

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA**

In re: Jointly Administered Under
Case No. 17-30673 (MER)
Gander Mountain Company,
Overton's, Inc., Case No. 17-30673
Case No. 17-30675
Debtors. Chapter 11 Cases

**OBJECTION BY THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS TO MOTION OF MICHAEL
SEAN HANCOCK FOR EXPEDITED RELIEF FROM THE AUTOMATIC STAY**

The Official Committee of Unsecured Creditors (the “**Committee**”) of Gander Mountain Company, et al. (collectively, the “**Debtor**”), by and through its undersigned counsel, Barnes & Thornburg LLP and Lowenstein Sandler LLP, files this objection (the “**Objection**”) to the *Motion for Entry of an Order Granting Relief from the Automatic Stay to Allow Joinder of Gander Mountain Company as a Defendant in Personal Injury Action* [Docket No. 1510] (the “**Motion**”). In support of its Objection, the Committee respectfully states as follows:

INTRODUCTION

1. Michael Sean Hancock (the “**Movant**”) filed his Motion on January 11, 2018, seeking an order granting relief from the automatic stay in order to exercise state law remedies against the Debtor.

2. The Complaint attached to the Motion and pending before the United States District Court for the Middle District of Florida (the “**District Court Case**”) alleges that the Movant’s distal phalanx was amputated while using a crossbow purchased from one of the Debtor’s retail locations.

OBJECTION

I. The Movant's Claims Should Be Resolved Through the Claims Resolution Process.

3. The Movant seeks relief from the automatic stay to prosecute a personal injury tort claim against, among others, the Debtor, which will require the Debtor to be actively engaged in the District Court Case. Despite the Movant's assertion, permitting relief from the automatic stay will not enhance the Debtor's estate, but instead will undoubtedly diminish the assets available to resolve claims against the estate. The Movant's claim is not unique and, like the majority of other claims pending against the estate, should be liquidated through the normal claims resolution process, which provides an organized and efficient method to pay creditors. The Movant has failed to establish the existence of cause to recover its unliquidated and contingent claim prior to the Debtor's other creditors, or to suggest that the Debtor should expend valuable estate resources to liquidate a claim that will likely be worth much less than the associated costs.

II. The Movant Has Not Demonstrated That Cause Exists to Grant Relief From the Automatic Stay.

4. The automatic stay arises by operation of law upon the filing of a petition for bankruptcy and prevents creditor actions against the debtor that may impact the bankruptcy.

5. The requisite statutory importance behind the automatic stay is made clear in the legislative history accompanying 11 U.S. C. § 362:

“. . . [t]he automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him [or her] into bankruptcy”

See, H.R. Rep. No. 595, 95th Cong., 1st Sess. 340-42 (1977) and S. Rep. No. 989, 95th Cong., 2nd Sess. 54-55 (1978), *reprinted in* 1978 U.S. Code Cong. & Admin. News 5787 at 5840, 6296-97. The automatic stay is designed to give a debtor breathing room from its creditors, to protect the debtor from an uncontrolled scramble for its assets in multiple proceedings in various courts, to preclude one creditor from pursuing a remedy to the disadvantage of other creditors, and to provide the debtor with reasonable respite from pre-petition litigation, during which they may have the opportunity to formulate a plan. *In re Cont'l Airline, Inc.*, 177 B.R. 475, 479 (D. Del. 1993) (citing *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 998 (4th Cir. 1986)).

6. Section 362(d)(1) of the Bankruptcy Code requires that a party seeking to lift the automatic stay show “cause” for such relief. The Movant has the burden of showing that “cause” exists to grant relief from the automatic stay. *In re Tribune Co.*, 418 B.R. 116, 127 (Bankr. D. Del. 2009). Where the moving party fails to satisfy its burden to show that “cause” exists, the Court is compelled to deny the motion. *See In re Aleris Int’l, Inc.*, 456 B.R. 35, 48 (Bankr. D. Del. 2011).

7. In determining whether “cause” exists for granting relief from the automatic stay, a court should look at the totality of the circumstances. *In re Wilson* 116 F.3d 87, 90 (3d. Cir. 1997). Whether “cause” exists is a decision within the sound discretion of the bankruptcy court, and one that must be determined on a case-by-case basis. *In re Wiley*, 288 B.R. 818, 821 (B.A.P. 8th Cir. 2003).

8. In determining whether the stay should be lifted to allow litigation involving the debtor to continue in another forum, this Court generally balances the potential prejudice to the debtor, to the bankruptcy estate, and to the other creditors against the hardship of the moving party if it is not allowed to proceed in state court. *In re Wiley*, 288 B.R. at 822 (B.A.P. 8th Cir.

2003). This Court looks to the following factors set forth in *In re Wiley*: (i) judicial economy; (ii) trial readiness; (iii) the resolution of preliminary bankruptcy issues; (iv) the creditor's chance of success on the merits; and (v) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors. *Id.* at 822; *In re Blan*, 237 B.R. 737, 739-40 (B.A.P. 8th Cir. 1999) (Dreher, J.). None of these factors have been satisfied by the Movant.

9. The balance of relative harms weighs in favor of maintaining the automatic stay. The factors set forth in *Wiley* require the Court to determine whether the Debtor would be prejudiced by granting the requested relief. The Movant contends that the relief from stay would not prejudice the Debtor incorrectly. To the contrary, the Debtor, its debtor-affiliates and their estates would be substantially prejudiced by the amount of time, finances and energy that would be expended to defend the Debtor's interest in the District Court Case.

10. Here, the issue of judicial economy weighs heavily in favor of denying the Motion. Denying the Motion will not cause this Court, the District Court, the Debtor, or the Movant to engage in redundant efforts. The District Court Case is in its beginning stages and will take much longer to prepare for trial than reaching a resolution through this Court. That said, the record of this Court does not reflect a claim being filed by the Movant in advance of the claims bar date despite having notice of the Debtor's bankruptcy filing. Accordingly, the Movant's attempt to join the Debtor in the District Court Case may be moot.

11. Moreover, the Movant has failed to address the likelihood of success on the merits. The requisite showing of the probability of success on the merits requires more than a mere reference to the allegations lodged in the complaint. *See, e.g., In re Rexene prods.*, 141 B.R. 574, 578 (Bankr. D. Del. 2007) (requiring movants to make more than a vague initial

showing that they can establish a prima facie case). The Movant's bare allegations in the Complaint attached to the Motion are insufficient to satisfy this factor. Thus, the balance of the relative harms weighs in favor of maintaining the stay. The District Court Case is in its beginning stages. Thus, it is unknown whether the Movant has any chance of success on the merits.

12. As to the final factor, the Debtor's estate would incur substantial litigation expenses and would be forced to expend substantial resources in its defense of the Movant's claims. The Movant erroneously contends that granting relief from the automatic stay is appropriate because he only seeks to pursue the Debtor's insurance provider for the amount of the resulting damages. However, it is unknown to the Committee whether the Debtor maintains insurance to cover the Movant's claim.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Official Committee of Unsecured Creditors respectfully requests that this Court deny the Motion, and grant all other relief that the Court deems just and proper.

Dated: January 19, 2018

Respectfully Submitted,

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