attempt to mediate or otherwise negotiate a full settlement of all claims. Settlement is all but impossible while the bankruptcy stay continues against non-debtor defendant CFMG and its employees, even though they appear to be covered by at least \$3 million in disclosed insurance in the Deppe Case and probably an equal amount in the Adena Case. Stay Obj. Ex. 2, ¶ 17.

B. Attempts to Confer and Obtain Insurance Information; Harm to Claimants

18. On November 27, 2024, Haddad & Sherwin LLP proposed a stipulation to defense counsel in the Claimants' Cases to dismiss all claims against the Wellpath Debtor Defendants with each side to bear their own costs and fees necessitated by the claims against those two parties. In exchange, in the Adena Case, Haddad & Sherwin LLP requested a stipulation to proceed with pending claims against the remaining non-debtor defendants without any bankruptcy stay (as the district court in the Deppe Case already ordered). Stay Obj. Ex. 2, ¶ 7. Debtors' counsel rejected this proposal.

19. In the Claimants' Cases, Haddad & Sherwin LLP proposed for each remaining medical defendant to produce any insurance policies that may provide coverage in these cases as already required by Federal Rule of Civil Procedure 26(a)(1)(A)(iv) and as requested in previously-served requests for production of documents. To date, Haddad & Sherwin LLP has not received a response to the proposed stipulation from counsel for the Wellpath Defendants or any of the other medical, non-debtor defendants in the Claimant's Cases. Stay Obj. Ex. 2, ¶ 7.

20. In their Rule 26 initial disclosures in the Adena Case on September 17, 2021, Wellpath Defendants, CFMG, and the individual medical employee defendants stated: "A request has been made for a copy of the policy of insurance for the defendants in this action and a copy will (sic) provided on receipt from the carrier." In their Rule 26 initial disclosures in the Deppe

Case on June 10, 2022, Defendants CFMG, medical employees, and Wellpath Defendants stated they are jointly insured by Allied World with combined policy limits of \$3,000,000.00. Stay Obj. Ex. 2, ¶ 9.

21. Haddad & Sherwin LLP also has not received the required and long overdue insurance policies from any of the medical defendants, including the Wellpath Defendants. To date, the Wellpath Defendants and the non-debtor defendants in the Claimants' Cases have not produced the insurance policies that provide coverage for claims made in these two cases, despite the requirement to do so under the Federal Rules of Civil Procedure, and despite Haddad & Sherwin LLP's repeated requests for this information. Stay Obj. Ex. 2, ¶ 8.

22. If Claimants were permitted, as they have proposed by stipulation, to dismiss all claims against the two Wellpath Defendants with each side to bear their own costs and fees necessitated by the claims against those two parties, and to proceed with pending claims against the remaining non-debtor defendants without any bankruptcy stay (as the district court already has ordered in the Deppe Case), then all parties, including Shasta County and its employees, could now attempt to reach a global settlement of all claims in the district court, or otherwise move Claimants' Cases toward trial. Stay Obj. Ex. 2, ¶ 18.

23. Claimants are the grieving parents of young men who died in the Shasta County jail in part due to the deliberate indifference to their serious medical needs by medical defendants in these cases, including the individual actors and CFMG. Jordan Deppe's father has had to wait almost four years, and John Adena's parents have had to wait over five years, for these cases to proceed after their sons' deaths. These parents deserve to have their civil claims heard or resolved without undue delay – especially from a bankruptcy stay of proceedings against Wellpath Defendants who are not necessary to the resolution of their claims. Stay Obj. Ex. 2, ¶ 19.

24. It would be a substantial and undue hardship on the Claimants in these two wrongful death cases for the bankruptcy stay to be permanently extended to include non-debtor defendants, including CFMG and its employees, and Shasta County and its employees. Stay Obj. Ex. 2, ¶ 13.

OBJECTION TO PC MOTION

A. The PC Motion fails to list the specific names of the “Professional Corporations.”

25. As a preliminary matter, the PC Motion does not list the names of specific Professional Corporations to which Debtors are requesting an extension of the stay. Instead, the Debtors sought a stay of all actions implicating Professional Corporations or triggering any indemnity provisions related to them and the Debtors, and improperly shifted the burden to the Claimants and other plaintiffs to prove that the stay should not be extended with respect to their particular claims against Professional Corporations.

26. Significantly, Claimants and other plaintiffs are unable to identify and distinguish which defendant parties are contemplated for a final order on the stay relief requested in the PC Motion and are deprived of their ability to challenge the Debtors’ bases for extending the stay to a particular entity. At the very minimum, Debtors should be able to provide the identities of the Professional Corporations with whom they have executory contracts (that must be listed on the Debtors’ schedules anyway) and to prove whether those contracts contain provisions that affect the Debtors if Claimants are permitted to continue litigation against non-debtor defendants.

B. The PC Motion seeks unsupported and overreaching relief as to Non-Debtors.

i. The Standard the Debtors Must Meet

27. The PC Motion and Stay Motion seek, and the PC Order and the *Amended Interim Order Enforcing the Automatic Stay* [ECF No. 69] (the “Interim Stay Order”) provide, a national blanket stay on all litigation where any Debtor is named.

28. Section 362(a) of the Bankruptcy Code provides that only actions against a debtor and property of the estate are protected by the automatic stay. 11 U.S.C. § 362(a). “It is clearly established that the automatic stay does not apply to non-bankrupt codefendants of a debtor, ‘even if they are in a similar legal or factual nexus with the debtor.’” *McConathy v. Foundation Energy Fund*, 111 F.4th 574, 582 (5th Cir. 2024).

29. The automatic stay does not apply to non-debtor entities and individuals absent affirmative action to expand the automatic stay to them. Absent such extension, the automatic stay does not apply against non-debtors or actions necessary to continue litigation against non-debtor defendants. *Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 544 (5th Cir. 1983) (“We join those courts concluding that the protections of § 362 neither apply to co-defendants nor preclude severance.”). The Debtors bear the burden of proving by a preponderance standard that the automatic stay should be extended to third party entities. *Nat’l Oilwell Varco, L.P. v. Mud King Prod., Inc.*, 2013 WL 1948766, at *3 (S.D. Tex. May 9, 2013); *In re Aearo Techs. LLC*, 642 B.R. 891, 911 (Bankr. S.D. Ind. 2022).

30. Any extension of the stay to a non-debtor party requires a showing of unusual circumstances. *Matter of Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995); *McCartney v. Integra Nat. Bank N.*, 106 F.3d 506, 510 (3d Cir. 1997). Courts have found two primary examples of such unusual circumstances warranting extension of the stay to non-debtor parties.

31. First, extension of the automatic stay is appropriate where there exists an identity between a debtor and the third-party defendant such that the debtor may be said to be the real party defendant and a judgment against the third-party defendant will be a judgment against the debtor. *In re Xenon Anesthesia of Tex., PLLC*, 510 B.R. 106, 111 (Bankr. S.D. Tex. 2014); *McCartney*, 106 F.3d at 510. However, the mere “presence of identical allegations against the debtor and non-

debtor defendants are an insufficient ground to extend the stay to the nondebtors.” *National Oilwell Varco, L.P.*, 2013 WL 1948766 at *2.

32. Second, extension of the automatic stay is appropriate “where stay protection is essential to the debtor’s efforts of reorganization.” *Matter of Zale Corp.*, 62 F.3d at 761; *McCartney*, 106 F.3d at 510 (citing *In re Lazarus Burman Associates*, 161 B.R. 891, 899–900 (Bankr.E.D.N.Y.1993)). If neither circumstance exists, courts “may not enjoin the third-party action.” *Matter of Zale Corp.*, 62 F.3d at 761.

33. Accordingly, it is the Debtors’ burden to show: (1) there are one or more Professional Corporations named in the Claimants’ Cases to which Debtors are requesting the Court extend the automatic stay; and (2) the Debtors must demonstrate the “unusual circumstances” described above, by a preponderance of evidence, that the automatic stay should be extended to such identified Professional Corporations in Claimants’ Cases.

ii. The Debtors Fail to Meet the Required Standard to Extend the Stay

34. The Debtors assert two broad and unsupported bases for extension of the automatic stay to the *unidentified* Professional Corporations: (i) the Debtors and the Professional Corporations share an identity of interests due to alter ego or overlapping claims; and (ii) the Debtors and the Professional Corporations share an identity of interest through indemnity obligations.

35. Here, Claimants assert direct claims against governmental (Shasta County) entities and individuals that are legally separate and distinct from the claims asserted against the Debtor Defendants. Liability against those parties does not require liability against the Debtors and a finding of liability against those parties may not necessarily result in liability against the Debtors.

36. Further, Claimants' pursuit of their claims against Shasta County and its employees would have no impact on the Debtors' ability to reorganize under chapter 11. There is no actual identity of interests between Debtors and Shasta County and its employees. Also, Shasta County does not fall into any of the categories of non-debtor defendants as to which Debtors specifically seek a stay. *See* PC Motion, ¶ 31 (seeking a stay as to "Professional Corporations").

37. Regarding CFMG and its employees, the Debtors have not articulated in the PC Motion that CFMG is a Professional Corporation to which it seeks an extension of the automatic stay. Thus, the PC Motion fails to show that the Claimants' Cases involves an "identity of interest" between the non-debtor parties and the Debtors to which to extend the stay.

38. Debtors argue that Professional Corporations may be able to assert "indemnification obligations" against the Debtors. PC Motion, ¶ 32. However, the Debtors have not produced documents supporting this assertion or any excerpts from contracts that would support such a finding. The bases provided by the Debtors in the PC Motion to extend the stay to non-debtors are inadequate to meet their burden under the two unusual circumstances examples warranting extension of the stay to non-debtor parties. Accordingly, the Debtors failed to meet their burden to extend the automatic stay to non-debtor parties based on indemnifications.

C. If the stay extension relief in the PC Order is extended on a final basis, the order should allow Claimants to take certain actions.

39. Claimants request that the Court deny the stay extension to Professional Corporations on a final basis. Alternatively, Claimants request that the Court exercise its discretion to allow Claimants to take the following actions without violation of the automatic stay: (a) severance of the Debtors or other parties, or bifurcation of actions to proceed against non-debtor entities, (b) settlement with non-debtor entities or the approval of such settlements, (c) obtaining

discovery from non-debtor entities, (d) dismissing the Debtors from Claimants' Cases, or (e) obtaining declaratory or injunctive relief against non-debtor entities.

D. Reservation of Rights

40. Claimants reserve the right to amend or supplement this Objection prior to final hearing on the PC Motion and to seek relief from the automatic stay.

CONCLUSION

Based on the foregoing, Claimants request that the Court deny the stay relief sought in the PC Motion on a final basis. Alternatively, Claimants request that any final order on the PC Motion provide that Claimants may take the following actions without violation of the automatic stay: (a) severance of the Debtors or other parties, or bifurcation of actions to proceed against non-debtor entities, (b) settlement with non-debtor entities or the approval of such settlements, (c) obtaining discovery from non-debtor entities, (d) dismissing the Debtors from Claimants' Cases, or (e) obtaining declaratory or injunctive relief against non-debtor entities.

Respectfully submitted,

/s/ Catherine A. Curtis

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CERTIFICATE OF CONFERENCE

Pursuant to L.B.R. 9013-1, from November 27, 2024 to December 20, 2024, counsel for Claimants conferred with counsel for Debtors regarding the stay relief requested, and Debtors are unwilling to alter the stay relief sought related to Claimants' Cases through the Stay Motion or PC Motion. Therefore, this Objection is presented to the Court for resolution.

/s/ Catherine A. Curtis

Catherine A. Curtis

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served at the time of filing, (a) by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on all parties registered to receive such service in the above captioned case and (b) the following by separate email:

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