

Stephen E. Hessler, P.C.
Marc Kieselstein, P.C.
Cristine Pirro Schwarzman
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

James H.M. Sprayregen, P.C.
Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)
Brad Weiland (admitted *pro hac vice*)
John R. Luze (admitted *pro hac vice*)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

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

In re:)	
)	Chapter 11
WINDSTREAM HOLDINGS, INC., <i>et al.</i> , ¹)	Case No. 19-22312 (RDD)
)	
Debtors.)	(Jointly Administered)
)	

STIPULATION AND AGREED ORDER TO LIFT THE STAY

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) and Bobbie S. Tindle (the “Movant,” and together with the Debtors, the “Parties”), through their undersigned counsel, hereby enter into this stipulation and agreed order (the “Stipulation and Order”).

WHEREAS, Movant commenced an action in the State of Missouri, in the County of Polk, entitled *Bobbie Sue Tindle v. Windstream Services, LLC et al.*, No. 18PO-CC00004, alleging

¹ The last four digits of Debtor Windstream Holdings, Inc.’s tax identification number are 7717. Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/windstream>. The location of the Debtors’ service address for purposes of these chapter 11 cases is: 4001 North Rodney Parham Road, Little Rock, Arkansas 72212.



causes of action for negligence to recover damages for personal injuries (the “Action”). *See* Amended Complaint attached hereto as **Exhibit 1**.

WHEREAS, the Debtors have insurance policies that they believe provide coverage for the Action (collectively and together with any agreements related thereto, the “Insurance Policies”), including, but not limited to, an insurance policy (Policy No. HDO G2786871A) issued by ACE American Insurance Company.

WHEREAS, on February 25, 2019 (the “Petition Date”), the Debtors commenced these voluntary cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and are continuing to operate their business and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, upon the filing of the Debtors’ chapter 11 petitions, the automatic stay arising under section 362 of the Bankruptcy Code (the “Stay”) came into effect and stayed the Action.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the Debtors and Movant, which agreement, when “so-ordered” by the Court, shall constitute an order of the Court, as follows:

1. The Stay is lifted to permit the Movant to continue the Action against the Debtors solely to the extent necessary to secure a verdict, judgment, or settlement agreement in connection with the Action. For the avoidance of doubt, any attempt to collect from any of the Debtors any amounts owing on account of any such verdict, judgment, or settlement agreement shall be subject to the Stay and the Movant shall be prohibited and stayed from taking any action to collect any such amounts to the full extent set forth in section 362 of the Bankruptcy Code.

2. The Debtors do not stipulate, agree, represent, or warrant that they are liable for any amounts at all in connection with the Action. The claims and/or damages alleged and/or

asserted in the Action are subject to the terms, conditions, exclusions, and limitations of the Insurance Policies. Moreover, the aggregate limit of the Insurance Policies are subject to reduction, depletion, and/or exhaustion by payments made hereafter with regard to any pending or future claims, and no representation to the contrary is asserted.

3. Any recoveries based upon any verdict, judgment, settlement or otherwise on account of the Movant's claims against the Debtors relating to the Action shall be subject to the applicable provisions of the Bankruptcy Code, including the requirement that the Movant file a proof of claim before any applicable claims bar date. Any efforts by the Movant to collect any amounts due in connection with the Action from the Debtors outside of a distribution under the Bankruptcy Code or in accordance with a plan in violation of the Stay are barred. This Stipulation shall not be construed to limit Movant's ability to recover amounts awarded to Movant based upon any verdict, judgment, settlement, otherwise obtained on account of the Movant's claims against the Debtors relating to the Action from any applicable proceeds available under the Insurance Policies.

4. Nothing herein: (i) alters, amends or otherwise modifies the terms and conditions of the Insurance Policies; (ii) relieves the Debtors of any of their obligations under the Insurance Policies; (iii) creates a direct right of action by the Movant against any of the Debtors' insurers; (iv) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under the Insurance Policies or to otherwise assert any defenses to coverage; or (v) constitutes a determination or admission that coverage exists with respect to the claims asserted in the Action.

5. This Stipulation and Order shall not become effective unless and until it is approved and entered by the Court.

6. By entering into this Stipulation and Order, the Debtors are not waiving any defenses at law or in equity, including as to the Action or any claims related thereto.

7. Neither the Stipulation and Order nor any negotiations and writings in connection with this Stipulation and Order shall in any way be construed as or deemed to be evidence of an admission on behalf of any Party regarding any, without limitation, claim, counterclaim, cause of action, right, or defense that such Party may have against each other.

8. This Stipulation and Order shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.

9. This Stipulation and Order shall not be modified, altered, amended, or vacated without written consent of all Parties hereto. Any such modification, alteration, amendment, or vacation, in whole or in part, shall be subject to the approval of the Court.

10. This Stipulation and Order contains the entire agreement by and between the Debtors and the Movant with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into this Stipulation and Order.

11. Each of the undersigned counsel represents that she or he is authorized to execute this Stipulation and Order on behalf of her or his respective client.

12. This Stipulation and Order may be executed in multiple counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which shall be deemed an original, but all of which together shall constitute one instrument.

13. The Debtors are authorized to take all actions necessary to effectuate the relief provided by this Stipulation and Order.

14. The terms and conditions of this Stipulation and Order shall be immediately effective and enforceable upon its entry.

15. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Stipulation and Order.

[Remainder of page intentionally left blank.]

Dated: May 10, 2019
White Plains, New York

/s/ Stephen E. Hessler

Stephen E. Hessler, P.C.
Marc Kieselstein, P.C.
Cristine Pirro Schwarzman
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
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- and -

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300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200

Counsel to the Debtors and Debtors in Possession

/s/ Donald M. Brown

Donald M. Brown
DOUGLAS HAUN HEIDEMANN, P.C.
901 E. St. Louis Street, Suite 1200
Springfield, Missouri 65806
Telephone: (417) 887-4949
Facsimile: (417) 326-2845

SO ORDERED this 15th day of
May, 2019

/s/ Robert D. Drain

THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Amended Complaint