

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Monday, November 19, 2018**

**Hearing Room 1568**

10:00 AM

**2:18-20151 Verity Health System of California, Inc.**

**Chapter 11**

**#7.10** HearingRE: [696] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Robles v. St. Francis Medical Center, Case No. BC697012 .

Docket 696

**Matter Notes:**

11/19/2018

The tentative ruling will be the order.  
Party to lodge order: Movant

Note to docket:  
Effective date was changed after oral argument to January 11, 2019.

**POST PDF OF TENTATIVE RULING TO CIAO**

**Tentative Ruling:**

11/16/2018

For the reasons set forth below, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **January 15, 2019**.

**Pleadings Filed and Reviewed:**

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 [Doc. No. 696] (the "Motion")
- 2) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) Filed by Josefina Robles [Doc. No. 777]
- 3) Debtors' Response to Motion for Relief from the Automatic Stay Filed on Behalf of Josefina Robles By and Through Her Conservator Sergio Robles [Doc. No. 791]
- 4) Reply of Josefina Robles to: (1) Debtors' Response to Motion for Relief from



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Stay; and (2) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay [Doc. No. 823]

**I. Facts and Summary of Pleadings**

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Josefina Robles, by and through her conservator, Sergio Robles ("Movant"), seeks stay-relief, pursuant to §362(d)(1), for the purpose of litigating a personal injury action against Debtor St. Francis Medical Center ("St. Francis") in the Los Angeles Superior Court (the "State Court Action"). The State Court Action asserts claims against St. Francis and various other third-party defendants. In the State Court Action, the recovery Movant seeks is not limited to applicable insurance, and Movant is not willing to waive any deficiency claim against St. Francis.

Debtors argue that the Motion should be denied without prejudice, because it is premature and would undermine the Debtors' efforts to successfully proceed under Chapter 11. Debtors assert that allowing the State Court Action to proceed would impair their ability to pursue critical issues, such as the pending sales of two of the Debtors' hospitals. Debtors further oppose the Motion on the ground that Movant is not willing to limit her recovery to applicable insurance. The Official Committee of Unsecured Creditors (the "Committee") opposes the Motion for the same reasons.

Movant makes the following arguments in reply to the opposition of the Debtors and the Committee:

- 1) The Debtors' assertion that the granting of the Motion would interfere with the case by distracting the Debtors' professionals with personal injury litigation is disingenuous. As soon as stay-relief is granted, defense of the State Court Action will be assigned to litigation and/or coverage counsel. In e-mail communications with the Movant, Debtors have already identified the lawyer who will ultimately defend against the State Court Action.
- 2) Movant has sustained horrific injuries as a result of the negligence of the doctors and nurses at St. Francis, and should not be required to wait to seek redress.

**II. Findings and Conclusions**

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As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

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*Plumberex*, 311 B.R. at 599.

The primary disagreement between Movant and the Debtors is the extent to which allowing the State Court Action to proceed would interfere with the case. Movant asserts that lifting the stay would have very little impact on the ability of the Debtors' professionals to attend to other pressing matters; the Debtors dispute this contention.

The Court finds that although it certainly would be possible for the Debtors to defend against the State Court Action at this time, requiring them to do so would nonetheless interfere with the case by distracting the Debtors' professionals from other pressing matters. The State Court Action alleges that Movant suffered extremely serious injuries as a result of the alleged malpractice of physicians employed by Debtor St. Francis. If these allegations are proven, the damages would be substantial. While it is true that primary responsibility for the Debtors' defense could be assigned to special litigation counsel, the Debtors' general bankruptcy counsel would still be required to monitor the litigation, given the seriousness of the allegations. Contrary to Movant's contention, Debtors' general bankruptcy counsel cannot simply assign the State Court Action to special litigation counsel and then forget about it.

An auction of two of the Debtors' hospitals is set to occur on December 10–11, with a hearing to approve the results of the auction set for December 19, 2018. To successfully prosecute the case for the benefit of creditors, Debtors will be required to devote substantial resources to the auction and the subsequent hearing to approve the results of the auction. Granting stay-relief at this juncture would require the Debtors to divert their attention from issues pertaining to the sale, which would be detrimental to creditors.

In view of the findings set forth above, *Curtis* factors two, five, seven, and eleven weigh against granting stay-relief at this time. However, after the December 19 auction has concluded, application of the *Curtis* factors will yield a different result. Although the relevant *Curtis* factors do not warrant stay-relief now, stay-relief will be warranted as of **January 15, 2019**.

Granting stay-relief now would interfere with the bankruptcy case by distracting the Debtors' professionals from other pressing matters (the second *Curtis* factor). With respect to factor five, the damages sought in the State Court Action are substantial; Movant has not agreed to limit her recovery to applicable insurance; and it is therefore not known whether available insurance proceeds will be sufficient to cover any judgment Movant may obtain. Factor five therefore weighs against granting immediate stay-relief. The litigation's interference with the case has the potential to reduce creditor recoveries; therefore, factor seven weighs against granting immediate

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stay-relief. The State Court Action has not reached the trial stage, so factor eleven also weighs against granting immediate stay-relief.

Factor twelve—the balance of the hurt—is neutral. As discussed, granting immediate stay-relief will harm the Debtors by distracting the Debtors' professionals from other pressing matters. On the other hand, Movant has sustained serious injuries and is prejudiced by the inability to pursue legal redress.

To the extent that they apply, the remaining *Curtis* factors weigh in favor of immediate stay-relief. The State Court Action will completely resolve the issues (factor one); the State Court is the tribunal best suited to hear the Movant's claims (factor three); and lifting the stay would result in a more expeditious determination of the State Court Action (factor ten). Nonetheless, these factors are outweighed by the harm that immediate stay-relief would impose upon the Debtors.

As noted, the *Curtis* factors are not the exclusive guideposts for assessing the appropriateness of stay-relief. Particularly relevant to this case is the reasoning of *Sumitomo Trust & Banking Co. v. Grand Rapids Hotel, L.P.*, 140 B.R. 643, 700 (Bankr. W.D. Mich. 1992), wherein the court held:

[I]f the relief from stay is requested at the early stages of the bankruptcy case, the

burden upon the debtor is less stringent. But, if relief from stay is requested later in the case, the debtor's showing is closely scrutinized.

*Sumitomi Trust*, 140 B.R. at 700. *See also Chrysler LLC v. Plastech Engineered Prods., Inc.*, 382 B.R. 90, 109 (Bankr. E.D. Mich. 2008) ("The longer the case goes on, the more the analysis may change and the balance of competing interests may compel a different result.").

Movant's attempts to distinguish *Sumitomi Trust* and *Plastech Engineered Prods.* are unavailing. Movant notes that *Sumitomo Trust* addressed stay-relief under §362(d)(2)(B), whereas the present Motion was filed under §362(d)(1). That is a distinction without a difference. Movant notes that the facts of *Plastech Engineered Prods.* were considerably different from the facts of this case. Those differences are immaterial. *Plastech Engineered Prods.* stands for the general proposition that at the outset of the case, a stay-relief motion should be closely scrutinized to further the Bankruptcy Code's objective of providing debtors breathing space to reorganize. That general proposition is valid regardless of the type of business that the debtor conducts.

Having considered the applicable *Curtis* factors and the principles set forth in *Sumitomo Trust* and *Plastech Engineered Prods.*, the Court finds that Movant is entitled to stay-relief, effective as of **January 15, 2019**. This result gives the Debtors

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some breathing space to achieve their objectives, while at the same time delaying Movant's ability to proceed with the State Court Action by only two months.

**III. Conclusion**

Based upon the foregoing, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **January 15, 2019**. Movants shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing. [Note 1]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**Note 1**

To ensure that the Debtors have the opportunity to review Movants' proposed order as to form, Movants shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

**Party Information**

**Debtor(s):**

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts