IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF COLUMBIA

In Re:	
GREATER SOUTHEAST COMMUNITY HOSPITAL CORPORATION I, and DOCTORS COMMUNITY HEALTHCARE CORPORATION,	Case No. 02-2250
Chapter 11	Washington, D.C. May 2, 2006

TRANSCRIPT OF HEARING ON MOTION
FOR RELIEF FROM STAY
BEFORE THE HONORABLE S. MARTIN TEEL, JR.

APPEARANCES:

For National Union:	ROBERT WALLACE, ESQ. DONALD GAFFNEY, ESQ.
For DCHC Liquidating Trust:	SAMUEL J. ALBERTS, ESQ. DOUGLAS MINTZ, ESQ.
For Tuft, et al.:	JOHN DALEY, ESQ.
For Parret and Kraus:	CHRISTIAN WORD, ESQ.
For Melvin Redman, et al.:	PETER M. GENNRICH, ESQ.

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1 **P R O C E E D I N G S**

2 THE CLERK: All rise. This Court is again in
3 session, the Honorable S. Martin Teel, Jr., presiding.
4 Please be seated and come to order.
5 The next case on this morning's calendar will be
6 Case 02-2250, Greater Southeast Community Hospital
7 Corporation I, et al. The matter before the Court is a
8 motion for relief from stay filed by National Union Fire
9 Insurance Company of Pittsburgh PA.
10 If the parties would please come forward and
11 state your names for appearance.
12 MR. WALLACE: Good morning, Your Honor. Robert
13 Wallace for National Union.
14 MR. ALBERTS: Good afternoon, Your Honor.
15 Sam Alberts on behalf of the DCHC Liquidating Trust. With
16 me today is Doug Mintz, a colleague of mine from White &
17 Case. At the appropriate time, I'd like to also introduce
18 the Court to Mr. Peter Gennrich and move his admission for
19 hearing. He represents Mr. Melvin Redman and his wife,
20 Victoria Redman.
21 MR. WALLACE: Your Honor, I would add that if
22 Mr. Alberts will be moving the admission of Mr. Redman's
23 counsel it may be necessary for me to move the admission of
24 Mr. Gaffney, who's National Union's counsel in the Arizona
25 action. But I'll wait and see how that goes, Your Honor.

1 THE COURT: Why don't you move his -- come on up.
2 MR. WALLACE: You want to do it now?
3 THE COURT: Yes.
4 MR. WALLACE: All right. I would move the
5 admission of Donald Gaffney. He is counsel for National
6 Union in the Arizona bankruptcy. He is a partner in the
7 firm of Snell & Wilmer, a member of the bar of Arizona, and
8 the U.S. District Court in Arizona as well as the
9 Bankruptcy Court.
10 THE COURT: Thank you. I will grant that motion.
11 MR. GAFFNEY: Thank you, Your Honor.
12 MR. DALEY: Good morning, Your Honor. John Daley
13 from Arnold & Porter, for Tuft, Mounts, Dietlin, Engelhard
14 and Talbot.
15 MR. WORD: Good morning, Your Honor. Christian
16 Word for Rebecca Parret and George Kraus.
17 MR. ALBERTS: Should I take this opportunity
18 now, Your Honor, to move Mr. Gennrich? Your Honor, I'd
19 like to move the admission pro hac vice of Peter Gennrich.
20 He is an attorney with the law firm of Jay Burke and Wilkie
21 in Phoenix, Arizona. My understanding is that he is
22 licensed and in good standing in Arizona and possibly
23 additional courts including Wisconsin.
24 THE COURT: All right, that motion's granted.
25 State your appearance, please, Mr. Gennrich.

1 MR. GENNRICH: Thank you, Your Honor. This is
2 Peter M. Gennrich, G-e-n-n-r-i-c-h, and I am appearing for
3 Melvin Redman and Victoria Redman, his spouse. And I am
4 an active member in good standing of the Arizona and
5 Wisconsin bars.
6 THE COURT: It's the motion of National Union.
7 I'll hear from National Union.
8 MR. WALLACE: Good morning, Your Honor. Robert
9 Wallace for National Union.
10 As the Court's aware from our papers, National
11 Union issued a D&O policy to various officers and directors
12 of the DCHC that include individuals who are represented by
13 counsel here today: Paul Tuft, Eric Mounts, Steve Dietlin,
14 Donna Talbot, Susan Engelhard, Rebecca Parret, George
15 Kraus, and Melvin Redman. The policy is attached to our
16 motion. It's also attached to the Trustee's objections.
17 We believe the threshold question for this Court
18 is whether the policy is the property of the DCHC Trust and
19 is subject to a stay in this Court. The reason we filed
20 the request to lift the stay, if any stay does exist, was
21 to give the Trustee an opportunity to assert whatever
22 rights and claims he may have in the policy. In essence,
23 National Union comes before this Court by way as an almost
24 an inter-pleader. Obviously we succeeded in finding the
25 Trustee's position on this matter -- he filed his

1 objections. But the Trustee also stated that there is no
2 dispute that the D&O insurance proceeds are the property of
3 the individual directors and officers covered by the
4 policy, and as such that would mean that the DCHC has no
5 interest in those policies directly.
6 We believe that even if the Court were to
7 conclude that a stay was in place in this Court, that
8 National Union should be relieved of whatever stay may
9 exist so that it can pay the defense costs sought by the
10 non-debtor coinsureds. There are multiple interests in
11 these policies, the non-Debtors having the principal claims
12 to date.
13 The stay, if it exists, should be lifted because,
14 as we said in our briefs, the Spalding and other cases
15 stand for the proposition that where there are multiple
16 claims to a policy and where that policy has provision for
17 defense costs, that the stay would not apply to the
18 non-debtor insureds and that the defense costs should be
19 distributed. We think it's fundamental that one director
20 or officer cannot improve his position vis-a-vis the
21 non-debtor officers and directors simply by filing for
22 bankruptcy.
23 We do want to point out that the contention by
24 the Trustee that the other insureds made a claim against
25 the policy -- that Mr. Redman made a claim for the other

1 insureds, is not correct. If you want to contend that the
2 first claim was made by DCHC when it simply tendered the
3 claim to National Union, then that would have been on
4 behalf of all officers and directors, in which case there
5 would be a ten-way tie. If it is made upon the time when
6 the individuals have sought reimbursement of the defense
7 costs, then Mr. Redman has not sought defense costs. He
8 did not hire an attorney -- or at least did not advise us
9 that he was seeking them -- but the other non-debtor
10 insureds have. And they go back well over a year in those
11 requests.
12 Now, the Trustee has raised the Arizona
13 bankruptcy as an issue to both attack National Union as
14 attempting to get around a stay in Arizona and as
15 controlling in this Court. Well, first of all, by
16 definition it is not in this Court, it's in Arizona. We
17 note that Mr. Redman was discharged from his Chapter 7
18 bankruptcy on May 5th, 2005. So the only question really
19 is -- and under 36(c)(2)(C) of the Code, that would
20 automatically lift the stay.
21 Now, I assume that there's a claim being made
22 under 36(a), that somehow this policy is property of the
23 Redman estate, even though to our knowledge it was never
24 scheduled.
25 It is only recently that the Trustee has sought

1 to move into the shoes of Redman through the settlement --
2 proposed settlement agreement that he's entered into with
3 Mr. Redman, but it's not been approved by the Court in
4 Arizona. Even if the Trustee could stand in the shoes of
5 Mr. Redman, we think the same reasoning applies to
6 Mr. Redman and for the Trustee standing in his shoes as
7 would apply with respect to this Court, and that is
8 multiple parties having an interest in a policy cannot --
9 one party cannot invoke a stay and thereby jump ahead of
10 the others.
11 We think there are compelling reasons to lift the
12 stay, if it exists, and to permit National Union to pay the
13 attorneys fees incurred by the non-debtor officers and
14 directors. They've incurred over $450,000.00 in defense
15 costs -- actually, 600,000, but with the $150,000.00
16 retention, that nets out to 450-plus. We think what's
17 happening is that the Trustee is -- by trying to invoke a
18 stay which we don't believe exists -- attempting to starve
19 out the non-debtor officers and directors, because they
20 won't be able to pay their defense costs in the very
21 adversarial action that the Trustee is aggressively
22 pursuing against them.
23 As to the prejudice incurred by the non-debtor
24 insureds, I think it's rather obvious but they are here and
25 represented by counsel who can more ably address that issue

1 than I can.
2 That's all I have for now, Your Honor.
3 THE COURT: Thank you.
4 MR. WORD: Your Honor, Christian Word. At this
5 time -- well, let me back up. As you know, I represent
6 Ms. Parret and Mr. Kraus, and John Daley from Arnold &
7 Porter represents the other individual Defendants here, the
8 individuals who are seeking to be paid or to receive the
9 advancement of their defense costs under the insurance
10 policy.
11 At this time, we don't have any arguments we'd
12 advance in addition to what National Union has offered.
13 Unless Your Honor has any questions, we're happy to sit
14 down and wait until after Mr. Alberts has made his
15 presentation.
16 THE COURT: Thank you.
17 MR. ALBERTS: Your Honor, I'm going to have some
18 exhibits that I have copies for you and your law clerk.
19 I've provided a set to National Union. I don't think any
20 of them will be controversial because they are basically
21 all from public records, but let me take a step back and
22 discuss the context of this action, where it's all fitting
23 in, because I think it's important for Your Honor to
24 understand.
25 First of all, National Union is not just seeking

1 relief from stay. They're seeking authority to draw down
2 from this insurance policy in order to pay defense counsel.
3 Now, they've identified two of the defense counsel. They'd
4 like to pay Latham & Watkins and Arnold & Porter, whose
5 fees apparently at this point top $600,000.00. There are
6 additional D&O counsel, some of whom are on the line, some
7 of whom are not.
8 We have Wilson Ellis, who are representing
9 National Union; we have Jaber of -- I'm sorry, Snell &
10 Wilmer, who is on the line here today representing National
11 Union in Arizona. We have the law firm of Lewis & Roca,
12 who is representing the D's and O's in the Arizona action
13 against Mr. Redman, there's been a lot of litigation there,
14 we suspect that they're going to want to draw down from the
15 policy there. So we have no idea what exactly they wish to
16 draw down. But I do think there are few things that are
17 very clear here, Your Honor.
18 Number one, there is a stay in effect in the
19 Arizona action of Mr. Redman. Mr. Redman's property
20 interest includes the proceeds from this policy. We are
21 seeking approval of a settlement in the Arizona Court on
22 May 11th which, Your Honor, I will subject to you I think
23 it is the position of the partially released D's and O's
24 that if we obtain that relief and we're able to draw down
25 from the policy, they're out of this case. Now, why do

1 they make that argument and how does this all fit together.
2 Let's take a step back to when the plan was
3 confirmed. Under the plan, as you may recall, there was a
4 certain carve-out for partially released parties. Certain
5 directors and officers were going to be released in part.
6 They would be released in part for amounts above
7 $10 million, and this was clearly done under the plan.
8 And those are the D's and O's who are not Mr. Kraus and
9 Ms. Parret in this action. They include Paul Tuft, Eric
10 Mounts, Donna Talbot, Susan Engelhard -- I may have missed
11 one. But, so you have two groups of defendants from the
12 D&O side, the partially released defendants and the
13 non-partially released defendants.
14 And let me show you a copy of the plan, the
15 confirmation order -- I'll hand one up to both you and your
16 clerk. This was entered by this Court; I think the Court
17 can take judicial notice of it.
18 The applicable provision, Your Honor, starts on
19 Section 8, on page 13, in which Section 12.1 of the plan
20 was deleted and superseded. And looking at Section B, it
21 defines who the partially released parties are. And you
22 will see that they include Paul Tuft, Eric Mounts, Steve
23 Dietlin, Donna Talbot, Susan Engelhard, and a host of other
24 D's and O's who have not been sued. Okay?
25 You look at Section D, and that talks about what

1 these D's and O's need to do and what they will do in
2 exchange. They need to provide declarations providing
3 information about their assets or lack of assets. And if
4 they file that with the Trustee and do so under penalty of
5 perjury they fall within this partially released class.
6 And in exchange for that they release any and all claims
7 against the estates. Okay. Now, that's important and we
8 will get to that in a few moments.
9 If you jump to Section K, you will see the magic
10 language. It's on page 22. Which talks about the
11 $10 million cap. And what it provides for Your Honor is
12 that the partially released parties "shall not be released
13 from any amount up to $10 million arising out of their
14 management and governance of the Debtors to the extent
15 unreleased claims give rise to insurable claims under the
16 Debtor's directors and officers insurance policy."
17 So for the partially released parties, they can
18 be held liable up to $10 million for claims that are
19 covered by the policy. Okay?
20 It's interesting, but in all of the motions to
21 dismiss filed so far they've never argued that none of the
22 actions against them are not covered. We suspect that
23 National Union may want to raise that someday in the
24 future, and we're glad that they're finally participating
25 in this bankruptcy case because we would like them to be

1 bound by Court findings. But the reality is, they really
2 haven't properly moved for it.
3 So we have these two groups. Mr. Kraus and
4 Ms. Parret can be held liable for whatever they can be held
5 liable for, the other partially released D's and O's, or
6 the partially released D's and O's, are limited. Now.
7 What happened, Your Honor, after this case.
8 Well, you have some experience with Mr. Redman.
9 We had a 2004 examination where Mr. Redman failed to
10 comply. This Court entered an order of contempt against
11 him, and we were about to have a hearing on sanctions where
12 Mr. Redman filed for bankruptcy in early 2005. He did so
13 in his home state of Arizona. Okay?
14 We filed proofs of claim, and before the
15 applicable deadline an adversary proceeding for
16 nondischargeability. Basically we said his breach of
17 fiduciary duty or defalcation as a fiduciary allows us to
18 get at him and create a nondischargeable claim.
19 After a series of litigation going on for months
20 and months, the parties worked out a settlement agreement,
21 a very detailed settlement agreement. And that settlement
22 agreement, Your Honor, includes what is known as a "Morris
23 Damron Agreement," which is very unique to Arizona law.
24 What this agreement does, Your Honor, is because Mr. Redman
25 is a debtor in a bankruptcy case in Arizona, we move under

1 9019, we say, Mr. Redman and your Chapter 7 Trustee and
2 Mrs. Redman and her Chapter 7 Trustee -- same Chapter 7
3 Trustee -- we will resolve all claims between us,
4 Mr. Redman's claims in our bankruptcy case go away, our
5 claims in Mr. Redman's case go away, our
6 nondischargeability action against Mr. Redman will go away.
7 In addition to that, Mr. Redman will confess judgment. And
8 in exchange for the confession of judgment, we will agree
9 not to prosecute him but only go against the insurance
10 proceeds and National Union for claims of bad faith that
11 Mr. Redman may have.
12 Now, Your Honor, this is permissible under
13 Arizona state law, under a series of cases called Morris
14 Damron. It doesn't exist here in D.C. But it does exist
15 out there. And we filed this motion, and I'd like to hand
16 up a copy of the motion and the settlement agreement, and
17 you can see that it is very detailed, a lot of work went
18 into this by both parties, in order to get a resolution.
19 Now, it's not stated here, Your Honor, but it is
20 really the position of the partially released D's and O's
21 that, "Look, if you get the money from the insurance policy
22 from the Arizona settlement, we're out." And let me tell
23 you, Your Honor, in terms of prejudice? I've said it
24 before and I will say it again. If they want in to the
25 same type of settlement agreement, we're happy to do it.

1 These are for the partially released parties. Confess
2 judgment, we'll just go right after the policies for
3 National Union and they're out of the case. So there's
4 really no prejudice here, and we don't understand why it's
5 been so difficult to get. But we're hopeful that we're
6 going to get it out in Arizona.
7 Now. Let's bring us to where we are with the
8 lift stay here and why was it filed now, right on the eve
9 of us trying to settle in Arizona. Well, it's very clear
10 what's going on here for a strategic reason but, Your
11 Honor, legally this motion should not have been filed at
12 this time. First of all -- well, let me take one slight
13 step back.
14 National Union is not a creditor in this case.
15 They did file a claim at one point. I have a copy of that
16 claim here, I'll provide it to the Court. A copy has been
17 provided to National Union's counsel, and this is marked as
18 Exhibit Number 3. That claim, however, Your Honor, was
19 objected to and that objection sustained by this Court by
20 order dated January 30th, 2006. I have here a copy of
21 Exhibit Number 4. Let me see if I can get that.
22 If you will look at Exhibit Number 4, there is a
23 listing of those claims under "A" which have been treated
24 as expunged, one of which is the claim of National Union
25 for the exact amount that they filed their proof of claim

1 in. So National Union is not a creditor in this case.
2 National Union is not a party in interest, therefore, and
3 therefore for National Union to be heard they need to move
4 to intervene, whether it is the adversary proceeding or the
5 main case.
6 THE COURT: Why is there an automatic stay still
7 in this case after a confirmed plan?
8 MR. ALBERTS: Under the plan, the plan extended
9 the stay -- I have a copy of that, Your Honor -- until
10 closing. This I had marked as Exhibit Number 5, so I guess
11 the timing is perfect.
12 If you look at Exhibit Number 5, Section 9.1 --
13 did you get a copy of that? -- you will see that the stay
14 is in effect in this case. Okay?
15 In addition, Your Honor, there is a reason why
16 they moved for relief from stay. It's pretty clear under
17 the policy's plain language that the policy covers the
18 company, quote, "the company," and other insureds. The
19 company appears to be DCHC and its subsidiaries under the
20 language of the policy, so it would appear from the plain
21 language of the plan that the stay in this case is still in
22 effect. And that would require -- assuming we can get to
23 procedurally that this motion was brought on properly,
24 which it wasn't, they then need evidence to establish why
25 the stay should be lifted. And I will get into that

1 momentarily as to why they have not met their burden.
2 So there is a stay in this case. There's no
3 dispute that Melvin Redman is a covered person under the
4 policy, and I think the other parties now are agreeing that
5 this policy is what they call a "race policy." Most
6 insurance policies are. The first one who goes after it
7 and gets it can deplete the policy. Okay? And that's
8 what's happened here.
9 Now, there may be factual issues about, well, did
10 Melvin Redman first submit his claim before they submitted
11 their current request for $600,000.00 in fees or some
12 portion of that? We don't know. That should, frankly, be
13 taken care of out in Arizona. Really where this case --
14 this matter belongs, is out in Arizona. Which is my second
15 point.
16 Which is there is a stay in Arizona. The stay is
17 in effect. Why they didn't move for relief from stay out
18 there is unclear, except for that I think it falls within
19 their strategy of trying to muck up the works enough where
20 they can go into the Arizona Bankruptcy Court and say,
21 "Listen, Judge, you shouldn't hear this, it's all being
22 taken care of D.C. --"
23 THE COURT: All I'm addressing is the automatic
24 stay in this case. If the automatic stay has expired in
25 Mr. Redman's case or relief from the stay is granted by the

1 Arizona Court in Mr. Redman's case, that's the business of
2 the Arizona Bankruptcy Court. It's really not a concern of
3 this Court.
4 MR. ALBERTS: Well, but they are asking you, Your
5 Honor, not just for relief from stay but for authority to
6 pay and draw down from the policy. If you look at the form
7 of order and what they are seeking, that's exactly what
8 they want. So they want a blessing from this Court, not
9 only for relief from the stay, but that they can make it
10 pay.
11 THE COURT: Well, I'll make it clear that if
12 there's an automatic stay in Mr. Redman's case, it's not
13 addressed by this order. That takes care of that issue.
14 MR. ALBERTS: All right. Well, let's get down to
15 the automatic stay issue, then.
16 Your Honor, they have to show where the harm is
17 for them. They have provided no evidence as to it. In
18 fact, Your Honor, they do not say why they cannot be paying
19 their insurance counsel. In fact, it's unclear, you know,
20 why this came up at this moment in time. It's very clear
21 the strategic reason of what they're doing.
22 Now, I say that because from public filings, Your
23 Honor, it's very apparent that, for example, from an SEC
24 action, Ms. Parret received almost $12 million in
25 compensation between 1999 and 2002. Now, she may have some

1 legal problems, but that's a whole lot of money. And she
2 has not submitted an affidavit saying I can't pay my
3 counsel, I must pay from these insurance policies.
4 Nor has Mr. Kraus. I have public filings here,
5 Judge, from various stock he owns in companies. He's large
6 enough in some of these companies where he's one of the few
7 listed people of major equity holders, holding millions and
8 millions of dollars in stock. So Mr. Kraus has a lot of
9 money in which to pay counsel, and that's really the issue.
10 The other partially released parties? They get a
11 "get out of jail free" card if they want it. There is no
12 reason to be litigating with us any further if they don't
13 want to. They can enter into the same deal as Mr. Redman.
14 Now, they cite a variety of issues, Your Honor,
15 which --
16 THE COURT: Outside of bankruptcy, if nobody were
17 in bankruptcy and six directors were trying to get their
18 attorneys fees paid by the insurance company, and you had a
19 settlement with another set of directors that potentially
20 would be covered by the insurance, what rights would you
21 have to stop the people who want to get their attorneys
22 fees paid from getting their attorneys fees paid?
23 MR. ALBERTS: Well, I think, Your Honor, the
24 right would belong to Mr. Redman in this case, and once we
25 take over his rights then they would inure to us. And

1 under the settlement agreement we're proposing we would
2 take over his rights. Currently we can't prevent it, other
3 than through bankruptcy. At least, I don't see a way of
4 doing it. And that's where our prejudice is, Your Honor.
5 Once they pay these amounts, I don't know how we get them
6 back.
7 THE COURT: That's what happens outside of
8 bankruptcy, right?
9 MR. ALBERTS: Well, Your Honor, I think --
10 THE COURT: So why does bankruptcy enhance your
11 right to try to prevent what would happen outside of
12 bankruptcy?
13 MR. ALBERTS: Well, Your Honor, first of all
14 there are automatic stays in effect, and Congress saw fit
15 to provide a debtor with that right. What they should be
16 doing is making this argument to the Redman Bankruptcy
17 Court, saying, "Judge, we are entitled from relief from
18 stay so we can pay this." That's where this action should
19 be.
20 And what I would propose, Your Honor, if Your
21 Honor has these issues is, we treat this hearing as a
22 preliminary hearing on relief from stay, have them file a
23 motion to intervene properly so then they can be bound in
24 the future by what's going on, we can allow the Arizona
25 hearing to continue and maybe reach fruition, and maybe we

1 never come back here again from this point.
2 They have not provided any evidence of harm. I
3 think, Your Honor, there is evidence of harm which we've
4 just discussed. They want to deplete the policy. They
5 want your blessing to do that. They want to pay their
6 counsel for doing that.
7 THE COURT: They want to get representation.
8 MR. ALBERTS: What's that?
9 THE COURT: The directors who are calling upon
10 the policy want to have their counsel paid. And they're
11 being prejudiced because they're not able to pay their
12 counsel, and it seems to me when you're looking at
13 insurance covering claims against directors, that the first
14 order f business for the insurance company is to go ahead
15 and pay the attorney so that everybody's got attorneys
16 representing them in the litigation. Isn't that the first
17 order of business?
18 MR. ALBERTS: Well, Your Honor, one might say
19 that, but here National Union declined -- first reserved
20 all claims issues, and apparently hasn't paid. And this
21 litigation's been going on for a year and a half now. So
22 it's only because we have brought this to the attention of
23 the Arizona Court, we've got a settlement right on the
24 verge, are they saying, "Oh, we must have the right to pay
25 our counsel."

1 THE COURT: Well, if it turns out that the
2 directors whose attorneys fees would be paid if I grant
3 relief from the stay, if it turns out that National Union
4 didn't owe any obligation to them then I don't see how
5 National Union can say, "Oops, the insurance policy's been
6 depleted by those payments out." It's acknowledging by
7 paying those amounts out that there was coverage, and --
8 MR. ALBERTS: I don't think I've heard National
9 Union say that. I don't think they've said that they are
10 willing to be bound or that they consider the claims to be
11 timely. They've continued to reserve. They've continued
12 to say, "We don't think we're liable for any of it. We
13 don't think that the Creditors Committee in this case --
14 back when it was the Creditors Committee -- their notice to
15 us was effective, it had to come from each D&O separately,
16 and you know, we reserve the right to raise all these
17 issues in the future," so we can get through judgment and
18 then we're going to still have to fight with them about it.
19 What I'm concerned about, Your Honor, is we are
20 exhausting this policy on a whole host of attorneys. We've
21 got a settlement agreement pending in Arizona which will
22 resolve a lot of these issues, we have offered to bring in
23 the other D's and O's --
24 THE COURT: If they pay somebody under the
25 insurance policy and later demonstrate that person was not

1 entitled to coverage, you would be able to argue, I would
2 think, "Now, you made a payment to somebody who wasn't
3 entitled to coverage. And therefore that payment doesn't
4 count against the policy."
5 MR. ALBERTS: Your Honor, you're assuming that
6 they're going to go after that money. I don't think they
7 will. I think they're going to make the payment and
8 require us to.
9 THE COURT: No, no, I'm saying that if they make
10 a payment out and you later recover a judgment against one
11 of these Defendants and they say there's no coverage and
12 they can demonstrate there really wasn't any coverage, they
13 can't very well, if you had a judgment against another
14 director, say that the payments for the attorneys fees for
15 the directors who prevailed, they can't very well say that
16 those funds are unavailable for you. If they decline to --
17 I've got it backwards. They can't take inconsistent
18 positions is what I'm trying to say.
19 MR. ALBERTS: Well, Your Honor, I think that --
20 I don't know what the arrangement is with proposed debtor's
21 counsel -- if they are offering to pay this amount subject
22 to a claw back, what we're talking about going forward in
23 the future. Just by these two counsels we're talking about
24 $600,000.00. We're not even past the motion to dismiss
25 stage. They have several other attorneys who are working

1 with National Union. I don't know if they're going to try
2 to drawn down the policies from that. I do know, though,
3 that if they are successful in this, this makes it more
4 difficult for us to settle with Mr. Redman, because our
5 settlement was contingent upon the payment of those
6 proceeds. That's why we moved when we did and sought to
7 get a hearing, and it's been delayed and delayed by the
8 insurance companies.
9 And I think, Your Honor, the way to resolve this
10 issue is that they have not provided procedurally a basis
11 to get into this case. They need to do it.
12 Number two, this should be treated as an initial
13 hearing on relief from stay. I think they need to present
14 evidence as to their harm as to why the stay should be
15 lifted. And I think we should set this matter out to occur
16 after the Arizona Court makes its determination.
17 I suspect, Your Honor, once that Arizona Court
18 makes its determination, we may have a resolution for the
19 partially released D's and O's, and we're certainly going
20 to have one for Mr. Redman, and possibly even the other D's
21 and O's. Our problem is here we have no idea what they're
22 going to try to draw down -- and what they're seeking is,
23 frankly, improper. They just don't want relief from the
24 stay, they want authority to pay. And they want to be able
25 to go to the Arizona Bankruptcy Court and say, "See, the

1 D.C. Court is involved, he's authorized the payment from
2 these policies, don't hear this matter." And I think
3 that's improper, Your Honor. I think that the fact that
4 they brought this motion when they did is telling for
5 exactly the reasons of what they're trying to do here. And
6 they could have requested this relief a year ago, at the
7 beginning of the case, but they didn't.
8 So I don't think they've met their burden, Your
9 Honor. I think that there is prejudice to the trust. I
10 don't think it should be the trust's duty to go and chase
11 after counsel, if that's what it comes down to, if they get
12 paid out improperly, I have no idea if the 600,000 is
13 reasonable or not.
14 THE COURT: Let me ask this -- you've got an
15 order that says the automatic stay stays in place, but the
16 fact of the matter is that the insurance policy is now held
17 by the liquidating trust and not by the estate. Is the
18 automatic stay even applicable if it's not estate property
19 any longer and it's property of the liquidating trust?
20 MR. ALBERTS: Well, I don't think it is property
21 of the trust, Your Honor. We are not an insured. We
22 didn't take over the policy. And we did that specifically,
23 Your Honor, so that the insurance company could not assert
24 an insured versus insured exclusion. So what happened,
25 Your Honor, is that the policy itself stays with the

1 debtors. That's why the stay is in effect.
2 THE COURT: Aren't the debtors reorganized
3 debtors with a change in -- aren't they new entities?
4 MR. ALBERTS: Well, but I think the stay applies
5 to them. I think the confirmation order was intended for
6 the stay to apply to them. That's why you have these lift
7 stay motions filed against the debtors in certain instances
8 after confirmation of the case.
9 And notably, you know, the debtors have not
10 weighed in on behalf of National Union. And we don't know
11 if their counsel, Mr. Berkowitz, is going to want to get
12 paid from this policy. And who is this all hurting, Your
13 Honor? It's hurting the creditors of the estate. We're
14 just trying to get the policy monetized, which we can do
15 out in Arizona, and pay these amounts out to creditors.
16 That was our charge. That was the deal under the plan, and
17 we now have an army of lawyers on the other side, two of
18 which, I guess, you know, they have $600,000.00 worth of
19 fees; we don't know about all the others. And I think,
20 Your Honor --
21 THE COURT: In agreeing to the plan, these
22 partially released directors knew they were going to be
23 able to look to insurance to cover their attorneys fees.
24 And you're telling me no, you can't look to the insurance
25 to cover your attorneys fees, you're going to have to

1 shoulder that burden yourself.
2 MR. ALBERTS: No. What I'm saying, Your Honor,
3 is they need to go into the Arizona Court and ask for
4 relief from stay.
5 THE COURT: Well, I've said that's the Arizona
6 Court's decision. But as far as this Court is concerned
7 I've got a plan that contemplated that they would be able
8 to look to insurance and would be entitled, under the --
9 they envisioned that they'd be able to get their attorneys
10 fees paid by the insurance company as they litigated these
11 D&O claims.
12 MR. ALBERTS: Well, Your Honor, you're putting
13 the trust in a very awkward position because we are not the
14 debtor in the Arizona case, and Mr. Redman -- you will hear
15 from his counsel -- Mr. Redman has no money. He could not,
16 you know, afford to, you know, have his counsel file a
17 brief. Apparently, he hasn't paid his counsel. So we are
18 trying -- you know, we're taking over the laboring oar, but
19 this is a burden on the estate. And if what you're saying
20 is, "Well, we'll just grant relief from the stay, you go to
21 Arizona and, you know, try to enforce it," that's a burden
22 that isn't necessary, and that should be factored into the
23 stay issue here.
24 Again, I think we have procedural defects which
25 are important and I do think that this matter should be

1 considered further by the Court and set for a final
2 hearing. This should be treated as a preliminary hearing.
3 Let them get their evidence together as to who exactly they
4 want to pay. Is it just Arnold & Porter and Latham &
5 Watkins? Or are there other attorneys? How many hundreds
6 of thousands of dollars more -- or millions -- in attorneys
7 fees are we? When were those requests made? All of these
8 factors go into the issue of cause. And they have not
9 established it, Your Honor.
10 I don't know if Mr. Gennrich is still on the line
11 or --
12 THE COURT: I think somebody's trying to call in
13 who --
14 MR. GENNRICH: No, I am -- this is Peter
15 Gennrich. I am still on the line. If the Court please.
16 THE COURT: I'll hear from you.
17 MR. GENNRICH: Thank you, Your Honor.
18 THE COURT: Unless Mr. Alberts has anything else.
19 Okay, thank you, Mr. Gennrich.
20 MR. GENNRICH: I do appreciate the Court's
21 willingness to allow me to appear by telephone.
22 Mr. Alberts is indeed correct that Melvin Redman and his
23 wife Victoria are out of money, have run out of money some
24 time ago. But I was concerned -- we were concerned -- on
25 their behalf that their failure to appear, failure to file

1 any kind of pleading in this matter be interpreted as
2 apathy on their part as to what takes place here. They are
3 very much concerned. They of course, as the Court has
4 heard, have reached a settlement with the DCHC Trustee
5 which would allow them to move on with their lives and it's
6 subject to approval out in Bankruptcy Court here. That has
7 been held up by the insurer, among others, objecting. And
8 it's scheduled for a hearing on May 11.
9 The concern here from the Redmans' standpoint,
10 of course, is that the D&O policy proceeds, they believe,
11 do constitute property of the bankruptcy estate here. The
12 concern of the Redmans is that the combination of the
13 insurer's objection to the settlement agreement out here,
14 coupled with now their afterthought of filing a motion for
15 relief in the Washington, D.C., court is basically a
16 combined effort to get an order out of the Washington, D.C.
17 Court which specifically authorizes them to pay out
18 proceeds and then bring that to Arizona and try to convince
19 Judge Nielson here that it's basically a done deal, or that
20 he no longer has the jurisdiction, that the Washington,
21 D.C. court has ruled, and quite frankly that's simply a
22 confusion of issues which is inappropriate.
23 The reliance by National Union on the case cited
24 in the materials in their brief, we believe, is totally
25 unfounded. The case that they cite is Spalding Composites,

1 it's a 9th Circuit Bankruptcy Appellate Panel decision.
2 It is a declaratory action decision, and as a matter of
3 fact, one of the points of the decision which permits,
4 which holds that the declaratory action is not a violation
5 of the automatic stay -- and I'm looking at page 907 --
6 emphasizes the fact that the declaratory judgment action is
7 not an attempt to exercise control over any estate
8 property. And that is not what we have here.
9 What we have here is in fact an attempt to get
10 a Washington, D.C. Court order that specifically relates
11 and approves their payment of insurance proceeds which then
12 they can bring to Arizona to further their attempt to block
13 any settlement out there. And we believe that's
14 inappropriate. We support the DCHC trust's position. We
15 believe that at a minimum the motion should be denied --
16 or, we believe the motion should be denied, but at a
17 minimum a further hearing scheduled after the Arizona Court
18 has had its opportunity to rule on the merits of that
19 settlement agreement on May 11.
20 Thank you.
21 THE COURT: Thank you. All right, a reply?
22 MR. WALLACE: Your Honor, I think you've spoken
23 to the issue of the Arizona stay and we respect that, and
24 we're only going to focus on the stay in this Court. Still
25 do not believe that there is a stay in this Court. We do

1 have a duty under the policy to -- it's not a duty-to-
2 defend policy but it's a duty-to-reimburse, and we advance
3 fees, and if the issue were to come up, as Your Honor
4 pointed out, where we ultimately concluded that our duty to
5 defend is -- or to advance fees is greater than our duty to
6 indemnify, which is sort of black-letter insurance law,
7 then we would seek to get it back and I'm sure that, as you
8 indicated, the Trustee would probably seek to get it from
9 us. So that's for another day.
10 But we are not trying to use one Court against
11 another, advantage anyone. We're simply trying to put
12 ourselves in a position where when we pay what we believe
13 we're obligated to pay, that we do not face a contempt
14 order or some injunction.
15 As to the other points raised by the Trustee, I
16 do want to point to a couple of things. He lists several
17 attorneys which he's afraid are going to come in and bleed
18 the policy dry. I assure you that as counsel for National
19 Union we do not have a right to claim under the policy.
20 And that Snell & Wilmer, as counsel for National Union, do
21 not have a right to claim under the policy. So you can put
22 that aside.
23 The fees that we're putting before the Court are
24 the ones that we've had -- that have been presented to us.
25 I don't know of others. We're not hiding anything in the

1 weeds. We're certainly not trying to get a ruling from
2 this Court that's binding on the Arizona Court. We're
3 simply trying to establish that there's not a stay in this
4 Court and that if there is a stay it should be lifted with
5 respect to National Union. I don't see why we need to
6 intervene in the adversarial action to accomplish this.
7 As I said when I opened, we're in the nature of
8 an inter-pleader and we're simply seeking the Court's
9 guidance so that we can do what we feel we're contractually
10 obligated to do. It's, from our perspective, as simple as
11 that.
12 Thank you, Your Honor.
13 MR. GAFFNEY: Your Honor, this is Don Gaffney
14 from Snell & Wilmer.
15 THE COURT: Go ahead, Mr. Gaffney.
16 MR. GAFFNEY: Your Honor, I appreciate your
17 giving us just a moment today. I just wanted to correct a
18 couple of impressions.
19 First of all, the National Union through its
20 service center was served with the proposed settlement down
21 here in Arizona. We didn't seek a copy of it, we were
22 presented with it, with a notice asking us to file a
23 response.
24 The second point is is that Judge Nielson, what
25 Judge Nielson is hearing on May 15th is not the settlement.

1 What he is hearing -- Judge Nielson directed the parties to
2 brief the preliminary question as to which Court should
3 take up the issue of the settlement, because it's a fairly
4 complicated set of issues. And that what we are in the
5 process of briefing is that preliminary question, and that
6 will be discussed on May 15th. There is no hearing set on
7 the settlement itself, which under our law would require an
8 evidentiary hearing, and under our local procedures
9 requires a noticed evidentiary hearing. So that's not any
10 time imminent.
11 And the third point is, I'd just like to assure
12 the Court, counsel can confirm this, filing the motions for
13 stay relief before your Court in D.C. had nothing to do
14 with a coordination of strategy with Arizona. I found out
15 this proceeding purely by accident on Friday by looking at
16 the D.C. docket and contacting Mr. Wallace. Because there
17 seemed to be some misimpression that the automatic stay
18 still was in place out here in Arizona, that the discharge
19 had been entered back in May, and in fact that this case is
20 pretty much done, the Chapter 7 Trustee's already filed his
21 final report, there's no distribution to unsecured
22 creditors in this case, in the Redman case out here, but
23 again, as the Court indicated, that would be for Judge
24 Nielson's discussion.
25 But I just wanted to place those points on

1 record.
2 THE COURT: All right, thank you.
3 MR. GAFFNEY: Thank you, Judge.
4 THE COURT: Mr. Daley?
5 MR. DALEY: John Daley, Your Honor. For the
6 partially released defendants.
7 Mr. Alberts said some interesting things about my
8 clients, and I think the point he was trying to make was
9 that there was no prejudice to my clients for their counsel
10 not being paid. I have two responses to that.
11 First, I'm not so sure that's even relevant, because he's
12 conceded in his papers that at least the proceeds of the
13 policy belong to the D&Os, not either the reorganized
14 debtors or the liquidating trust or the debtors. So the
15 stay doesn't apply, so it's sort of irrelevant.
16 But there certainly is prejudice, and Your Honor
17 focused on the reason why. My clients have been sued.
18 They have a right to defend themselves. The policy gives
19 them the right to have their counsel paid by that policy,
20 and money or not, whatever sort of offers that appear to
21 having been made in open Court, they have the right to
22 defend their name, they have the right to dispute what they
23 believe to be very groundless claims, and they have been
24 doing so for the better part of a year. And for that
25 reason, and that reason alone, they have prejudice.

1 And I would point Your Honor to the WorldCom case
2 that we cited in our opening papers, on page 469 to '70,
3 where they make that very point. That the inability to pay
4 your counsel is, as a matter of fact, irreparable harm.
5 Irreparable harm. The fact that money is fungible doesn't
6 matter; you have the right to have your counsel paid when
7 you need your counsel paid. So there's really no dispute
8 of that.
9 THE COURT: There was no agreement for counsel to
10 look solely to the insurance policies for payment of fees?
11 MR. DALEY: Again, I don't know that that is sort
12 of relevant. I mean, you have a right under the policy to
13 be paid under the policy, and in that case, you know,
14 you've contracted for that right and you have that right
15 and you're allowed to have it paid.
16 Whether or not you can, you know, find change
17 under the couch or sell your house or do other things to do
18 it isn't really the point. The point is, you have a right
19 under that policy to have your counsel paid and to defend
20 yourself. That's the reason why you buy the insurance.
21 It's why the reason why the insurance was purchased. And
22 that's it. Unless you have some other questions, Your
23 Honor, that's all I have to say.
24 THE COURT: All right. Thank you.
25 MR. WORD: I just wanted to address a couple of

1 quick points, Your Honor, again. Christian Word for
2 Defendants Parret and Kraus.
3 As I think has become obvious is my two clients
4 are sort of outsiders to most of the bankruptcy agreements
5 that have gone on between the debtor, the reorganized
6 debtor and the liquidating trust, and some of the other
7 directors and officers. But the fundamental point, which
8 they are part of the group, is that they are former
9 directors of DCHC and are protected by the insurance
10 policy.
11 And Mr. Alberts made a point during his
12 presentation to highlight that Ms. Parret made some monies
13 in the past, or that Mr. Kraus has some current assets.
14 That's entirely irrelevant, Your Honor, to whether or not
15 they have the right to obtain defense costs under the
16 insurance policy. This insurance policy was set up
17 specifically to cover instances like this, to protect
18 individuals' assets when they are sued by shareholders,
19 others, or in this case, by a liquidating trustee. And my
20 clients are looking to that policy to cover those defense
21 costs.
22 In fact, this policy has some unique provisions
23 that require my clients to seek out certain counsel and to
24 hire those counsel. As a typical term in a National Union
25 insurance policy there's what's known as a "panel counsel

1 list," counsel that are experienced in these types of
2 matters and that the insurance carrier directs the insureds
3 to look to when they have to retain counsel.
4 So my clients selected my firm to represent them
5 in this matter because they were looking to the insurance
6 policy to pay our bills. They didn't just go out and hire
7 the attorneys that they're used to working with. For
8 example, Ms. Parret has counsel in Ohio. She has counsel
9 in Arizona. She didn't use any of those law firms she has
10 experience with. She looked at my firm, because this D&O
11 insurance policy told her that she needs to look to one of
12 the panel counsel attorneys. And that's why she came to
13 me, because she's looking to the policy to pay the bills.
14 The same is true for Mr. Kraus. From the very
15 beginning we've submitted our bills to National Union under
16 the policy. This policy was contemplated and intended,
17 even through the reorganization, to provide those defense
18 costs. So my clients are simply looking to access that
19 policy, to continue their defense on the claims brought by
20 the Trustee. And that policy is set up for that purpose.
21 Thank you.
22 MR. ALBERTS: Just a couple small points, Your
23 Honor. Number one, from Wilson Ellis, I'm glad to hear
24 that they're not going to seek to draw down from the
25 policy. However, he did not mention Lewis & Roca, who is

1 representing the partially released parties in Arizona, or
2 Farrell Fritz, who's been representing the company, which
3 appears to be an insured. We have no idea what we're
4 talking about in terms of amounts there.
5 Secondly, Your Honor, they keep talking about,
6 "well, we've effectively intervened." They haven't. They
7 need to do it by way of motion. It's an important thing
8 that they do that, because we want them bound, Your Honor;
9 we want them to interject.
10 And another point, Your Honor, I just wanted to
11 address. They have basically argued that we're trying to
12 elevate Mr. Redman's rights to get paid first . The reality
13 is, this is a first-come, first-served policy, which exists
14 whether there's a bankruptcy or not. We have attempted to
15 settle. Normally, we could have settled that with
16 Mr. Redman not in the Bankruptcy Court, but he's in
17 bankruptcy. And only through their objections, Your Honor,
18 have we been prevented from doing so.
19 So it is really -- what they're trying to argue
20 in effect is, nobody can get paid unless we settle
21 everything. Now, that's not appropriate, Your Honor. In
22 fact, there are a series of cases -- recent cases -- which
23 talk about the importance of allowing settlements to go
24 forward, even if it doesn't include all of the D's and O's,
25 under a race policy. I'm going to cite a few of these for

1 Your Honor.
2 One is In re Enron Corp, 391 F.Supp, 2d, 541, the
3 PIN cite is 544, and that's out of the Southern District of
4 Texas. It discusses cases holding that insurance pay
5 claims on a first-come, first-served basis according to the
6 priority of the judgment.
7 There is In re Global Crossings, at 225 F.R.D.,
8 436, PIN cite 444. Same premise.
9 In re First Central Financial Corp, 238 B.R., 9,
10 PIN cite 14. That's a Bankruptcy Court out of the Eastern
11 District of New York, 1999.
12 There is also In re Reliance Corp -- In re
13 Reliance Group Holdings, Inc., security litigation. That's
14 a Westlaw cite, 2004, W.L. 943545 at Star 3. Southern
15 District of New York case.
16 All of these Courts, Your Honor, rule that it is
17 appropriate for a certain director and officer to settle
18 first out. It will actually encourage settlement process
19 of the other D's and O's. And we would submit, Your Honor,
20 that is in part what we are attempting to do here. We are
21 attempting to get resolution to these matters in an
22 efficient and effective way, and what we seem to be dealing
23 with are attempts at just sidetracking these actions and,
24 frankly, you know, we are fighting somewhat on our own
25 because of Mr. Redman's financial limitations. So this is

1 a burden on the trust, it's a burden on the trust's
2 beneficiaries, and what I would say, Your Honor, is that
3 procedurally, again, we think this motion should be denied.
4 If not denied, it should be treated as a preliminary
5 matter.
6 The hearing on the 15th, I don't know what the
7 Judge is going to rule. I know that they have attempted to
8 delay things again for more evidence, when it's pretty
9 clear we could just put Mr. Redman on and have this
10 hearing. But it's clear what their game plan is. They
11 want to delay, delay, delay. They want to exhaust the
12 policy. They want to force the trust into this situation.
13 They have not met their burden of proof. I know this is a
14 lift stay hearing, Your Honor, but they seek more than
15 that.
16 And I think you should look very carefully at the
17 form of their order and what they are requesting, and think
18 about it in terms of this context. And I would request
19 that the Court at minimum defer ruling on this matter until
20 a final hearing, until we hear the additional evidence that
21 we need, and we can update the Court as to what has
22 happened in Arizona.
23 With that, Your Honor, if there are no other
24 questions I would rest.
25 THE COURT: Thank you. The Court will take a

1 recess.
2 THE CLERK: All rise. This Court will stand in a
3 brief recess.
4 (Whereupon, a brief recess was taken.)
5 THE CLERK: All rise. This Court is again in
6 session. Please be seated and come to order.
7 THE COURT: This is a hearing on a motion by
8 National Union Fire Insurance Company for relief from the
9 automatic stay, to permit it to make payments of insurance
10 proceeds for payment of counsel's fees and litigation
11 against various directors and officers who were formerly
12 directors and officers of the debtors. The Court will
13 grant the motion for the following reasons.
14 National Union asked the Court to lift the stay
15 to permit reimbursement of defense costs incurred by the
16 director and officer defendants in various litigation.
17 The motion is opposed by Sam J. Alberts, the Trustee for
18 the DCHC Liquidating Trust that was established by the
19 confirmed plan in these Chapter 11 bankruptcy cases.
20 Alberts objects that the payment of an
21 unspecified amount in defense costs will reduce the policy
22 proceeds available to satisfy the claims Alberts is
23 pursuing and in the process of settling against Melvin
24 Redman in a bankruptcy case pending in the United States
25 Bankruptcy Court for the District of Arizona. National

1 Union takes the position that any entitlement of the
2 non-debtor director and officer defendants to the policy
3 proceeds for defense costs and indemnity are not property
4 of the debtor's estate in this case.
5 In the alternative, National Union takes the
6 position that the proceeds, even if they are property of
7 the estate -- that relief from the stay may be granted as
8 to the proceeds for cause containing the quote, "although
9 the debtor may be entitled to coverage under the policy in
10 its own right to the extent claims may have been asserted
11 directly against it any payment of the policy's proceeds
12 will directly benefit the debtor since it will reduce the
13 estate's own liability for any defense costs," unquote.
14 National Union's motion at paragraph 43.
15 In addition, the motion has been joined in by
16 various directors who note that the plan that was confirmed
17 in this case expressly contemplated that the insurance
18 policy would be applicable to claims brought against the
19 director and officer defendants, see confirmation order,
20 paragraph 8 amending plan, Section 12.1(k).
21 They argue that an insured's right to advancement
22 of the defense costs is routine and judicially recognized,
23 citing the WorldCom Securities Litigation case, 354 F.Supp,
24 2d., 455, 464-65 (Southern District New York, 2005).
25 Alberts contends that National Union has not

1 intervened in this bankruptcy case and ought not be heard.
2 The motion was inadvertently docketed i the adversary
3 proceeding that is pending in this Court, but the motion
4 clearly is being pursued in the main case and it's been
5 called on the calendar in the main case. And that clerical
6 error will not stand in the way of the Court's deciding the
7 motion.
8 Alberts's argument also is that National Union
9 simply doesn't have standing; it hasn't intervened in this
10 bankruptcy case; it's not a creditor. But obviously any
11 party that is affected by the automatic stay is entitled to
12 file a motion for relief from the stay or for a declaration
13 of whether the stay applies.
14 Alberts further contends that there is an
15 automatic stay that has arisen in Melvin Redman's
16 bankruptcy case that bars the pursuit of the insurance
17 proceeds and that this Court should not lift the stay
18 because there is a stay in Melvin Redman's bankruptcy case.
19 I've made clear in colloquy with counsel that the issue of
20 whether there's a stay in Melvin Redman's bankruptcy case
21 is not properly before this Court and any order the Court
22 issues will make clear that it's not deciding that issue.
23 The fundamental proposition that ought to control
24 here is that bankruptcy generally does not alter
25 non-bankruptcy law entitlements. Non-bankruptcy law sets

1 rules controlling who is entitled to obtain proceeds that
2 are available under an insurance policy, and there is
3 nothing in the automatic stay of Section 362(a) that alters
4 non-bankruptcy law in that regard. The rights of the
5 individual directors and officers to look to the insurance
6 policy are not property of the bankruptcy estate and they
7 are entitled to pursue those rights without the automatic
8 stay barring their pursuit.
9 The debtor is the owner of the policy, but the
10 debtor is not the owner of the rights that accrue under the
11 policy to the individual directors and officers. So the
12 rights of the individual directors and officers are their
13 property rights, not property of this bankruptcy estate.
14 Accordingly, the automatic stay does not bar the individual
15 directors and officers from calling upon the insurance
16 policy to pay defense costs that these defendants are
17 incurring.
18 In any event, cause exists to grant relief from
19 the stay if it were found to be applicable, because the
20 plan expressly contemplated that the insurance policy would
21 be applicable to claims brought against the individual
22 directors and officers. They are entitled to look to that
23 insurance policy for the advancement of defense costs.
24 They ought not be required to pay those defense costs out
25 of their own pocket, and they were entitled to have counsel

1 sign on to represent them with knowledge that the insurance
2 policies would be available to pay counsel's fees as they
3 were incurred.
4 As the Court observed in colloquy with counsel,
5 cause exists because the first order of business under any
6 insurance policy, it stands to reason, is to pay the
7 attorneys fees that officers and directors are incurring in
8 defending against claims that are covered by the insurance
9 policies.
10 Alberts makes an argument that the insurance
11 company has contested coverage of the claims against the
12 individual defendants and is taking an inconsistent
13 position by asking for permission to pay attorneys fees.
14 It seems to me that's a non-bankruptcy law question with
15 non-bankruptcy law ramifications that can be sorted out
16 under non-bankruptcy law. It's not really a question that
17 is influenced by the automatic stay.
18 Again, this order has no bearing on whether there
19 is a stay that has arisen in Melvin Redman's bankruptcy
20 case pending in the District of Arizona. The Court's order
21 will only adjudicate that the automatic stay does not apply
22 in this case to prevent the acts from being undertaken that
23 National Union has requested to undertake and that, in any
24 event, cause exists to grant relief from the stay even if
25 the stay does apply.

1 Thank you, counsel.
2 COUNSEL: Thank you, Your Honor.
3 THE CLERK: That concludes the matters that we
4 have for hearing this morning.
5 All rise. This Court stands in adjournment.
6 (Whereupon, proceedings were concluded.)
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UNITED STATES OF AMERICA)
) Case No. 02-2250
DISTRICT OF COLUMBIA)

I, PAUL R. CUTLER, do hereby certify that a recording of the foregoing proceedings in the above matter was duplicated from an original recording by the Office of the Clerk, United States Bankruptcy Court for the District of Columbia, and that said duplicate recording of the proceedings was transcribed under my direction to typewritten form.

_____
PAUL R. CUTLER

I do hereby certify that the foregoing transcript was typed by me and that said transcript is a true record of the recorded proceedings to the best of my ability.

_____
BONNIE FURLONG