

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

)	
)	CHAPTER 11
In RE:)	
)	Case No. 20-61065-pwb
THE KRYSTAL COMPANY, <i>et al.</i> ,)	
)	
Debtors.)	
_____)	
)	
WALTER HAYGOOD and)	
CONNIE HAYGOOD)	
)	
Movants,)	CONTESTED MATTER
)	
v.)	
)	
THE KRYSTAL COMPANY, <i>et al.</i> ,)	
)	
Respondent.)	
_____)	

MOTION FOR RELIEF FROM AUTOMATIC STAY

This motion for relief from stay is before the Court in the Chapter 11 bankruptcy case of THE KRYSTAL COMPANY (“Krystal’s”), and its debtor affiliates (collectively, the “**Debtor** or **Debtors**”), as debtors and debtors-in-possession, and Walter Haygood and Connie Haygood (the “**Claimants**” or “**Movants**”), to modify and lift the automatic stay with reference to the following facts:

JURISDICTION AND VENUE

The United States Bankruptcy Court for the Northern District of Georgia (the “**Bankruptcy Court**”) has subject matter jurisdiction over this matter under 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. § 1408 and § 1409.



2. The statutory predicates for the relief requested herein are § 362(d) of Title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 4001(d) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

3. The Debtors remain in possession of their assets and continue to manage their businesses as debtor-in-possession pursuant to sections 1107 and 1108 of Title 11 of the Bankruptcy Code.

BACKGROUND

4. On or about June 20, 2018, Movant Walter Haygood slipped and fell in the Debtors’ premises located at 111 North Morningside Drive in the City of Cartersville, Georgia. As a proximate result of the fall, the Movant suffered serious injury, chiefly a punctured and collapsed lung. His injuries caused him to incur medical and related expenses and lost wages. His fall and injuries also caused him to endure great pain, suffering, worry, shock, fear and grief. At all relevant times, Walter and Connie Haygood have been husband and wife. As a result of Debtors’ wrongful conduct and Mr. Haygood’s resultant injuries and damages, Movant Connie Haygood suffered the loss of the incidents of her marriage including the comfort, support, companionship and services inherent in the marriage, and she is entitled to an award of money damages for loss of consortium (collectively referred to as the “**Injury Claim**”).

5. On February 11, 2020, the United States Trustee for the Northern District of Georgia (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Creditors Committee**”) pursuant to section 1102 of the Bankruptcy Code.

6. At the time of the fall, the Debtor was insured for personal injury claims by one or more insurers, including Travelers Property Casualty Company of America (hereinafter “**Travelers**” or “**Insurer**”).

7. Prior to the Petition Date, on July 17, 2019, the Claimants commenced an action entitled Walter Haygood and Connie Haygood v. The Krystal Company, in the Superior Court of Gwinnett County, Georgia, Case Number 19-A-07146-6, based on an alleged premises liability and/or negligence claim in which Movant Walter Haygood seeks special damages for medical bills and lost wages, and general damages for pain and suffering, and in which Movant Connie Haygood seeks damages for loss of consortium. Said action was subsequently removed prior to the Petition Date, and is currently pending in the United States District Court for the Northern

District of Georgia, Atlanta Division, Civil Action File No. 1:19-CV-03788-ODE (collectively referred to as the “**Injury Action**”).

8. On January 19, 2020 (the “**Petition Date**”), Debtor filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code the Bankruptcy Court.

9. Upon commencement of the Chapter 11 Cases, the Action was stayed pursuant to the automatic stay imposed by Section 362(a) of the Bankruptcy Code (the “**Automatic Stay**”).

10. Krystal’s maintains or maintained general liability insurance with Travelers (the “**Insurance Policies**”) which provide for the payment of indemnification claims (the “**Insurance Proceeds**”) for injuries covered under the policy with respect to the claims of the type asserted by the Claimants, and which occurred during the applicable policy period.

RELIEF REQUESTED

11. In connection with the action, the Claimants seek relief from the Automatic Stay to pursue a liquidation of their injury claim against Krystal’s through a prosecution and/or settlement of the Injury Action in the United States District Court for the Northern District of Georgia and pursue recovery against the Insurance Proceeds of Travelers and any other insurer providing coverage to Respondent.

WAIVER OF RIGHTS AND LIMITATIONS

12. Claimants consent to limit any recovery that may be obtained in connection with the Action solely to the proceeds of the Insurance Policies.

13. Claimants consent to waive any claims Claimants may have against the Debtors’ estates, including without limitation the Krystal’s estate.

APPLICABLE AUTHORITY

14. Section 362(d)(1) of the Bankruptcy Code provides:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay ...

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

15. Generally, in the determination of a cause, section 362(g) is interpreted as placing an initial burden on the moving party to establish its prima facie case which must then be rebutted

by the party opposing such relief. *See In re Allstar Bldg. Products, Inc.* 834 F. 2d 898, 899-900 (11th Cir. 1987).

16. In determining whether the stay should be lifted, section 362(a), paragraph 2, states that relief shall be given whenever the debtor holds no equity in the property affected by the stay and the property is not necessary for an effective reorganization. *Matter of Mimi's of Atlanta, Inc.*, 5 B.R. 623, 630 (N.D. Ga. 1980).

ANALYSIS

A. No prejudice to the estates or the Debtors would result from granting relief from stay.

17. As mentioned above, upon information and belief, the Insurance Proceeds should cover any award that the Movants may receive in connection with their Injury Claim asserted in the Injury Action.

18. A bankruptcy estate is not considered to have an interest in proceeds of liability insurance policies.

19. Due to the lack of interest in the liability proceeds, courts typically hold that debtors do not suffer prejudice when creditors obtain stay relief to liquidate claims that are covered by such proceeds. *In re Jet Florida Systems, Inc.*, 883 F.2d 970, 975 (11th Cir. 1989) (Allowing stay relief and finding the “debtor is not prejudiced by exposure to the liability claim because the Debtor and his property are not subject to any risk and maintenance of the suit does not frustrate the policy of the Bankruptcy Code in giving the Debtor a fresh start in his economic life.”); *see also* 3 Colliers On Bankruptcy, ¶ 362.07[3][a].

20. Importantly, any award that the Movant may receive is likely to be covered in full by the Insurance Policies and insurance Proceeds. Moreover, there are no known circumstances where the Insurance Proceeds could ever become part of the Debtors’ bankruptcy estates. Therefore, the estates would not be in any possible danger of suffering depletion if the Movants obtain their relief requested.

21. Moreover, as the primary parties in interest in the Civil Action, the Debtors’ insurers would be highly motivated to provide a vigorous defense. The Debtors would not need to expend their resources in that regard.

22. In effect, all that the Movants seek is an adjudication of liability that can serve as a predicate for recovery from the insurers. They respectfully submit the estates of respondent would suffer no prejudice, much less the “great prejudice” that the standard requires.

B. Movants will suffer significant hardship if the stay remains in effect.

23. As explained above, the Debtors would not suffer any hardship if the Movants are granted their requested relief. On the other hand, the Movants will suffer great hardship if they are denied relief from the stay.

24. The Movant Walter Haygood suffered painful and serious injuries for which he has not been compensated. Moreover, as a result of Mr. Haygood’s significant injuries and loss, Movant Connie Haygood has endured the loss of the society, comfort and companionship of her husband, Walter Haygood, along with other incidents of the marriage. As noted above, the Injury Claim occurred on June 20, 2018, which will have been two years ago later this month. Movants are without adequate resources to cope with damages while they continue to wait for due compensation. As such, additional delay compounds the already significant hardship that the Movants have suffered.

25. A claimant under a liability policy suffers prejudice from delay due to the lost time value of money as well as the lapse in terms of its ability to effectively prosecute its claims as witnesses and documents become unavailable.

26. Further, the Movants have invested their resources developing the Injury Action in the United States District Court for the Northern District of Georgia, Atlanta Division and conceivably a full trial on the merits would follow a claims estimation. Here, judicial economy should dictate a prompt resolution in a single forum with the same judge who was originally assigned to the case. Beginning this litigation anew in the bankruptcy court would result in hardship to the Movants and flies in the face of principles surrounding judicial economy.

27. Finally, the Movants note that under 28 U.S.C. § 157(b)(5), the Injury Action is a non-core matter, and as such, this Court cannot enter a final order in that action. Rather, in the instant matter and pursuant to section 157, the personal injury claims of the Injury Action may only be tried before the United States District Court for the Northern District of Georgia, Atlanta Division.

28. The Movants' hardships enumerated above are great. Movants suffered severe injury and significant financial damages related to their injuries. Any additional delay in a resolution of their claim would be tremendously harmful. In contrast, the Debtors will face virtually no hardship if the Movants are granted relief from the stay. No estate assets would be jeopardized, and the Debtors would not have to expend any funds or commit any significant resources to defend the Civil Action.

29. The Movants respectfully submit that the hardship they would suffer if the stay remains in effect considerably outweighs any hardship to the Debtors concerning the requesting relief.

C. The Movants are likely to prevail on the merits.

30. With respect to this prong of the analysis, courts around the country have held that the required showing is very slight. *In re Downey Financial*, 428 B.R. 595, 610 (D. Del. 2010) ("Even a slight probability of success on the merits may be sufficient to warrant stay relief in an appropriate case."). Only strong defenses to state court proceedings can prevent a bankruptcy court from granting relief from stay in cases where the decision-making process should be relegated to bodies other than the bankruptcy court. *In re Fonseca*, 110 B.R. 191, 196 (E.D. Pa. 1990).

31. No strong defenses to the Civil Action are apparent here, and there is a strong likelihood that the Movants will succeed on the merits given that Movants were customers on the Debtors premises when Movant Walter Haygood slipped and fell. There exists triable issue of fact in the Civil Action. *See In re Fernstrom Storage and Van Co.*, 938 F.2d 731, 736 (7th Cir. 1991) (lifting automatic stay upon finding the underlying action non-frivolous).

32. This already low bar of the third prong is even lower where, as is the case here, a Movant's claim would be covered by non-debtor sources. In such circumstance, a bankruptcy court should not examine the merits of the movant's claims; rather, the movant should only be required to make more than a vague initial showing that he or she can establish a *prima facie* case. In cases such as this one, the Movants seek only to liquidate their claims as a predicate to recovering against insurance and other non-debtor sources. To require a merits analysis would defeat the objective of economizing judicial resources and would frustrate the effort to resolve relief from stay motions expeditiously.

33. Here, the Movants have alleged colorable and plausible claims and respectfully submits that they have met this prong of the stay relief analysis.

CONCLUSION

WHEREFORE, the Movants respectfully request entry of an order, in substantially the form submitted as a proposed order, but otherwise: (1) granting them relief from the automatic stay of 11 U.S.C. § 362(a) so that they may proceed to liquidate their claims against the Debtors in the Civil Action and pursue recovery against the Insurance Proceeds for any judgment or other resolution obtained against the Debtors; and (2) granting such further relief as may be appropriate.

Date: June 5, 2020

Cartersville, Georgia

Attorney for Claimants Walter & Connie Haygood
By PERROTTA, LAMB & JOHNSON, LLC

/s/ Michael R. Bauer

MICHAEL R. BAUER

Georgia Bar No.: 940544

Robert W. Lamb

Georgia Bar No.: 631650

222 E. Main Street

Cartersville, GA 30120

Ph (770) 382-8900/Fax (770) 386-1170

Email: mbauer@perrottalaw.com

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NOTICE OF HEARING
ON HAYGOODS' MOTION FOR RELIEF FROM AUTOMATIC STAY

PLEASE TAKE NOTICE that WALTER and CONNIE HAYGOOD have filed a Motion for Relief from the Automatic Stay seeking an order from the court lifting the automatic stay as it pertains to their claim for relief in United States District Court for the Northern District of Georgia, Atlanta Division.

PLEASE TAKE FURTHER NOTICE that the court will hold a hearing on the Motion from Relief from the Automatic Stay in the Atlanta Division at the following address and time:

**Courtroom 1401, United States Courthouse,
75 Ted Turner Drive SW, Atlanta, GA
At 10:00 am on July 15, 2020.**

Given the current public health crisis, hearings may be telephonic only. Please check the “[Important Information Regarding Court Operations During COVID-19 Outbreak](#)” tab at the top of the GANB Website prior to the hearing for instructions on whether to appear in person or by phone.”

Your rights may be affected by the court’s rulings on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk’s Office is: Clerk, U.S. Bankruptcy Court, Suite 1350, 75 Ted Turner Dr., Atlanta, GA 30303. You must mail a copy of your response to the undersigned at the address stated below.

If a hearing on the motion for relief from the automatic stay cannot be held within 30 days, Movants waive the requirement for holding a preliminary hearing within 30 days of the filing of the motion and agree to a hearing on the earliest possible date. Movants consent to the automatic stay remaining in effect until the Court orders otherwise.

Date: June 10, 2020

Cartersville, GA

Attorney for Claimants Walter & Connie Haygood
By PERROTTA, LAMB & JOHNSON, LLC

/s/ Michael R. Bauer
MICHAEL R. BAUER
Georgia Bar No.: 940544
Robert W. Lamb
Georgia Bar No.: 631650
222 E. Main Street
Cartersville, GA 30120
Ph (770) 382-8900/Fax (770) 386-1170
Email: mbauer@perrottalaw.com

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 10, 2020, a copy of the foregoing Notice of Hearing and Motion for Relief from Stay is being filed electronically. The filing will be served via the Court’s CM/ECF system upon all parties registered to receive notice. The below distribution list signifies parties who have not received a copy of the foregoing by electronic service, and such parties have been served with a copy of the foregoing Motion and Notice of Hearing via first class U.S. Mail.

Judge Paul W Bonapfel
Room 1492 – U.S. Courthouse
75 Ted Turner Dr, SW
Atlanta, GA 30303

United States of America
U.S. Attorney
C/O Andres H. Sandoval
United States Attorney's Office

Krystal Columbus DT, LLC
C/O Benjamin Keck
Rountree, Leitman & Klein, LLC
Suite 175, Century Plaza 1
2987 Clairmont Rd
Atlanta, GA 30329

75 Ted Turner Drive SW, Ste 600
Atlanta, GA 30303
Krystal Columbus DT, LLC
C/O Registered Agent for Service
David Andes
201 Allen Rd NE, Ste 300
Atlanta, GA 30328

Krystal Commerce, LLC
C/O Benjamin Keck
Rountree, Leitman & Klein, LLC
Suite 175, Century Plaza 1
2987 Clairmont Rd
Atlanta, GA 30329

Krystal Commerce, LLC
C/O Registered Agent for Service
**NO registered Agent
**NO address for party

Krystal Holdings, Inc.
C/O Sarah Robinson Borders
King & Spalding LLP
1180 Peachtree Street
Atlanta, GA 30309

Krystal Holdings, Inc.
C/O Registered Agent for Service
CT Corporation System
289 S Culver St
Lawrenceville, GA 30046

Krystal V, LLC
C/O Evan T. Miller
Bayard, P.A.
Suite 400
600 N. King Street
Wilmington, DE 658-6395

Krystal V, LLC
C/O Registered Agent for Service
**NO registered Agent
**NO address for party

The Krystal Company
C/O Sarah Robinson Borders
King & Spalding LLP
1180 Peachtree Street
Atlanta, GA 30309

The Krystal Company
C/O Registered Agent for Service
CT Corporation System
289 S Culver St
Lawrenceville, GA 30046

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Attorney for Claimants Walter & Connie Haygood
By PERROTTA, LAMB & JOHNSON, LLC

/s/ Michael R. Bauer
MICHAEL R. BAUER

Georgia Bar No.: 940544
Robert W. Lamb
Georgia Bar No.: 631650
222 E. Main Street
Cartersville, GA 30120
Ph (770) 382-8900/Fax (770) 386-1170
Email: rlamb@perrottalaw.com