

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: CASE NO. 21-32351 (DRJ)
LIMETREE BAY SERVICES, LLC, *et al*¹ CHAPTER 11
Debtors Jointly Administered

LIMETREE BAY REFINING, LLC

Plaintiff ADVERSARY NO. 21-03791
vs
BEECHER COTTON, *et al*
Defendants

**RESPONSE TO DEBTOR'S EMERGENCY MOTION TO EXTEND
THE AUTOMATIC STAY AND, ADDITIONALLY OR IN THE ALTERNATIVE,
GRANT PRELIMINARY INJUNCTIVE RELIEF, HALTING THE PROSECUTION
OF THE CLASS ACTION AGAINST DEBTOR AND NON-DEBTOR
DEFENDANTS FOR 60 DAYS**

NOW INTO COURT, by and through undersigned counsel, come Clifford Boynes, Chris Christian, Margaret Thompson, Delia Almestica, Carlos Christian, minor child "J.M.M.," minor child "V.M.," minor child "Z.R.C.," minor child "M.M.," minor child "O.N.," Anna Rexach-Constantine, Mervyn Constantine, Neal Davis, Edna Santiago, Guidrycia Wells, O'Shay Wells, Aaron G. Maynard, Verne McSween, Rochelle Gomez, Joan Mathurin, Myrna Mathurin, Ann Marie John-Baptiste, Warrington Chapman and Leoba John-Baptiste-Pelle, on behalf of themselves and all other similarly situated (hereinafter the "*Boynes Class*"), who hereby files this

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Limetree Bay Services, LLC (1866); Limetree Bay Refining Holdings, LLC (1776); Limetree Bay Refining Holdings II, LLC (1815); Limetree Bay Refining, LLC (8671); Limetree Bay Refining Operating, LLC (9067); Limetree Bay Refining Marketing, LLC (9222). Debtors' mailing address is Limetree Bay Services, LLC, 11100 Brittmoore Park Dr., Houston, TX 77041.

response (“Response”) to the *Debtor’s Emergency Motion to Extend the Automatic Stay and, Additionally or in the Alternative, Grant Preliminary Injunctive Relief, Halting the Prosecution of the Class Action Against Debtor and Non-Debtor Defendants for 60 Days* [Dkt. No. 2] (“Motion”) and states as follows:

INTRODUCTION

1. On July 26, 2021, Debtor, Limetree Bay Refining, LLC (“Debtor”) filed its Motion requesting the Court extend the automatic stay to the Non-Debtor Defendants and, additionally or in the alternative, issue an injunction to prevent prosecution of the Class Actions for 60 days. *See* Dkt. No. 2 (hereinafter the “Motion”).

2. In its Motion, the Debtor defined the “Non-Debtor Defendants” as the following entities collectively: Limetree Bay Ventures, LLC; Limetree Bay Terminals, LLC; Arclight Capital Partners, LLC; Freepoint Commodities, LLC; EIG Global Energy Partners, LLC; and BP Products North America. *Id.* The Debtor and Non-Debtor Defendants are hereinafter collectively referred to as “Defendants.”

3. The four class actions pending against the Debtor and certain Non-Debtor entities include: *Boyne, et al., s v. Limetree Bay Ventures, LLC, et al.*, No. 21-cv-00253 (D.V.I.); *Shirley, et al., v. Limetree Ventures, LLC, et al.*, No. 21-cv-00259 (D.V.I.); *Charles, et al., v. Limetree Ventures, et al., LLC*, No. 21-cv-00260 (D.V.I.); and *Cotton, et al., v. Limetree Ventures LLC, et al.*, No. 21-cv-00261 (D.V.I.).

4. Undersigned counsel represents the *Boynes* Class in the first filed matter in the District Court of the Virgin Islands, St. Croix. that is styled *Boynes, et al. v. Limetree Bay Ventures, LLC, et al.*, No. 21-cv-00253. The remaining three class actions were originally filed in state court in the Virgin Islands but were removed to the District Court of the Virgin Islands, St.

Croix on June 24, 2021. The *Boynes* Class, unlike the lower numbered state court class actions, intends to proceed in federal court and has no intention of seeking remand.

5. On the same day the Debtor filed its Motion, this Court entered an Order (*see* Dkt. No. 3) stating that pursuant to section 362 of the Bankruptcy Code, the automatic stay prohibits prosecution of the class action against the Debtor and extending the protections of the automatic stay to the Non-Debtor Defendants for 14 days. Further, the Order enjoined the Class Action Plaintiffs and anyone acting on their behalf from continuing the class action against the Non-Debtor Defendants for 14 days. *Id.*

6. The *Boynes* Class files this Memorandum in Response to the Motion and asks this Court to enter an order prohibiting the Debtor, the Non-Debtors, and anyone acting on their behalf from soliciting releases from any putative class member while the class action is stayed or otherwise prohibited from proceeding. The *Boynes* Class further requests that this Court limits the extension of the automatic stay to the Non-Debtor Defendants and any injunctive relief prohibiting prosecution of the class actions against the Non-Debtor Defendants to 30 days. Finally, the *Boynes* Class requests that the Court require the Debtor to come forward with documentary support for its assertions that its relationship with the Non-Debtor Defendants warrants temporary extension of the automatic stay to the Non-Debtor Defendants.

7. Thirty days is sufficient “breathing room” to allow the Debtor and its stakeholders an opportunity to focus on the overall restructuring, and any additional delay will have a significant negative impact on the people of St. Croix, who continue to suffer serious injury from the 2021 chemical releases from the Limetree Bay Refinery into the environment and on to the putative class members’ property. The continued harm to the putative class includes, but is not limited to, the lack of sufficient access to clean water for bathing, cooking, and drinking that is

the result widespread contamination of cisterns systems across the western part of the island from the chemical releases. Cisterns are systems that are used to collect and store rainwater for household use and are the only natural source of fresh water on the island. Until this vital source of fresh water is properly remediated, the putative class members will continue to suffer grave harm. As such, this Court should be conservative when extending the automatic stay to Non-Debtor Defendants and limit the delays to the class action—and the injunctive relief in the form of environmental remediation sought therein—as a result of any extension of the stay.

BACKGROUND

9. On June 9, 2021, the *Boynes* Class filed this putative class action against Defendants on behalf of themselves and all others similarly situated. As the *Boynes* Complaint outlines in detail, Defendants’ reckless operation of the Limetree Bay Refinery (“the Refinery”) resulted in several catastrophic emissions of toxins throughout the western side of St. Croix, United States Virgin Islands. More specifically, on at least four separate occasions in 2021—February 4, April 23, May 5, and May 12—the Refinery spewed toxic substances, gases, and odors, including but not limited to hydrogen sulfide, sulfur dioxide, petroleum hydrocarbon, and other chemicals and particulates into the air and onto the residents of St. Croix and their property. *See* Dkt. No. 1, Compl., at ¶¶ 3-7 of 21-cv-00253 (D.V.I.).² As the result of these toxic emissions, the *Boynes* Class has suffered severe property damage, including the critical loss of clean water for drinking, bathing, cooking, watering crops, etc. *See id.*, at ¶¶ 12-36, 61-87. The majority of the residents of St. Croix rely exclusively on cisterns for their household water use. *See id.*, at ¶ 64. The emissions from the Refinery contaminated the cisterns, making the water unsafe to use and leaving residents without sufficient access to clean water.

² Attached hereto as **Exhibit A**.

10. “According to the EPA review of the National Weather Service data for February through May 2021 for St. Croix Henry E. Rohlsen Airport meteorological station, the prevailing wind blows from the east and east-southeast to the west and west-northwest. Wind direction prevalence indicated that communities located within Southcentral, Southwest, Frederiksted, Northwest, and portions of Northcentral are located downwind of the [Refinery]. Among the communities are the following: Clifton Hill, Profit Hills, Kingshill, University of Virgin Islands Campus, Hannah’s Rest, Frederiksted, Estate Northside, Smithfield, Upper Bethlehem, Mars Hill, Estate Carlton, Golden Grove, Grove Place, Negro Bay, Williams Delight, Whim, Sandy Point, La Grange, and Prosperity. Many residents live and work in these communities.” *See* Dkt. No. 2-1 at p. 5-6 of 21-cv-00264 (D.V.I.).³

11. As the EPA has recognized repeatedly, the communities on the western side of the island who have been impacted by these emissions—and therefore the putative Class Members here—are “predominately made up of people of color and low-income populations who are already disproportionately affected by environmental burdens” and “[t]hese disproportionate burdens present environmental justice concerns.” *See* Dkt. No. 1, Compl., at ¶ 96 of 21-cv-00253 (D.V.I.). Indeed, the EPA found that in the neighborhoods adjoining the Refinery, 27% of residents live below the poverty line and 75% are people of color. *See id.*, at ¶ 97.

12. In the immediate wake of these pollution events, Defendants dispatched representatives into the neighborhoods and communities surrounding the Refinery to knock on doors and induce putative class members to sign releases of property and personal injury damages in exchange for small sums of money. In order to procure the majority of these releases, Defendants hired sophisticated experts employed by Sedgwick Claims to act as their agents and

³ Attached hereto as **Exhibit B**.

negotiate the releases with putative class members on Defendants' behalf. The putative class members, on the other hand, were easily outmatched by the Defendants' resources and sophistication. The releases thrust upon the putative class were not negotiable. Putative class member were not given an opportunity to negotiate the sum of money being offered in exchange for an extremely broad release of "all claims" for personal injury or property damage associated with the Refinery emissions.⁴ Defendants required the putative class members to sign the release as it was presented to them by Defendants or forego the money being offered. Many putative class members were—and continue to be—desperate for clean water and lack the resources necessary to pay to have their cisterns cleaned on their own. As such, Defendants induced putative class members to sign the releases by putting them into the unconscionable position of deciding whether to take the money being offered to aid the cleanup of the cisterns and sign an extremely broad release or refuse to sign the release and be forced to continue to drink and bathe in contaminated water.

ARGUMENT

A. This Court should enter an order prohibiting Defendants from soliciting additional releases from the putative class members while the class action is stayed or otherwise prevented from proceeding.

13. As Defendants acknowledge in the Motion, on July 15, 2021, the District Court in the Virgin Islands entered an Order enjoining all Defendants from "soliciting agreements and using the Release, Amended Release, or any other Release pending the Court's review and approval of an appropriate Release." *See* Exhibit B to the Motion, Dkt. No. 2-2. The District Court's Order enjoining Defendants from soliciting releases was set to go into effect on July 16, 2021 and remained in effect for fourteen days, which expired four days ago on July 30, 2021. *Id.*

⁴ An example of the releases solicited by Defendants is attached hereto as **Exhibit C**.

The District Court's Order contemplated continued involvement by the District Court to decide the legality of the Defendants' solicitation of the releases and the validity of the releases that have already been executed. *Id.* During the pendency of the District Court's injunction of Defendants' procurement of releases, on July 26, 2021, this Court issued its Order extending the automatic stay to all Defendants and enjoining the prosecution of the class actions. *See* Dkt. No. 3. As a result of these crossing Orders, the Class Action Plaintiffs are unable to proceed with obtaining relief from the District Court regarding the Defendants' solicitation of the releases or the validity of the releases, yet the District Court's order prohibiting Defendants from continuing to procure these releases has ostensibly expired. The present status of the injunctions places the Class Action Plaintiffs (*i.e.*, the *Boynes* Class) at an unfair disadvantage where they cannot adequately protect the interest of the putative class members from the Defendants continuing to procure these releases.

14. Where, like here, there is a "significant disparity of bargaining power," the contract "unreasonably favors the party with the far greater bargaining power," and a contract is imposed on the party with inferior bargaining power on a "take-it-or-leave-it basis," Courts invalidate the contract as unconscionable and violating public policy. *See e.g., Reed v. Turner St. Croix Maint. Inc.*, 46 V.I. 544, 550 (D.V.I. Mar. 28, 2005); *see also Nino v. Jewelry Exchange, Inc.*, 609 F.3d 191, 202 (3d. Cir. 2010).

15. The *Boynes* Class intends to present argument to the District Court that the releases at issue in this case should be invalidated on these grounds and Defendants should be permanently prohibited from requiring a release to be signed as a *quid pro quo* to supplying the funds to clean cistern systems that provide the only available natural source of clean water to the impacted communities.

16. As the result of the stay issued by this Court, the *Boynes* Class is prohibited from presenting argument to this effect to the District Court in the Virgin Islands to protect the putative class members. In order to prevent Defendants from ceasing on this unfair advantage, this Court should take action to ensure that the putative class members are protected by issuing an order prohibiting the Defendants or anyone acting on their behalf from soliciting any releases from putative class members while the Class Action Plaintiffs are prevented from prosecuting their cases before the District Court.

B. The temporary halt of proceedings against the Non-Debtor Defendants should be limited to 30 days.

17. “As a general rule, the automatic stay of section 362(a) protects only the debtor, property of the debtor or property of the estate. It does not protect non-debtor parties or their property.” *R. Hassell Builders, Inc. v. Texan Floor Serv., Ltd.*, 546 S.W.3d 816, 825 (Tex. App. 2018) (quoting *In re Chugach Forest Prods., Inc.*, 23 F.3d 241, 246 (9th Cir. 1994)). This rule applies even when claims against the non-debtor co-defendants arise from the same factual and legal basis. *GATX Aircraft Corp. v. M/V Courtney Leigh*, 768 F.2d 711, 716 (5th Cir. 1984). The automatic stay provision does not “extend to actions against nondebtors simply because of their relationship to [the] debtor.” *Texan Floor Serv.*, 546 S.W.3d at 826 (finding that although the non-debtor was “part of the same corporate family [as debtor], they are separate legal entities” and, thus, not entitled to the same protections of the automatic stay).

18. The Fifth Circuit has, however, recognized at least one instance where the stay may be extended to non-debtors—cases where “there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.” *Reliant Energy Servs., Inc. v. Endron Canada Corp.*, 349 F.3d 816, 825 (5th Cir. 2003)

(quoting *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986)). This exception should apply **only** where a “claim of a formal tie or contractual indemnification ha[s] been made to create an identity of interests between the debtor and nondebtor.” *Id.* at 825. The exception **does not** apply where the non-debtor defendant is independently liable to the plaintiff, or jointly and severally liable with the debtor. *In re Eugene L. Pieper, P.C.*, 202 B.R. at 294, 299-300 (Bankr. D. Neb. 1996); *Jenkins v. TXS United Housing Program, Inc.*, No. 3:13-CV-3808-BN, 2014 WL 6084890 (N.D. Tex. Nov. 14, 2014) (“The stay generally does not ... extend to a codefendant that a plaintiff alleges is jointly and severally liable on her claims with the debtor.”).

19. The Fifth Circuit emphasized that despite the above-described exception, “[s]ection 362 is rarely ... a valid basis on which to stay actions against non-debtors.” *Luppino v. York*, 562 B.R. 894 (W.D. Tex. 2016) (citing *Arnold v. Garlock, Inc.*, 278 F.3d 426, 436 (5th Cir. 2001)). *See also S.I. Acquisition, Inc.*, 817 F.2d 1142, 1147 (5th Cir. 1987) (recognizing that courts have found that in “very limited situations” a § 362(a)(1) stay may apply to actions against nonbankrupt defendants). In fact, an examination of the statute’s language and legislative history compels a restrictive application. The Fifth Circuit, in a case of first impression, declined to extend the stay provision to solvent co-defendants and in reaching its conclusion, made the following determinations:

We begin our inquiry by examining the plain language of the statute. That language clearly focuses on the insolvent party. There are repeated references to *the debtor*. The stay envisioned is “applicable to all entities,” § 362(a), but only in the sense that it stays all entities proceeding against the debtor. To read the “all entities” language as protecting co-debtors would be inconsistent with the specifically defined scope of the stay “against the debtor,” § 362(a)(1). Continuing, we note that the remaining clauses of § 362(a) carefully list the kinds of proceedings stayed, in each instance explicitly or implicitly referring to “the debtor.”

This literal interpretation of § 362(a) is bolstered by language which is notably absent from its provisions. By way of comparison, Chapter 13 specifically

authorizes the stay of actions against co-debtors. 11 U.S.C. § 1301(a) (“a creditor may not ... commence or continue any civil action ... [against] any individual that is liable on such debt with the debtor”). No such shield is provided Chapter 11 co-debtors by § 362(a).

Further, the legislative history of § 362 supports this distinction between debtors and co-debtors. The automatic stay was intended to protect the debtor's assets and give it a “breathing spell.” *See* S. Rep. No. 989, 95th Cong., 2d Sess., 54–55, *reprinted in* [1978] U.S. Code Cong. & Admin.News 5787, 5840–41. The provision concomitantly protects creditors by preventing a race for the debtor's assets. *See* H.R. Rep. No. 595, 95th Cong., 2d Sess., 340, *reprinted in* [1978] U.S. Code Cong. & Admin.News 5787, 6297. Neither purpose is advanced by application of the stay rule to co-defendants.

Wedgworth v. Fibreboard Corp., 706 F.2d 541, 544 (5th Cir. 1983).

20. Separately from section 362, Bankruptcy Code section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Debtor seeks a section 105(a) injunction as an alternative remedy to extending the automatic stay to the Non-Debtor Defendants.

21. The Fifth Circuit has held that only in “unusual circumstances” should an injunction prohibit an action from proceeding against a non-debtor defendant. *In re Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995). These “usual circumstances” include: “1) when the nondebtor and the debtor enjoy such an identity of interests that the suit against the nondebtor is essentially a suit against the debtor, and 2) when the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization. When either of these circumstances occur, an injunction may be warranted.” *Id.*

22. In deciding whether to grant a preliminary injunction the court must consider the following: “(1) the likelihood that the plaintiff will prevail on the merits at a final hearing; (2) the extent to which the plaintiff is being irreparably harmed by the conduct complained of; (3) the extent to which the defendant will suffer irreparable harm if the preliminary injunction is

granted; and (4) the public interest.” *Merchant & Evans, Inc. v. Roosevelt Bldg. Products Co.*, 963 F.2d 628, 632–33 (3d Cir. 1992). The movant has the burden of persuasion on each of the four elements. *Apple Barrel Productions, Inc. v. Beard*, 730 F.2d 384, 386 (5th Cir. 1984).

23. Although the *Boynes* Class is eager to proceed with its action in the District Court in order to obtain relief on behalf of the putative class, the *Boynes* Class recognizes the complexity of the issues presented by the bankruptcy of the Debtor. As a result, whether analyzed under section 362 or section 105 of the Bankruptcy Code, the *Boynes* Class does not object to the Debtor’s request for a “breathing spell,” but the *Boynes* Class asserts that the class action should not be halted for more than thirty days.

24. As this Court is aware, the *Boynes* Class seeks redress of the environmental contamination that plagues St. Croix. The citizens of St. Croix are continuing to suffer considerable injury day after day from the presence of the contamination in their water and on their property.

25. The Debtor’s barbarous position that “the Class Action Plaintiffs will suffer no harm from having to wait,” Dkt. No. 2 at p. 19, should not be adopted by this Court.

26. Access to clean water for bathing, cooking, and drinking is a fundamental human need. The *Boynes* Class is predominantly comprised of low-income, people of color who are being forced to continue to consume and bathe in contaminated water. The only way to remedy this harm is to swiftly proceed with the class action in order established effective cleaning protocols for the cistern systems that provide the only natural source of clean water on St. Croix. In addition to the lack of clean water, the *Boynes* Class has suffered other forms of serious property damage, such as loss of their crops and other food sources, damage to structures and homes, damage to personal property and vehicles, and damage to their livelihoods as the result of

exposure to the oily and noxious chemicals. The health, safety, and wellbeing of the *Boynes* Class hangs in the balance, and there is an immediate need to resolve these environmental issues in order to prevent continued exposure to harmful chemicals. The chemicals known to have been released into the community include, among other things, hydrocarbons, hydrogen sulfide, and sulfur dioxide. These chemicals are known to be toxic and to cause significant health effects, as well as other harm to the environment and vegetation.

27. The *Boynes* Class is in the process of analyzing the insurance policies produced by the Debtor to determine if there is sufficient insurance coverage for the damage caused to the putative class. Additionally, the *Boynes* Class is exploring other sources of recovery which may include letters of credit in favor the United States Virgin Islands, the HOVENSA Environmental Response Trust (the “ERT”), or other insurance policies that have not been produced to date—including those required by the ERT—under which coverage may be provided.

28. The harm that will be suffered by the *Boynes* Class if the class action is not able to proceed and environmental cleanup is not commenced as soon as possible severely outweighs the potential for harm to the Debtor by allowing the class action to proceed against the Non-Debtor Defendants after a 30 day “breathing spell.”

29. Further, the Debtor has yet to disclose any facts to establish that its relationship with the Non-Debtor Defendants warrants the stay to apply to the Non-Debtor Defendants at all, let alone for longer than a 30 day “breathing spell.” The Debtor baldly states that “[b]ecause of the Debtor’s relationship with the other Non-Debtor Defendants, the Debtor has had to spend significant time with the Non-Debtor Defendants regarding the Debtor’s positions on the claims asserted, coordinating issues related to the joint defense against the claims, and review of discovery matters related to the claims that are expected to arise in the future. The Debtor cannot

ignore the Class Action, as long as they are ongoing against the Non-Debtor Defendants, because of the potential impact to the estate.” *See* Dkt. No. 2 at p. 15. The Debtor states that it has a contractual relationship with each of the Non-Debtor Defendants, yet it does not disclose the nature the contractual relationship between it and the Non-Debtor Defendants. It does not disclose any indemnity or co-insurance issues that exist between the Debtor and Non-Debtor Defendants.

30. As the Court is aware, the automatic stay should not be extended to non-debtor defendants where no contractual relationship has been established and the non-debtor defendant is independently liable to the plaintiff, or jointly and severally liable with the debtor. *See* ¶18, *supra*.

31. In order to extend the protection of the stay to the Non-Debtor Defendants, the Debtor should be required to establish—not simply state—how the “identity of interests” between the Debtor and the Non-Debtors are so “intertwined” that “allowing the litigation to advance would amount to allowing a suit against the debtor to proceed.”

32. If there are indemnity agreements or other contractual relationships that exist between the Debtor and Non-Debtors Defendants that create this alleged interdependence, the Debtor should be required to establish those facts and provide the supporting documents. Several of the Non-Debtor Defendants are affiliated “Limetree” companies, but there are also several private equity groups among the Non-Debtor Defendants who are not under the Limetree umbrella. The Debtors’ relationship with the Limetree affiliates and these private equity groups remains a mystery, and this Court should not extend the protections of the stay to these Non-Debtor Defendants blindly.

WHEREFORE, for the foregoing reasons, the *Boynes* Class respectfully request that the Court enter an order that provides that:

1. Debtor, the Non-Debtor Defendants, and anyone acting on their behalf is precluded from soliciting or procuring releases from the putative class members while the class action is stayed or otherwise prevented from proceeding;
2. Limiting any extension of the automatic stay and/or injunctive relief preventing the prosecution of the class actions against the Non-Debtor Defendants to no longer than 30 days from the date of the order;
3. Ordering the Debtor to provide documentary evidence of the contractual relationship, if any, that exists between it and the Non-Debtor Defendants that established the “unusual circumstances” that warrants extension of the automatic stay to these third parties; and
4. Granting such other relief as is equitable and just.

Dated: August 3, 2021

Respectfully submitted,

/s/ Tristan Manthey

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CERTIFICATE OF SERVICE

I, Tristan Manthey, do hereby certify I caused the above and foregoing *Response* to be served on August 3, 2021, via the Court's ECF Notification System.

/s/Tristan Manthey _____
Tristan Manthey