

Hearing Date & Time: April 29, 2020 at 11:00 a.m.
Opposition Deadline: April 22, 2020

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*Attorneys for JoAnna Culley, as Guardian of
the Estate of Dennis Leroy Williams, Disabled*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| In re: | : | Chapter 11 |
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| THE McCLATCHY COMPANY, <i>et al.</i> , | : | Case No. 20-10418 (MEW) |
| | : | (Jointly Administered) |
| Debtors. ¹ | : | |
| ----- | x | |

**MOTION OF JOANNA CULLEY, Guardian of the Estate of DENNIS LEROY
WILLIAMS, disabled FOR RELIEF FROM THE AUTOMATIC STAY**

COMES NOW Movant JoAnna Culley, Guardian of the Estate of Dennis Leroy Williams, Disabled (“Movant”), by and through her attorneys, and moves this Honorable Court for the entry of an Order lifting or modifying the automatic stay imposed by 11 U.S.C. § 362(a) (the “Automatic Stay”) pursuant to 11 U.S.C. § 362(d)(1), FED. R. BANKR. P. 4001, and LOCAL BANKR. R. 4001-1. In support thereof, Movant respectfully states as follows:

¹ The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. A complete list of the debtor entities and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.



SUMMARY OF GROUNDS FOR REQUESTED RELIEF

1. On or about February 13, 2020 (the “Petition Date”), Debtors Cypress Media, Inc. (“Cypress Inc.”) and Cypress Media, LLC (“Cypress LLC,” collectively with Cypress Inc., “Debtors”), together with their related Debtor affiliates, filed Voluntary Petitions under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). Debtors’ cases have been jointly administered for procedural purposes by the Bankruptcy Court’s Order of February 14, 2020 [Doc. No. 59] under Case No. 20-10418 (MEW).

2. On November 7, 2014, Movant filed her Complaint (the “Complaint”) in a certain state court cause of action for personal injury against, among other defendants, Cypress Inc., and Cypress LLC, in the Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois (the “State Court”), in the case styled *Joanna Culley, Guardian of the Estate of Dennis Leroy Williams, Disabled, Plaintiff vs. Cypress Media, LLC., et al., Defendants*, bearing Case No. 14-L-737 (the “Civil Suit”). A true and accurate copy of the Amended Complaint in the Civil Suit has been attached hereto as Exhibit A and is incorporated herein by this reference.²

3. The Civil Suit stems from a motor vehicle accident that occurred on or about November 17, 2012 in St. Clair County, Illinois, wherein Movant was injured while walking on North 22nd Street in East St. Louis, IL, when he was hit by a vehicle driven by Randy McCray who was delivering newspapers for Cypress Media, LLC d/b/a The Belleville News Democrat.

4. The Civil Suit is filed against multiple parties, including Debtors, and is pending jury trial.

² Notably, while Debtor The McClatchy Company was originally named as a defendant in the Civil Suit, it has since been dismissed as a defendant and, as such, the relief sought by Movant herein does not apply to that entity.

5. The filing of Debtors' Voluntary Petitions under Chapter 11 of the Bankruptcy Code effectively stayed prosecution of Movant's cause of action in the Civil Suit.

6. Prior to the Petition Date, Debtors' insurance counsel had filed an answer to Movant's Petition in the Civil Suit and the parties had conducted written discovery and were in the process of having a mediation before a retired U.S. District Court Judge and had active settlement discussions with insurance counsel.

7. Movant and Debtors' insurance counsel were scheduled to have a mediation of the Civil Suit on the Petition Date, but the mediation did not go forward because of the automatic stay.

8. Upon information and belief, Debtors are covered by a general liability insurance policy or policies providing coverage for defense and liability expenses. It is believed that Debtors' insurance coverage includes primary coverage of \$2,000,000.00 with Travelers Property Casualty Company of America, \$25,000,000.00 umbrella policy with Continental Casualty Company, and a second layer excess policy with Fireman's Fund Insurance Company of \$50,000,000.00 and that any self-insured retention has already been paid.

9. Movant requests that the automatic stay be lifted or modified to allow Movant to pursue her cause of action in the Civil Suit, only to the extent that recovery of any judgment against the Debtors is limited solely to the limits of liability of Debtors' applicable insurance policy or policies.

10. Movant will not seek the enforcement of any judgment against the Debtors, or any of them, without further order of this Court.

11. Movant's Claim against Debtors, and each of them, shall be limited to recovery under Debtors' applicable insurance policy or policies. Any recovery to the extent that Debtor is self-insured or in excess of policy limits shall be filed as a Claim against the Debtors' bankruptcy

estate(s) (“Bankruptcy Estate”).

12. Section 362(d) of the Bankruptcy Code requires relief from the automatic stay, “by terminating, annulling, modifying or conditioning such stay- for cause.” *See* 11 U.S.C. § 362(d)(1).

13. Good cause exists to allow Movant to proceed with her Civil Suit against Cypress Inc. and Cypress LLC. and to allow Movant to establish her rights, if any, to the proceeds of any insurance policy or policies.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. § 1409. This is a core proceeding under 28 U.S.C. § 157(b). The statutory predicates for the relief sought are sections 105(a) and 362 of the Bankruptcy Code.

ARGUMENT

15. Upon information and belief, Debtors are covered by a liability insurance policy or policies providing coverage for defense and liability expenses related to the Civil Suit.

16. It is assumed that the Debtors carry insurance with limits that would satisfy any potential judgment against them in the Civil Suit, either in full or in part.

17. Section 362(d)(1) of the Bankruptcy Code authorizes the Court to grant relief from the automatic stay “[o]n request of a party in interest . . . for cause, including the lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. § 362(d)(1).

18. The Bankruptcy Code does not define “cause,” but courts in the Second Circuit in determining whether to lift or modify the automatic stay to permit litigation to proceed in another forum are guided by the factors enumerated in *Sonnax Indus., Inc. v. Tri Component Prods. Corp.*

(*In re Sonnax Indus., Inc.*), 907 F.2d 1280 (2d Cir. 1990) (the “*Sonnax* Factors”):

(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.

19. Not all of the factors are relevant in every case, *Schneiderman v. Bogdanovich* (*In re Bogdanovich*), 292 F.3d 104, 110 (2d Cir. 2002); *Mazzeo v. Lenhart* (*In re Mazzeo*), 167 F.3d 139, 143 (2d Cir. 1999), and the Court need not assign equal weight to each factor. *In re Taub*, 413 B.R. 55, 62 (Bankr. E.D.N.Y. 2009); *In re Keene Corp.*, 171 B.R. 180, 183 (Bankr. S.D.N.Y. 1994).

20. The movant bears the initial burden of making a *prima facie* showing of “cause” for relief from the stay, but the ultimate burden of persuasion rests with the debtor to show an absence of “cause.” *See Mazzeo*, 167 F.3d at 142; *Sonnax*, 907 F.2d at 1285; *cf.* 11 U.S.C. § 362(g)(2) (party opposing stay relief has burden of proof on all issues other than debtor's equity in subject property).

21. In the instant proceeding, the relevant *Sonnax* factors include: “(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; . . . (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; . . . (7) whether litigation in another forum would prejudice the interests of other creditors; . . . (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.”

22. The first *Sonnax* factor is whether relief would result in a partial or complete resolution of the issues. Relief here would result in a partial if not complete resolution of the Movant’s claim in that a jury in the personal injury matter would determine the extent of Movant’s damages, with the claim being satisfied either in whole or in part by insurance proceeds.

23. The second *Sonnax* factor is lack of any connection with or interference with the bankruptcy case. While the Movant’s claim has a connection to the bankruptcy case as a result of the claim being liquidated, the state court proceeding will certainly not interfere with the administration of the Bankruptcy case.

24. The fourth *Sonnax* factor, (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; the fifth factor, (5) whether the debtor's insurer has assumed full responsibility for defending it; the tenth factor, (10) the interest of judicial economy and the expeditious and economical resolution of litigation; and the eleventh *Sonnax* factor, (11) whether the parties are ready for trial in the other proceeding, all weigh heavily in favor of permitting the Civil Suit litigation to proceed. This jury trial case has been before the State Court since 2014; the defense has been assumed by Debtors’ insurers, most discovery has been completed and the case is ready for mediation and for jury trial at the completion of mediation. The State Court is the most efficient and appropriate place for the matter to be brought to conclusion.

25. The seventh *Sonnax* factor is (7) whether litigation in another forum would prejudice the interests of other creditors. This factor, likewise, weighs in favor of granting the reasonable relief requested. Any risk to creditors can be addressed by conditioning recovery to insurance proceeds with a resulting claim limited to the amount of the judgment not satisfied by the insurance coverage.

26. Similarly, the twelfth *Sonnax* factor, (12) the impact of the stay on the parties and the balance of harms, favors the automatic stay being lifted or modified. The Civil Suit has been pending for almost six years. Movant would likely encounter significant hardship should the automatic stay remain in place with respect to prosecution of her Civil Suit. As noted by the Court in *In re Todd Shipyards*, 92 B.R. 600, 603 (Bankr. D.N.J. 1988), “courts have regarded the opportunity to litigate the issue of liability as a significant right which cannot be easily set aside, even where pre-petition causes of action are involved.” Should the stay remain in place, Movant likely will have to wait an inordinately long time to prosecute the claim, which arose in 2012. This wait may effectively deny Movant an opportunity to litigate given the risk of aging evidence, loss of witnesses and crowded court dockets. *See In re Brock Laundry Machine Co.*, 37 B.R. 564, 566 (Bankr. N.D. Ohio 1984).

27. In the case at bar, Movant submits that there is sufficient cause for the Court to lift or modify the automatic stay so that Movant may proceed to prosecute her Civil Suit in the State Court. The balancing factors demonstrate that Debtors and the Bankruptcy Estate would encounter little, if any, prejudice should the stay be lifted or modified on the condition that Movant’s recovery against Debtors would be first limited to the Debtors’ applicable insurance policies before filing a claim in the Debtors’ Bankruptcy Estate to the extent that any judgment exceeds Debtors’ applicable insurance coverage.

28. Based on the foregoing, Movant submits that cause exists to lift or modify the automatic stay.

WHEREFORE, the premises considered, Movant Joanna Culley, Guardian of the Estate of Dennis Leroy Williams, Disabled prays this Court enter an Order granting relief as follows:

- a. Granting Movant relief from the automatic stay provisions of 11 U.S.C. § 362(a) to prosecute any claims that she may have against Debtors in the Civil Suit;
- b. Authorizing the State Court to conduct such hearings or other proceedings as may be necessary in the Civil Suit;
- c. Limiting Movant's Claim against Debtors and the Bankruptcy Estate to the recovery, if any, under Debtors' applicable insurance policies, with any additional recovery not covered by insurance proceeds to be filed as a Claim by Movant against the Bankruptcy Estate; and
- d. For such other and further relief as this Court deems just and proper.

[Signatures on Following Page]

Dated: April 1, 2020

Respectfully submitted,

McLAUGHLIN & STERN, LLP

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of the Estate of Dennis Leroy Williams, Disabled*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11
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THE McCLATCHY COMPANY, *et al.*, : Case No. 20-10418 (MEW)
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Debtors.¹ : (Jointly Administered)
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**ORDER GRANTING MOTION OF JOANNA CULLEY, Guardian of the Estate of
DENNIS LEROY WILLIAMS, disabled FOR RELIEF FROM THE AUTOMATIC STAY**

UPON CONSIDERATION of the Motion for Relief from the Automatic Stay (“Motion”) filed by JoAnna Culley, Guardian of the Estate of Dennis Leroy Williams, Disabled (“Movant”), together with any submissions in support of, or in opposition to, the Motion; and having heard oral argument, if any; and for good cause shown, it is this ____ day of _____, 2020,

ORDERED that the Motion shall be, and hereby is, GRANTED; and it is further

ORDERED that Movant shall be, and hereby is, granted relief from the automatic stay imposed by 11 U.S.C. § 362(a) (the “Automatic Stay”) pursuant to 11 U.S.C. § 362(d)(1), FED. R. BANKR. P. 4001, and LOCAL BANKR. R. 4001-1, to allow Movant to prosecute any claims that she may have against Debtors Cypress Media, Inc. and Cypress Media, LLC (collectively, “Debtors”), as previously alleged in the Circuit Court, Twentieth Judicial Circuit, St. Clair County, Illinois (the “State Court”), in the case styled *Joanna Culley, Guardian of the Estate of Dennis Leroy Williams, Disabled, Plaintiff vs. Cypress Media, LLC., et al., Defendants*, bearing Case No. 14-L-737 (the “Civil Suit”), and it is further

¹ The last four digits of Debtor The McClatchy Company’s tax identification number are 0478. A complete list of the debtor entities and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/McClatchy>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 2100 Q Street, Sacramento, California 95816.

ORDERED that the Automatic Stay shall not preclude the State Court from conducting such hearings or other proceedings as may be necessary in the Civil Suit; and it is further

ORDERED that Movant's Claim against Debtors and their bankruptcy estate(s) shall be limited to the recovery, if any, under Debtors' applicable insurance policies, with any additional recovery not covered by insurance proceeds to be filed as a Claim by Movant against the bankruptcy estate(s).

HON. MICHAEL E. WILES, U.S.B.J.