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*Counsel for the State of Florida*

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

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

**THE STATE OF FLORIDA’S RESPONSE IN OPPOSITION TO  
DEBTOR’S MOTION TO (I) ENFORCE THE AUTOMATIC STAY  
AND (II) IMPOSE COSTS AND DAMAGES**

The State of Florida, by and through the Department of Legal Affairs, Office of the Attorney General (the “State”), hereby responds to Debtor’s July 3, 2019 Motion to Enforce the Automatic Stay and Impose Costs and Damages and respectfully submits that this motion was filed in bad faith and should be summarily denied. Well before the filing of the stay motion, undersigned counsel had already informed Debtors’ counsel that the State intended to seek guidance from this Court regarding the automatic stay, which has now been done (Doc. 760), and had further promised to take no action in the state court case until this Court ruled upon the automatic stay issues.

<sup>1</sup> 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’ proposed 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.



Moreover, despite numerous requests from undersigned counsel, Debtors have still not cited a single case suggesting, much less indicating, that seeking to intervene in a pending False Claims Act case brought on behalf of the State could ever violate the automatic stay, especially when the intervention motion was coupled with a request for a ruling on the applicability of the automatic stay from a court with concurrent jurisdiction, as was the situation here.

Accordingly, the filing of the stay motion was merely part of a continued course of gamesmanship by Debtors. Undersigned counsel has tried at every opportunity to engage with Debtors' counsel to find the appropriate vehicle to resolve any automatic stay issues, while also taking into account the Court's comments from the June 17, 2019 hearing, but those engagement efforts have been rejected, time after time. Fortunately, the upcoming August 20, 2019 hearing will allow the Court to consider the State's July 8, 2019 Motion For Entry of An Order Finding That: (1) The State's Request To Intervene In The State Court Litigation Does Not Violate The Automatic Stay; And, (2) The Automatic Stay Will Not Apply To The State Court Litigation Once The State Court Allows Such Intervention and thus provide the judicial guidance that has always been sought by undersigned counsel.

### **Argument**

The Attorney General filed her Motion to Intervene And For Entry Of An Order Determining That There Is No Applicable Bankruptcy Stay in the state court action on June 7, 2019. Pursuant to that motion, the Attorney General sought an order from the Leon County Circuit Court: (1) allowing the State to intervene and take over this matter pursuant to Fla. Stat. § 68.084(3); and, (2) then determining that any claimed automatic stay pursuant to 11 U.S.C. § 362 would not apply based on the State's intervention and continued prosecution of the claims asserted

on its behalf in that matter. As Debtors grudgingly concede in their Motion to Stay, the state court has concurrent jurisdiction to determine the applicability of the claimed automatic stay.

While the Motion to Intervene remains on file, Debtors are under no obligation to respond to it given the extensions that undersigned counsel provided to them before the Debtor's Motion to Stay was filed in the state court action on June 24, 2019. Likewise, there has never been a scheduled hearing, despite the bizarre claims made by Debtors' counsel. Although undersigned counsel communicated with the state court about a potential hearing date, the Motion to Intervene has never been noticed for hearing. As is made clear in Section 2.5 of the Policies, Procedures and Preferences for All Civil Cases Assigned to Leon County Circuit Court Judge Ronald W. Flury, it is "the movant's responsibility to produce and distribute a notice of hearing." Stated simply, a party cannot seek to "take down" a hearing that has never been noticed.

At the June 17, 2019 hearing on the Motion to Enforce the Automatic Stay filed against Phone Recovery Services, LLC (a stay motion that did not name, much less seek relief against, the State), Debtors' counsel decided to make a number of comments regarding his views of the impact of the motion to intervene, despite knowing that undersigned counsel was not provided with the opportunity to appear at the hearing; indeed, the first time that undersigned counsel received any official notice of this matter, beyond the boilerplate Suggestion of Bankruptcy filed in the state court action, was when he was served with the July 3, 2019 automatic stay motion against the State. (Tr. 21-23).

At the hearing, the Court acknowledged the state court would have "the power to determine whether that matter is subject to the automatic stay." Id. at 23-24. The Court further recognized that if intervention was considered to be the continuation of an action by the governmental unit, the automatic stay would not apply. Id. at 26-27. Given what it viewed to be an incomplete record,

especially due to the State's lack of notice of the hearing and the newly raised arguments of Debtors' counsel, the Court specifically declined "to extend my ruling today to the State of Florida" but indicated that "the wiser course of action here for the State of Florida would be ... [to] seek[] relief or a declaration under (b)(4)." Id. at 27-29. The State's July 8, 2019 motion for declaratory ruling sets forth its positions as to the automatic stay issues, which will not be repeated here in the interests of brevity.

Upon receiving the transcript from the June 17, 2019 hearing, undersigned counsel promptly engaged with Debtors' counsel in an effort to reach agreement on the appropriate vehicle to seek a declaratory ruling from the Court, just as the Court had asked. After the June 17, 2019 hearing, Debtors demanded that the Attorney General "take down" the Motion to Intervene. Attached as Exhibit 1 are emails between undersigned counsel and Defendants' counsel in the state court case. After undersigned counsel inquired about this Court determining any automatic stay issues in an email dated June 21, 2019, Defendants' counsel James Leito responded on the same day that:

Russell – Our position has never been that the bankruptcy court decides the merits of the Motion to Intervene (i.e., whether the state has good cause to intervene). Our position (and Judge Drain's) is that you must seek relief from the automatic stay in the bankruptcy court before you can even pursue the Motion to Intervene. In short, the existing Motion to Intervene and hearing date violate the automatic stay. Windstream should not be spending any time or money thinking about or responding to motions filed in Florida until the bankruptcy court grants the State of Florida relief from the automatic stay. You need to seek relief from the stay in the bankruptcy court, and if successful, refile the Motion to Intervene in Florida. If you do not take down the Motion to Intervene (and the related hearing) by noon on Monday, Windstream will proceed with filing a motion for sanctions in the bankruptcy court.

*See Exhibit 1, Email from Debtor's counsel dated June 21, 2019.*

Undersigned counsel responded to the “take down” demand on the same day and offered to extend the deadline for Debtors to respond to the Motion to Intervene until after this Court had provided guidance on the automatic stay issues:

James, that position is completely frivolous. We have already provided substantial authority that seeking to intervene is not a violation of the stay and you, despite multiple requests, have provided no authority to the contrary. The approach I have offered is more than reasonable, especially since, as you concede, Judge Flury does have concurrent jurisdiction over both issues. If what you’re really seeking is an extension of the time to respond to the motion to intervene until after the bankruptcy court has provided a ruling on the two issues I have discussed, that would be something I’d be willing to consider but your posturing is far from productive.

*See Exhibit 1, Email from Russell Kent dated June 21, 2019.* On the following day, undersigned counsel expressly provided Debtors with an extension of time until at least July 9, 2019 to respond to the motion to intervene:

James, I am on the road most of the upcoming week, with the following week having the holiday for the 4th, so you may have an additional 15 day extension of time on any response to the motion to intervene while we discuss things further.

*See Exhibit 1, Email from Russell Kent dated June 22, 2019.*

Instead of accepting the offered extension until at least July 9, 2019, Defendants chose to file their Motion to Stay in the state court action on June 24. Then, on July 2, 2019, counsel for Debtors repeated their threat to file a motion to enforce the automatic stay and for damages and costs if the Attorney General did not accede to their demand to “take down” the Motion to Intervene.

In response to this threat, undersigned counsel once again reiterated the State's intention to seek guidance from this Court about the applicability of the automatic stay (notwithstanding the fact that the state court has concurrent jurisdiction to determine the stay’s applicability) and to extend the deadline for Debtors to respond to the Motion to Intervene:

Rather than responding to my June 21st proposal [to extend the deadline to respond to the motion to intervene] set forth below, your clients brattishly filed a motion on June 24th to stay the response to the motion to intervene, despite the fact that I had already graciously offered an extension of time for any such response. As you both know, there is no hearing set for August 14th; likewise, the claims of being forced to expend funds ring especially hollow when you chose to spend money to file a frivolous stay motion rather than accept the extension that had already been offered. The extension remains available to your clients and would be in place until a week after the bankruptcy court rules under my June 21st proposal, which I have set forth again below. Accordingly, the theoretical pendency of the motion to intervene has not and cannot cost your clients a dime, especially in light of the extension of time that was gracelessly spurned but which remains available to your clients.

To be clear, I remain willing to have the bankruptcy judge determine whether seeking to intervene is consistent with the automatic stay as well as the applicability of the automatic stay after intervention is granted; while Judge Flury clearly has concurrent jurisdiction over these matters, the bankruptcy court is also a (but not the only) proper forum to determine the two issues. I would greatly appreciate the benefit of an actual response to the proposal this time around rather than further silly saber-rattling.

*See Exhibit 2, Email from Russell Kent dated July 2, 2019.*

Less than 24 hours later, instead of responding to the State's proposal, Debtors filed a Motion to (I) Enforce Automatic Stay and (II) Impose Costs and Damages against the Attorney General in the Bankruptcy Court. but for some reason chose not to advise the Court of undersigned counsel's July 2, 2019 email.

Due to the July 4th holiday and the time required to obtain electronic filing privileges for this Court, the State was not able to file the promised motion seeking guidance about the automatic stay and the Motion to Intervene until July 8, 2019. However, on that day, the State filed its Motion for Entry of an Order Finding that: (1) the State's Request to Intervene in the State Court Litigation Does Not Violate the Automatic Stay; and, (2) the Automatic Stay Will Not Apply to the State Court Litigation Once the State Court Allows Such Intervention. Debtors' counsel originally noticed the automatic stay motion for July 26, 2019, without ever seeing if that date was even available for undersigned counsel (which it was not), in an apparent effort to have the automatic

stay motion heard well before the State's motion for a declaratory ruling, but both motions are now set for hearing on August 20, 2019.

**Conclusion**

Based on the foregoing, the Attorney General respectfully requests that the Court enter an Order denying Debtors' motion, granting the State's motion (Doc. 760), and awarding such other and further relief to the State as it deems just and appropriate.

Dated: August 13, 2019

**Respectfully submitted,**

**ASHLEY MOODY**  
**Attorney General**

/s/ Russell S. Kent  
Russell S. Kent  
Special Counsel for Litigation  
Florida Bar No. 20257  
Russell.Kent@myfloridalegal.com  
Department of Legal Affairs  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
Telephone: (850) 414-3854

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served via the CM/ECF electronic filing system and/or electronic mail on the 13th day of August 2019.

/s/ Russell S. Kent  
Russell S. Kent

# Exhibit 1



**From:** [Russell Kent](#)  
**To:** [Leito IV, James V.](#)  
**Cc:** [Krumholz, Richard](#); ["Michael Ehren"](#); ["Shane A. Newlands"](#); [Brannon Buck](#); [Chloe Schulte](#)  
**Subject:** RE: 911/FL: Status  
**Date:** Saturday, June 22, 2019 5:19:02 PM

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James, I am on the road most of the upcoming week, with the following week having the holiday for the 4<sup>th</sup>, so you may have an additional 15 day extension of time on any response to the motion to intervene while we discuss things further. Thanks.

Russell S. Kent

[russell.kent@myfloridalegal.com](mailto:russell.kent@myfloridalegal.com)

Special Counsel for Litigation

The Capitol, PL-01

Tallahassee, FL 32399-1050

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**From:** Russell Kent  
**Sent:** Friday, June 21, 2019 3:44 PM  
**To:** 'Leito IV, James V.'  
**Cc:** Krumholz, Richard ; 'Michael Ehren' ; 'Shane A. Newlands' ; 'bbuck@badhambuck.com' ; Chloe Schulte  
**Subject:** RE: 911/FL: Status

James, that position is completely frivolous. We have already provided substantial authority that seeking to intervene is not a violation of the stay and you, despite multiple requests, have provided no authority to the contrary. The approach I have offered is more than reasonable, especially since, as you concede, Judge Flury does have concurrent jurisdiction over both issues. If what you're really seeking is an extension of the time to respond to the motion to intervene until after the bankruptcy court has provided a ruling on the two issues I have discussed, that would be something I'd be willing to consider but your posturing is far from productive.

Russell S. Kent

[russell.kent@myfloridalegal.com](mailto:russell.kent@myfloridalegal.com)

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**From:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>  
**Sent:** Friday, June 21, 2019 3:37 PM  
**To:** Russell Kent <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>  
**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren' <[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>; 'Shane A. Newlands' <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; 'bbuck@badhambuck.com' <[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)>; Chloe Schulte <[Chloe.Schulte@myfloridalegal.com](mailto:Chloe.Schulte@myfloridalegal.com)>  
**Subject:** RE: 911/FL: Status

Russell – Our position has never been that the bankruptcy court decides the merits of the Motion to Intervene (i.e., whether the state has good cause to intervene). Our position (and Judge Drain's) is that you must seek relief from the automatic stay in the bankruptcy court before you can even pursue the Motion to Intervene. In short, the existing Motion to Intervene and hearing date violate

the automatic stay. Windstream should not be spending any time or money thinking about or responding to motions filed in Florida until the bankruptcy court grants the State of Florida relief from the automatic stay. You need to seek relief from the stay in the bankruptcy court, and if successful, refile the Motion to Intervene in Florida. If you do not take down the Motion to Intervene (and the related hearing) by noon on Monday, Windstream will proceed with filing a motion for sanctions in the bankruptcy court.

Thanks

James

**James V. Leito IV**

Norton Rose Fulbright US LLP  
214-855-8004 (O)  
817-980-2329 (M)

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**From:** Russell Kent [<mailto:Russell.Kent@myfloridalegal.com>]

**Sent:** Friday, June 21, 2019 9:12 AM

**To:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren' <[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>; 'Shane A. Newlands' <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; 'bbuck@badhambuck.com' <[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)>; Chloe Schulte <[Chloe.Schulte@myfloridalegal.com](mailto:Chloe.Schulte@myfloridalegal.com)>

**Subject:** RE: 911/FL: Status

James, I haven't had a chance to review the transcript yet given the press of other business; I did notice that the bankruptcy judge's order doesn't mention the State at all.

I do have a proposal for your consideration. I would be willing to have the bankruptcy judge determine whether seeking to intervene is consistent with the automatic stay as well as the applicability of the automatic stay after intervention is granted; while these issues could be heard by Judge Flury, the bankruptcy judge also has concurrent jurisdiction over them. What the bankruptcy judge cannot do is hear the motion to intervene; accordingly, the scheduled hearing on August 14<sup>th</sup> would go forward but only as to the motion to intervene itself. Please let me know if you agree with this approach.

Russell S. Kent

[russell.kent@myfloridalegal.com](mailto:russell.kent@myfloridalegal.com)

Special Counsel for Litigation

The Capitol, PL-01

Tallahassee, FL 32399-1050

(850) 414-3854

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**From:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>

**Sent:** Friday, June 21, 2019 1:33 AM

**To:** Russell Kent <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren' <[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>; 'Shane A. Newlands' <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; 'bbuck@badhambuck.com' <[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)>

**Subject:** RE: 911/FL: Status

Russell – What's the word on this? Are we having a call today? I am free other than 1030-1130 central time.

**James V. Leito IV**

Norton Rose Fulbright US LLP  
214-855-8004 (O)  
817-980-2329 (M)

**From:** Leito IV, James V.

**Sent:** Wednesday, June 19, 2019 8:52 PM

**To:** 'Russell Kent' <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren' <[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>; Shane A. Newlands <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; [bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)

**Subject:** RE: 911/FL: Status

Russell-

Please see attached for the transcript from the June 17 hearing. Judge Drain's ruling begins on page 23 of the transcript. Specifically, I would point your attention to page 27, where the court states that the State of Florida must move for relief from the stay in the bankruptcy court to pursue the motion to intervene, and page 28, where the court states that "clearly the State of Florida is on notice that it may be violating the automatic stay."

Consistent with Judge Drain's ruling, we request that the State of Florida immediately withdraw its motion to intervene and seek relief from the automatic stay in the Bankruptcy Court for the Southern District of New York before taking any further action in the Florida proceedings. If the State of Florida does not do so, the company will seek further relief from the bankruptcy court, including the imposition of sanctions for knowing violation of the automatic stay. Judge Drain recognized this possibility when, at page 29 of the transcript, he noted that "the State of Florida is at risk, given what I've just laid out on the record, of being subject to . . . sanction for violating the stay unless it seeks relief or a declaration under (b)(4)."

Please confirm when you have withdrawn the motion to intervene.

Thanks

James

**James V. Leito IV**

Norton Rose Fulbright US LLP  
214-855-8004 (O)  
817-980-2329 (M)

**From:** Russell Kent [<mailto:Russell.Kent@myfloridalegal.com>]

**Sent:** Tuesday, June 18, 2019 11:48 AM

**To:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>; Shane A. Newlands <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; [bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren' <[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>

**Subject:** RE: 911/FL: Status

Let's do a call on Friday morning if that time also works for relator's counsel. Thanks.

Russell S. Kent

[russell.kent@myfloridalegal.com](mailto:russell.kent@myfloridalegal.com)

Special Counsel for Litigation

The Capitol, PL-01

Tallahassee, FL 32399-1050

(850) 414-3854

**From:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>

**Sent:** Monday, June 17, 2019 3:43 PM

**To:** Russell Kent <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>; Shane A. Newlands <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>;  
[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren'  
<[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>

**Subject:** RE: 911/FL: Status

I can talk Wednesday/Thursday after 1 central and anytime on Friday. What works for y'all?

**James V. Leito IV**

Norton Rose Fulbright US LLP  
214-855-8004 (O)  
817-980-2329 (M)

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**From:** Russell Kent [<mailto:Russell.Kent@myfloridalegal.com>]

**Sent:** Monday, June 17, 2019 2:33 PM

**To:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>; Shane A. Newlands  
<[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; [bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren'  
<[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>

**Subject:** RE: 911/FL: Status

James, the court will never notice whether you filed anything today but you have a one-week extension on the response in any event and can so notify Judge Flury if it makes you feel better. There is no world in which the bankruptcy judge has any role as to the intervention issue but understand you're just reporting back impressions of things that other people think they may have heard. We have already briefed the issue that seeking to intervene cannot be a violation of any automatic stay and you have provided no authority to the contrary. If you have a transcript from today's hearing, I would obviously be interested in seeing it at your earliest convenience. Perhaps we can have a call towards the end of the week to discuss further.

Russell S. Kent

[russell.kent@myfloridalegal.com](mailto:russell.kent@myfloridalegal.com)

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Tallahassee, FL 32399-1050  
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**From:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>

**Sent:** Monday, June 17, 2019 3:13 PM

**To:** Russell Kent <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>; Shane A. Newlands <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>;  
[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren'  
<[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>

**Subject:** 911/FL: Status

Russell (and Shane/Brannon) –

I did not attend the SDNY hearing today, but my understanding is that Judge Drain said that the State of Florida should seek relief from the automatic stay in SDNY before pursuing any motions in Florida state court and that the State may already be at risk of having violated the stay. (Shane/Brannon – whoever attended the hearing, let me know if you disagree.) In light of that and the Florida court's

decision to extend the FCC stay, can we discuss what you all believe the path forward is? It seems like moving forward with the Motion to Intervene on August 14 is not the best use of anyone's resources, and indeed may be prohibited by the SDNY ruling.

In any event, can we get an extension on our response to the Motion to Intervene? I think it is technically due today. Can we inform the court of something like (1) a hearing occurred today in bankruptcy court, (2) the parties are evaluating the effect of that hearing, (3) the parties agree that Windstream does not need to respond to the Motion to Intervene at this time, and (4) the parties will submit a proposed briefing schedule on the Motion to Intervene within the next 2 weeks. Then we can figure out where we are procedurally during the next 2 weeks, what relief (if any) y'all are seeking, and where you intend to seek it.

I would like to get something on file today (whether agreed or opposed) letting the court know it should not be expecting a response from us but one may be forthcoming.

Thanks

James

**James V. Leito IV** | Partner

Norton Rose Fulbright US LLP

2200 Ross Avenue, Suite 3600, Dallas, Texas 75201-7932, United States

Tel +1 214 855 8004 | Fax +1 214 855 8200

[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)

## **NORTON ROSE FULBRIGHT**

*Law around the world*

[nortonrosefulbright.com](http://nortonrosefulbright.com)

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# Exhibit 2

**From:** [Russell Kent](#)  
**To:** [Luze, John R.](#)  
**Cc:** [Krumholz, Richard](#); [Leito IV, James V.](#); ["Michael Ehren"](#); ["Shane A. Newlands"](#); [Brannon Buck](#); [Chloe Schulte](#); [Weiland, Brad](#); [Petrie, Francis](#)  
**Subject:** RE: 911/FL: Status  
**Date:** Tuesday, July 2, 2019 3:23:04 PM

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Jack and James:

You have still been unable or unwilling to provide any authority for the proposition that filing the motion to intervene is a violation of the automatic stay; our motion, however, cited several cases establishing that filing such a motion did not violate any claimed automatic stay. If you have even the semblance of authority for the proposition that seeking to intervene is somehow itself a violation of the stay I would ask you, yet again, to provide any such authority to me at your earliest convenience. Moreover, as James has already conceded, the stay order does not mention the State at all. James has likewise conceded that the bankruptcy court cannot determine whether the motion to intervene should be granted; that matter may only be heard by Judge Flury.

Rather than responding to my June 21<sup>st</sup> proposal set forth below, your clients brattishly filed a motion on June 24<sup>th</sup> to stay the response to the motion to intervene, despite the fact that I had already graciously offered an extension of time for any such response. As you both know, there is no hearing set for August 14<sup>th</sup>; likewise, the claims of being forced to expend funds ring especially hollow when you chose to spend money to file a frivolous stay motion rather than accept the extension that had already been offered. The extension remains available to your clients and would be in place until a week after the bankruptcy court rules under my June 21<sup>st</sup> proposal, which I have set forth again below. Accordingly, the theoretical pendency of the motion to intervene has not and cannot cost your clients a dime, especially in light of the extension of time that was gracelessly spurned but which remains available to your clients.

To be clear, I remain willing to have the bankruptcy judge determine whether seeking to intervene is consistent with the automatic stay as well as the applicability of the automatic stay after intervention is granted; while Judge Flury clearly has concurrent jurisdiction over these matters, the bankruptcy court is also a (but not the only) proper forum to determine the two issues. I would greatly appreciate the benefit of an actual response to the proposal this time around rather than further silly saber-rattling.

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**From:** Luze, John R.

**Sent:** Tuesday, July 02, 2019 2:55 PM

**To:** Russell Kent

**Cc:** Krumholz, Richard ; Leito IV, James V. ; 'Michael Ehren' ; 'Shane A. Newlands' ; 'bbuck@badhambuck.com' ; Chloe Schulte ; Weiland, Brad ; Petrie, Francis

**Subject:** RE: 911/FL: Status

Russell,

As you may know, Kirkland & Ellis LLP is bankruptcy counsel to Windstream, representing them in

connection with their chapter 11 cases currently pending in the U.S. Bankruptcy Court for the Southern District of New York. Due to the fact that, notwithstanding Judge Drain's clear guidance on the record at the June 17 hearing (a transcript of which NRF has provided), your client continues to refuse to withdraw the motion to intervene or otherwise act in accordance with the Bankruptcy Code's automatic stay, Windstream intends to file a motion in the bankruptcy court seeking to enforce the stay against your client and for associated costs and damages pursuant to section 362(k) of the Bankruptcy Code. Windstream intends to file this motion by tomorrow evening. If you would like to discuss, please feel free to reach out.

Thank you,

Jack

**John R. Luze**

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**KIRKLAND & ELLIS LLP**

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[john.luze@kirkland.com](mailto:john.luze@kirkland.com)

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**From:** Russell Kent [<mailto:Russell.Kent@myfloridalegal.com>]

**Sent:** Friday, June 21, 2019 2:44 PM

**To:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren' <[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>; 'Shane A. Newlands' <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; 'bbuck@badhambuck.com' <[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)>; Chloe Schulte <[Chloe.Schulte@myfloridalegal.com](mailto:Chloe.Schulte@myfloridalegal.com)>

**Subject:** RE: 911/FL: Status

James, that position is completely frivolous. We have already provided substantial authority that seeking to intervene is not a violation of the stay and you, despite multiple requests, have provided no authority to the contrary. The approach I have offered is more than reasonable, especially since, as you concede, Judge Flury does have concurrent jurisdiction over both issues. If what you're really seeking is an extension of the time to respond to the motion to intervene until after the bankruptcy court has provided a ruling on the two issues I have discussed, that would be something I'd be willing to consider but your posturing is far from productive.

Russell S. Kent

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**From:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>

**Sent:** Friday, June 21, 2019 3:37 PM

**To:** Russell Kent <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren' <[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>; 'Shane A. Newlands' <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; 'bbuck@badhambuck.com' <[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)>; Chloe Schulte <[Chloe.Schulte@myfloridalegal.com](mailto:Chloe.Schulte@myfloridalegal.com)>



**Subject:** RE: 911/FL: Status

Russell – Our position has never been that the bankruptcy court decides the merits of the Motion to Intervene (i.e., whether the state has good cause to intervene). Our position (and Judge Drain's) is that you must seek relief from the automatic stay in the bankruptcy court before you can even pursue the Motion to Intervene. In short, the existing Motion to Intervene and hearing date violate the automatic stay. Windstream should not be spending any time or money thinking about or responding to motions filed in Florida until the bankruptcy court grants the State of Florida relief from the automatic stay. You need to seek relief from the stay in the bankruptcy court, and if successful, refile the Motion to Intervene in Florida. If you do not take down the Motion to Intervene (and the related hearing) by noon on Monday, Windstream will proceed with filing a motion for sanctions in the bankruptcy court.

Thanks

James

**James V. Leito IV**

Norton Rose Fulbright US LLP

214-855-8004 (O)

817-980-2329 (M)

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**From:** Russell Kent [<mailto:Russell.Kent@myfloridalegal.com>]

**Sent:** Friday, June 21, 2019 9:12 AM

**To:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren'

<[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>; 'Shane A. Newlands' <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>;

'bbuck@badhambuck.com' <[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)>; Chloe Schulte

<[Chloe.Schulte@myfloridalegal.com](mailto:Chloe.Schulte@myfloridalegal.com)>

**Subject:** RE: 911/FL: Status

James, I haven't had a chance to review the transcript yet given the press of other business; I did notice that the bankruptcy judge's order doesn't mention the State at all.

I do have a proposal for your consideration. I would be willing to have the bankruptcy judge determine whether seeking to intervene is consistent with the automatic stay as well as the applicability of the automatic stay after intervention is granted; while these issues could be heard by Judge Flury, the bankruptcy judge also has concurrent jurisdiction over them. What the bankruptcy judge cannot do is hear the motion to intervene; accordingly, the scheduled hearing on August 14<sup>th</sup> would go forward but only as to the motion to intervene itself. Please let me know if you agree with this approach.

Russell S. Kent

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**From:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>

**Sent:** Friday, June 21, 2019 1:33 AM

**To:** Russell Kent <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren'

<[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>; 'Shane A. Newlands' <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>;

'bbuck@badhambuck.com' <[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)>

**Subject:** RE: 911/FL: Status

Russell – What’s the word on this? Are we having a call today? I am free other than 1030-1130 central time.

**James V. Leito IV**

Norton Rose Fulbright US LLP

214-855-8004 (O)

817-980-2329 (M)

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**From:** Leito IV, James V.

**Sent:** Wednesday, June 19, 2019 8:52 PM

**To:** 'Russell Kent' <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren' <[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>; Shane A. Newlands <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; [bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)

**Subject:** RE: 911/FL: Status

Russell-

Please see attached for the transcript from the June 17 hearing. Judge Drain’s ruling begins on page 23 of the transcript. Specifically, I would point your attention to page 27, where the court states that the State of Florida must move for relief from the stay in the bankruptcy court to pursue the motion to intervene, and page 28, where the court states that “clearly the State of Florida is on notice that it may be violating the automatic stay.”

Consistent with Judge Drain’s ruling, we request that the State of Florida immediately withdraw its motion to intervene and seek relief from the automatic stay in the Bankruptcy Court for the Southern District of New York before taking any further action in the Florida proceedings. If the State of Florida does not do so, the company will seek further relief from the bankruptcy court, including the imposition of sanctions for knowing violation of the automatic stay. Judge Drain recognized this possibility when, at page 29 of the transcript, he noted that “the State of Florida is at risk, given what I’ve just laid out on the record, of being subject to . . . sanction for violating the stay unless it seeks relief or a declaration under (b)(4).”

Please confirm when you have withdrawn the motion to intervene.

Thanks

James

**James V. Leito IV**

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**From:** Russell Kent [<mailto:Russell.Kent@myfloridalegal.com>]

**Sent:** Tuesday, June 18, 2019 11:48 AM

**To:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>; Shane A. Newlands <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; [bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)

**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren' <[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>

**Subject:** RE: 911/FL: Status

Let’s do a call on Friday morning if that time also works for relator’s counsel. Thanks.

Russell S. Kent

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**From:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>  
**Sent:** Monday, June 17, 2019 3:43 PM  
**To:** Russell Kent <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>; Shane A. Newlands <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>;  
[bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)  
**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren'  
<[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>  
**Subject:** RE: 911/FL: Status  
I can talk Wednesday/Thursday after 1 central and anytime on Friday. What works for y'all?

**James V. Leito IV**

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**From:** Russell Kent [<mailto:Russell.Kent@myfloridalegal.com>]  
**Sent:** Monday, June 17, 2019 2:33 PM  
**To:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>; Shane A. Newlands  
<[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>; [bbuck@badhambuck.com](mailto:bbuck@badhambuck.com)  
**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren'  
<[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>  
**Subject:** RE: 911/FL: Status

James, the court will never notice whether you filed anything today but you have a one-week extension on the response in any event and can so notify Judge Flury if it makes you feel better. There is no world in which the bankruptcy judge has any role as to the intervention issue but understand you're just reporting back impressions of things that other people think they may have heard. We have already briefed the issue that seeking to intervene cannot be a violation of any automatic stay and you have provided no authority to the contrary. If you have a transcript from today's hearing, I would obviously be interested in seeing it at your earliest convenience. Perhaps we can have a call towards the end of the week to discuss further.

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**From:** Leito IV, James V. <[james.leito@nortonrosefulbright.com](mailto:james.leito@nortonrosefulbright.com)>  
**Sent:** Monday, June 17, 2019 3:13 PM  
**To:** Russell Kent <[Russell.Kent@myfloridalegal.com](mailto:Russell.Kent@myfloridalegal.com)>; Shane A. Newlands <[shane@pkblawfirm.com](mailto:shane@pkblawfirm.com)>;  
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**Cc:** Krumholz, Richard <[richard.krumholz@nortonrosefulbright.com](mailto:richard.krumholz@nortonrosefulbright.com)>; 'Michael Ehren'  
<[mehren@lashgoldberg.com](mailto:mehren@lashgoldberg.com)>  
**Subject:** 911/FL: Status  
Russell (and Shane/Brannon) –

I did not attend the SDNY hearing today, but my understanding is that Judge Drain said that the State of Florida should seek relief from the automatic stay in SDNY before pursuing any motions in Florida state court and that the State may already be at risk of having violated the stay. (Shane/Brannon – whoever attended the hearing, let me know if you disagree.) In light of that and the Florida court's decision to extend the FCC stay, can we discuss what you all believe the path forward is? It seems like moving forward with the Motion to Intervene on August 14 is not the best use of anyone's resources, and indeed may be prohibited by the SDNY ruling.

In any event, can we get an extension on our response to the Motion to Intervene? I think it is technically due today. Can we inform the court of something like (1) a hearing occurred today in bankruptcy court, (2) the parties are evaluating the effect of that hearing, (3) the parties agree that Windstream does not need to respond to the Motion to Intervene at this time, and (4) the parties will submit a proposed briefing schedule on the Motion to Intervene within the next 2 weeks. Then we can figure out where we are procedurally during the next 2 weeks, what relief (if any) y'all are seeking, and where you intend to seek it.

I would like to get something on file today (whether agreed or opposed) letting the court know it should not be expecting a response from us but one may be forthcoming.

Thanks

James

**James V. Leito IV** | Partner

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