

IN THE UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

IN RE:

CASE NO.: 3:09-BK-07047-JAF

TAYLOR, BEAN & WHITAKER,

Debtor.

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FARKAS' NOTICE OF JOINDER IN THE MOTION FOR ADDITIONAL RELIEF  
FROM THE AUTOMATIC STAY, TO THE EXTENT APPLICABLE, TO PERMIT  
INSURER TO ADVANCE DEFENSE COSTS OF LEE FARKAS

COMES NOW Party in Interest, LEE FARKAS ("FARKAS"), by and through his undersigned counsel, and hereby files this joinder in the Motion for Additional Relief from the Automatic Stay, to the Extent Applicable, to Permit Insurer to Advance Defense Costs of Lee Farkas filed by National Union Fire Insurance Company of Pittsburgh, PA (DE #1796) for the reasons set forth in said pleading. As further support, Farkas states as follows:

1. On or about June 11, 2010, National Union filed its Motion for Relief from the Automatic Stay (DE # 1534) seeking permission to advance defense costs to Bowman and Allen, former officers of TBW. A hearing on said motion was held on July 16, 2010, during which time it was also noted that Farkas had a claim for coverage under consideration by National Union, and the matter is currently under advisement. To date, Farkas has not received any defense costs from National Union, while simultaneously having

his personal funds frozen by the U.S. Government.

2. If National Union's motion for additional relief is not granted, and Farkas is not advanced defense costs pursuant to the applicable policy of insurance in the immediate future, he will be severely prejudiced in his defense of the criminal proceedings pending against him in the Eastern District of Virginia, including but not limited to his inability to secure counsel to represent him in those proceedings. The criminal proceedings have been set for trial in November 2010, and the District Court has stated that no continuances are likely to be granted. Accordingly, the prejudice to Farkas in not being afforded insurance coverage to which he is legally entitled is and will be immediate and severe, and quite possibly irreversible.


3. Farkas likewise has relied upon the existence of the policy, its terms, and the coverage that it was and is intended to provide to him, and under the applicable law of the forum state, he is entitled to coverage accordingly.

4. To the extent that there is any professed concern over payment of the self-insured retention (for which Farkas cannot and should not be required to take a coverage position), the Court is nonetheless permitted to grant National Union's motion for additional relief from stay. The failure of a bankrupt insured to fund its self-insured retention ("SIR") does not excuse the insurer's performance under the contract. In re

Vanderveer Estates Holding, LLC, 328 B.R. 18, 25 (Bankr.E.D.N.Y. 2005) (specifically holding that an insurer has a continuing obligation to pay claims under the applicable policy).<sup>1</sup> The Committee is attempting to create an issue regarding the SIR when it is neither its prerogative to do so, nor relevant or material to the Court's determination of the issues framed by National Union's motion.

WHEREFORE, for these reasons and those set forth by National Union, LEE FARKAS, respectfully moves that the Court grant National Union's Motion for Additional Relief from Stay to allow it to immediately advance FARKAS defense costs as claimed, and for such further relief as is just and proper.

**HELD & ISRAEL**

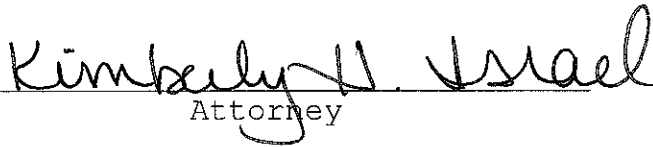
  
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<sup>1</sup> There are other cases that stand for this same proposition, but given this is not an issue for the Court's determination - at least not as related to the relief sought by National Union - no further argument on the point will be made herein.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Farkas' Notice of Joinder in the Motion for Additional Relief from the Automatic Stay, to the Extent Applicable, to Permit Insurer to Advance Defense Costs of Lee Farkas, via electronic notification or U.S. Mail, to all registered CM/ECF recipients and to all Local Rule 1007-2 Parties in Interest, this 3<sup>rd</sup> day of September, 2010.

  
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Attorney