

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**IN RE:**

**PICCADILLY RESTAURANTS, LLC,  
*ET AL.*,**

**DEBTORS**

\* **CASE NO. 12-51127**  
\*  
\* **(JOINT ADMINISTRATION)<sup>1</sup>**  
\*  
\* **CHAPTER 11**  
\*  
\* **JUDGE ROBERT SUMMERHAYS**

**LIMITED OBJECTION TO MOTION TO MODIFY STAY**

**NOW IN COURT**, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”),<sup>2</sup> who submit this *Limited Objection to Motion to Modify Stay*, and in support thereof do state as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

**BACKGROUND**

2. On September 11, 2012 (the “Petition Date”), the Debtors filed for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No trustee or examiner has been appointed, and no official

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<sup>1</sup> Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

<sup>2</sup> The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC and Piccadilly Investments, LLC.

committee of creditors or equity interest holders has been established in these procedurally consolidated Chapter 11 cases (collectively, the “Bankruptcy Case”).

3. On October 1, 2012, Cora Ann Ball and Elwyn Ball (the “Movers”) filed a Motion to Modify Automatic Stay (P-157) (the “Motion”).

4. Before the Petition Date, on July 12, 2011, the Movers obtained a judgment against Piccadilly Restaurants, LLC (“Restaurants”) and its insurer, American Home Assurance Company (the “Insurance Company”) in the aggregate amount of \$244,115.00 from the 22<sup>nd</sup> Judicial District Court for the Parish of St. Tammany, State of Louisiana (the “Judgment”).

5. Restaurants and the Insurance Company timely appealed the Judgment to the First Circuit Court of Appeal, State of Louisiana (the “Appeal Court”). On May 2, 2012, the Appeal Court affirmed the Judgment. On May 24, 2012, the Appeal Court denied an application for rehearing filed by Restaurants and the Insurance Company.

6. On June 22, 2012, Restaurants and the Insurance Company filed an Application for Writs of Certiorari and Supervisory Review with the Supreme Court of Louisiana. The Movers responded to the writ application on June 28, 2012.

7. On September 12, 2012, Restaurants informed the Supreme Court that it had filed for bankruptcy protection in this Court.

8. On October 1, 2012, the Movers filed this Motion to “seek a modification of the stay only to allow the liquidation of the claim against [Restaurants], but not the collection of the claim against the Bankruptcy estate of [Restaurants]; and to clarify the fact that the automatic stay pursuant to Section 362 does not apply to the [Insurance Company].” Motion at page 10.

### **ARGUMENT**

9. The Bankruptcy Code provides that the filing of bankruptcy petition “operates as a stay, applicable to all entities of . . . the commencement or continuance . . . of a judicial,

administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title” and “any act to obtain property of the estate.” 11 U.S.C. § 362(a).

10. The Bankruptcy Code further provides that the automatic stay may be lifted for cause. 11 U.S.C. § 362(d)(1). While the Bankruptcy Code does not define “cause,” courts have held that the stay should be modified to allow litigation to proceed in state courts under appropriate circumstances. *See In re Loudon*, 284 B.R. 106, 108 (BAP 8<sup>th</sup> Cir. 2002); *see also* U.S. Code Cong. & Admin. News 1978, at 5787, 5836. These courts conclude that the litigation may proceed when there is no great harm to the estate. *Id.*

11. While allowing the litigation to proceed would provide some harm to the estate, that harm is tempered by limiting stay relief to allow the state court to determine liability only but limiting the ability of the Movant to enforce any judgment.

12. The Debtors file this limited objection to the Motion in order to clarify that if the stay is modified, it only be modified insofar to allow the Louisiana Supreme Court to decide liability. The Debtors submit that any enforcement of any judgment obtained by the Movants should proceed in the claims resolution process before this Court.

WHEREFORE, the Debtors pray that, should the stay be modified, that it only be modified insofar as to allow the Louisiana Supreme Court to decide the liability of the Debtors to the Movants. All other issues between the Movants and the Debtors should remain subject to the automatic stay and further order of this Court.

Respectfully submitted,

*/s/ Mark A. Mintz*

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**Attorneys for Piccadilly Restaurants, LLC,  
Piccadilly Food Service, LLC and  
Piccadilly Investments, LLC**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the foregoing document was served on October 23, 2012, through this Court's CM/ECF system on those parties entitled to receive service.

**NEW ORLEANS, LOUISIANA**, this 23rd day of October, 2012.

*/s/ Elizabeth J. Futrell*

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ELIZABETH J. FUTRELL