IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	CHAPTER 11
	)	
COACH AM GROUP	)	Case No. 12-10010 (KG)
HOLDING CORP., *et al*.,	)	Jointly Administered
	)	
Debtors	)	**Hearing Date: April 23, 2012 at 11:00 a.m.**
	)	**Objections Due: April 16, 2012 at 4:00 p.m.**

MOTION OF THOMAS LESLIE FOR RELIEF
FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)

THOMAS LESLIE ("Movant") files this motion for relief from stay to allow prosecution a suit pending in the Superior Court of Placer County, California (the "Trial Court"), under 11 U.S.C. § 362(d) and pursuant to Fed. R. Bankr. P. 4001(a), 9014 and L.B.R. 4001-1.

FACTUAL BACKGROUND

A. The Accident

1. On or about November 3, 2008, movant Thomas Leslie was being transported as a passenger to his assigned duty location in a vehicle owned by debtor Corporate Coach of America, Inc. ("Debtor Defendant"). Movant was injured as a result of, *inter alia*, Debtor Defendant's negligence when certain equipment fell out of the van in which he had been a passenger (the "Accident").

2. As a direct and proximate result of the negligence and carelessness of Debtor Defendant, Movant sustained injuries.

B. The Lawsuit

3. By complaint dated July 29, 2010 (the "Complaint", Exhibit "A" hereto), Movant filed an action (the "PI Action") in the Trial Court based on the Accident. In the Complaint, Movant seeks to recover damages from Debtor Defendant based on common law negligence.

4. In addition, Movant seeks to recover damages from co-defendant Union Pacific Railway Company ("Union Pacific") under the Federal Employers Liability Act, 45 U.S.C. §§ 51 *et seq.* ("FELA").

C. Debtors' Insurance

5. On information and belief, Movant understands that Debtor Defendant may be insured under the following policy (the "Primary Policy"):

Carrier	Policy No.	Term
AIG/ American International Companies / American Home Assurance Company / National Union Fire Insurance Company Of Pittsburgh	CA 979-86-79 (Commercial Auto) (the "Primary Policy")	9/16/2008 – 9/16/2009

6. Certain portions of the Primary Policy provided to Movant's trial counsel are attached as Exhibit "B".

7. On information and belief, Union Pacific is named as an additional insured under the Primary Policy.

8. It has generally been the Debtors' position that all of their insurance policies covering personal automobile related injuries are subject to a $5 million deductible. A review of the Primary Policy in effect for 2008, however, shows that there is no such deductible applicable to claims for bodily injury. Rather, those portions of the Primary Policy that set forth a deductible related only to "Business Auto" coverage. But, there is also a "Liability Coverage/Bodily Injury" portion. Under the Liability Coverage/Bodily Injury" portion, the deductible does not apply.

9. The absence of a deductible is consistent with the contract for the provision of insurance between Union Pacific and Debtors (Exhibit "C" hereto). Such contract requires

Debtors to obtain insurance to cover automobile related accidents—there is no provision for a $5 million deductible.

10. Even if there is a $5 million deductible, as addressed in detail in the *Reply Of Rosalinda Simon And Diego Acosta In Support Of Their Motion For Relief From The Automatic Stay Pursuant To Section 362(D) Of The Bankruptcy Code (DI 424) (the "Diego Reply"),* it appears that the insurer under the Primary Policy (the "Insurer") is responsible to provide first dollar coverage for the benefit of claimants, and then seek to recover the amount of the deductible from the Debtors. Movant joins in the arguments made in the Diego Reply to the extent applicable.

11. The Debtors have raised certain general arguments against granting stay relief in this or any other case. In the interest of avoiding redundancy, to the extent applicable, Movant incorporates and joins in the arguments made in the Joint Amendment To Motions Of Sean Loehr, As Personal And Estate Representative, Lorraine Kenny, As Estate Representative And Representative Of Statutory Beneficiaries, Michael Galusha And Dawn Galusha, Albert And April Bailey, Ryan MacDonnell And Terry MacDonnell, And Terry And Lavonne Schwartzenberger For Relief From The Automatic Stay (DI 542).

RELIEF REQUESTED AND REASONS THEREFOR

A. Legal Authority

12. By virtue of 11 U.S.C. § 362(a), the PI Action as it pertains to the Debtor Defendant has been stayed pending a hearing on this Motion.

13. Section 362(d) of the Bankruptcy Code provides:

> (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

> (1) for cause, including lack of adequate protection of an interest in property of such part in interest;
>
> (2) with respect to a stay of an act against property under subsection (a) of this section, if—
>
> (A) the debtor does not have an equity in such property; and
>
> (B) such property is not necessary to an effective reorganization.

14. In determining whether cause exists to lift the stay to permit a party to pursue an action outside of the Bankruptcy Court, this Court may consider whether:

a. Any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit,

b. The hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship of the debtor, and

c. The creditor has a probability of prevailing on the merits.

In re Rexene Prods. Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992); *see also American Airlines, Inc. v. Continental Airlines, Inc. (In re Continental Airlines, Inc.)*, 152 B.R. 420, 424 (D. Del. 1993); *Levitz Furniture Inc. v. T. Rowe Price Recovery Fund, L.P. (In re Levitz Furniture Inc.)*, 2000 Bankr. LEXIS 1322, *15 (Bankr. D. Del. 2000); *Save Power Limited v. Pursuit Athletic Footwear, Inc. (In re Pursuit Athletic Footwear, Inc.)*, 193 B.R. 713, 718 (Bankr. D. Del. 1996). Further, courts are directed to consider the following legislative history:

> It will often be more appropriate to permit proceedings to continue in their place of origin, where no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.

Rexene Products, 141 B.R. at 576; *In re Wilson*, 85 B.R. 722, 728-29 (Bankr. E.D. Pa. 1988) (citing S. Rep. No. 989, 95th Cong., 2d. Sess. 50, reprinted in [1978] *U.S. Code Cong. & Ad. News* 5836)

15. The legislative history of section 362 indicates that cause may be established by a single factor such as "a desire to permit an action to proceed . . . in another tribunal," or "lack of any connection with or interference with the pending bankruptcy case." H.R. Rep. No. 95-595, 95th Cong., 1st Sess., 343-344 (1977) *U.S. Code Cong. & Admin. News*, pp. 5787, 6300. *See also In re Rexene*, 141 B.R. at 576 ("cause" for relief was found in order to allow civil plaintiffs to proceed with a class action against the debtor because discovery was nearly complete, both parties were nearly ready for trial prior to the bankruptcy filing, trial of the claim in bankruptcy court would be burdensome to plaintiffs and risk unnecessary, duplicative litigation, and plaintiffs had at least some probability of success on merits of suit); s*ee also In re Drexel Burnham Lambert Group, Inc.*, 113 B.R. 830, 838 n. 8 (Bankr. S.D.N.Y. 1990) (citing various examples of "cause" to permit litigation in another forum such as liquidation of a personal injury, arbitration or specialized jurisdiction claims).

16. This Court, in the *Continental Airlines* decision referred to above, set forth the following framework for analyzing motions for relief from the automatic stay:

> There is no rigid test for determining whether sufficient cause exists to modify an automatic stay. Rather, in resolving motions for relief for "cause" from the automatic stay courts generally consider the policies underlying the automatic stay in addition to the competing interests of the debtor and the movant. In balancing the competing interests of the debtor and the movant, Courts consider three factors: (1) the prejudice that would be suffered should the stay be lifted; (2) the balance of the hardships facing the parties; and (3) the probable success on the merits if the stay is lifted. *See Int'l Business Machines v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.*) 938 F. 2d 731. 734-37 (7th Cir. 1991).

In re Continental Airlines, 152 B.R. at 424.

B. Application to the Case at Bar

17. Application of the standards set forth in the case law here weighs strongly in favor of granting stay relief. The prejudice to Movant in forcing him to pursue his claims in Delaware is manifest. Movant resides thousands of miles away and travel to Delaware is both expensive and impractical.

18. By contrast, the allowance or disallowance of Movant's claim in a large commercial bankruptcy such as this would have no discernable effect on the administration of the Debtors' cases, or confirmation, consummation or implementation of their plan. Furthermore, as California law applies and no bankruptcy issues are involved, this Court's special expertise would not be of assistance in adjudicating this matter. Further, as the PI Action had been pending for almost two years, the Trial Court has some familiarity with that action.

19. As to probability of success on the merits, there is little doubt that the Accident was the result of negligence of Debtor Defendant contributing to cause the accident. Defendant failed to provide the type and the size of vehicle that they were required to provide according to the contract Coach Am Group had with the Union Pacific Railroad, the vehicle was too small for transporting the plaintiff, his fellow employees and their luggage and Defendant was aware complaints had been made about Defendant using the incorrect vehicles that were too small for transporting the employees.

20. Further, Movant submits that the interests of both Movant and Debtors would be protected by granting stay relief. All material witnesses are located in either California or Nevada. None are in Delaware or close to Delaware. A California court already is familiar with this case. Hence, litigating this matter in Delaware would result in greater expense to all parties.

21. Finally, and most significantly, timing is absolutely critical to Movant. Movant was injured on November 2, 2008, almost three and a half years ago. The initial trial was

scheduled to begin December 5, 2011. It was continued to April 16, 2012; however, the Court continued the trial from that date primarily because of this automatic stay. The automatic stay has delayed things even further. The California Court hearing this matter has scheduled hearings for April 24, 2012 and May 1, 2012 to update the current status of the lawsuit based upon the filing of the automatic stay. Plaintiff is not working, he is unable to draw a salary and he is being highly prejudiced by his inability to have his case decided and the facts resolved. Allowing the case to be continued even longer will highly prejudice Plaintiff and also all parties concerned, including the other defendant in the lawsuit, the Union Pacific Railroad.

WHEREFORE, Movant requests that the Court approve the order attached hereto, granting relief from the automatic stay to permit the prosecution of the PI Action against Debtor Defendant along with any subsequent appeals, and granting such other and further relief as this court deems just and proper.

DATED: April 5, 2012

/s/ Christopher D. Loizides

Christopher D. Loizides (No. 3968)
LOIZIDES, P.A.
1225 King Street, Suite 800
Wilmington, DE 19801
Telephone: (302) 654-0248
Facsimile: (302) 654-0728
Email: loizides@loizides.com

Counsel for Thomas Leslie