IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THOR ZURBRIGGEN, *et al.*, Plaintiffs, v. TWIN HILL ACQUISITION COMPANY, Inc., *et al.*, Defendants.	Case No. 1:17-cv-05648 Hon. John J. Tharp, Jr. Magistrate Judge Jeffrey Cole

PLAINTIFFS' RESPONSE AND OPPOSITION TO DEFENDANT TWIN HILL'S SUGGESTION OF BANKRUPTCY

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Plaintiffs, by their counsel, submit this response and opposition to Twin Hill's suggestion of bankruptcy and state as follows:

I. Introduction

Twin Hill, who is not a debtor in bankruptcy, filed a Notice of Suggestion of Pendency of Bankruptcy for Tailored Brands, Inc. *et al.*, and Automatic Stay of Proceeding (the "Suggestion of Bankruptcy") requesting this Court stay this case because Tailored Brands Inc.("Tailored Brands"), the former parent of Twin Hill who is not a party in this case, filed for bankruptcy protection in the Bankruptcy Court for the Southern District of Texas. More specifically, Twin Hill argues "that automatic stay [in Tailored Brands bankruptcy case] applies to stay the case against Twin Hill." Dkt. No. 220. Tailored Brands, the debtor, is not a party to the Suggestion of Bankrutpcy, nor has it sought to extend the automatic stay in this matter.

As a matter of law and as discussed below, the automatic stay does not apply to parties other than a debtor. *See* 11 U.S.C. § 362. There is no dispute that Twin Hill is not a debtor in bankruptcy. In addition, there is no dispute that Tailored Brands is not a co-defendant in this case, let alone a party to this litigation.

Rather, Tailored Brands, the debtor in bankruptcy and former parent of Twin Hill, sold the stock of Twin Hill to TH Holdco Inc. on August 16, 2020. (Exhibit A, Declaration of Holly Etlin, Chief Restructuring Officer of Tailored Brands, Inc., In Support of Chapter 11 Petitions and First Day Motions, para. 57). In fact, the sale of Twin Hill stock is described by Ms. Etlin as part of an effort to sell off "non-core operations" of Tailored Brands. *Id.* at para. 55.

Only bankruptcy debtors are entitled to the automatic stay of § 362 of the Bankruptcy Code. *In re Lengacher*, 485 B.R. 380, 383–84 (Bankr. N.D. Ind. 2012) ("As for principles of statutory construction, the Supreme Court has clearly expressed a decided preference for interpreting the

Bankruptcy Code according to its plain meaning, . . . and nowhere does § 362(a) extend the automatic stay beyond debtors, their property and property of the bankruptcy estate. . . . [T]he court should not 'interpret' § 362(a) to prohibit actions it plainly does not. Doing so would read things into it that simply are not there." (citations omitted)). As Twin Hill is not a bankruptcy debtor, it is not entitled to the §362 automatic stay. If Twin Hill is entitled to injunctive relief, its remedy lies elsewhere – not in § 362.

As will be seen, the appropriate Bankruptcy Code provision is § 105, which permits the extension of the automatic stay to claims against non-debtors but requires far more than what Twin Hill has submitted, and based upon the known facts it is apparent that it could not do so if it tried.

Yet, without a properly-framed request made by the debtor, Twin Hill is attempting to have this Court utilize its equitable powers to stay a lawsuit against a non-debtor in which a debtor in bankruptcy is not even a party to the litigation. While the automatic stay may be extended to non-debtor litigants in extraordinary circumstances, those circumstances are not present here.

As an initial matter, a party seeking a stay under § 105 bears the burden by clear and convincing evidence to demonstrate grounds to extend the automatic stay. Here, the debtor is not a party to the Suggestion of Bankruptcy nor is it a party to this litigation nor is it alleged to have played a role in the facts giving rise to Plaintiffs' claims. This alone warrants denial of the Suggestion of Bankrutpcy. Moreover, for the reasons stated below, there are no extraordinary circumstances supporting Twin Hill's contentions that "the automatic stay applies to stay the case against Twin Hill." Dkt. 220, at 2. This is not a situation where a co-defendant files bankruptcy and the plaintiff is seeking to continue the litigation agaisnt the non-debtor defendants while the case is stayed against the bankruptcy co-defendant.

As described below, under any of the varying tests to extend an automatic stay to an action brought against a non-debtor under § 105 – the mere fact that a debtor in bankruptcy owes some form of indemnification to a non-debtor defendant does not trigger the right to the extraordinary relief which Twin Hill is seeking. Simply stated, contrary to its opaque contention, Twin Hill has not established an identity of interest between it and Tailored Brands such that a judgment against Twin Hill will effectively be a judgment against Tailored Brands. Most important, Twin Hill has failed to show how allowing these actions to proceed until final judgment will affect the debtor's bankruptcy estate such that an extension of the automatic stay could even be considered in this case.

Whether this Court applies the case law from the circuit in which the Tailored Brands bankruptcy is pending, the Fifth Circuit, or case law from the Seventh Circuit, the result is still the same – Twin Hill's Suggestion of Bankruptcy should be denied.

II. Twin's Hill's Request To Extend the Automatic Stay Should Be Denied

It would normally be incumbent upon Tailored Brands as the debtor in bankruptcy, not the non-debtor Twin Hill, to seek an extension of the automatic stay under the injunctive relief requirements of § 105. "Although called an extension of the automatic stay provisions of the Bankruptcy Code to non-debtor parties, these are in fact injunctions issued by a bankruptcy court under 11 U.S.C. § 105(a), after determining that the situation requires it in order to protect the interests of the bankruptcy estate." *In re Bora Bora Inc.*, 424 B.R. 17, 23 (Bankr. D.P.R. 2010). A request for injunctive relief normally must be brought as an adversary proceeding before the bankruptcy court and must follow the traditional standards for the issuance of an injunction. *Id.* at 24–25. Furthermore, an injunction under § 105 is "an extraordinary and drastic remedy which

should only be granted when the movant has carried its burden through clear and convincing evidence." *Id.* at 25.

> The party seeking an injunction under § 105 must meet its burden on four elements:
>
> The four standard factors that the Debtor would have to establish to obtain injunctive relief restraining an action against Mr. Juelle are as follows: (1) that the debtor would suffer irreparable injury if the injunction were not granted; (2) that such injury outweighs any harm which granting injunctive relief would inflict on Quicksilver; (3) that the debtor has exhibited a likelihood of success on the merits, which means in this context a reasonable likelihood of a successful reorganization; (4) that the public interest will not be adversely affected by the granting of the injunction which requires a balancing of the public interest in successful bankruptcy reorganizations with other public interests. *Saxby's Coffee Worldwide, LLC*, 2009 WL 4730238 at *6 (citation omitted); *Codfish*, 97 B.R. at 135 citing *Supermercado Gamboa*, 68 B.R. at 232; *Lazarus Burman*, 161 B.R. at 901.

Id. at 25–26.

A. Twin Hill's Request Should be Denied Under Seventh Circuit Law

The Ninth Circuit has noted that most circuits have applied the usual preliminary injunction standards to motions seeking to extend the automatic stay under § 105. *In re Excel Innovations Inc.,* 503 F.3d 1086, 1293–94 (9th Cir. 2007) (though noting that the Seventh Circuit does not require the movant to prove "irreparable harm").[1] While perhaps slightly different in its requirements, the Seventh Circuit, requires the movant to prove that the denial of the injunction "will endanger the success of the bankruptcy proceedings." *In re Caesars Entertainment Operating Company, Inc.*, 808 F.3d 1186, 1189 (7th Cir. 2015). *Caesars* is an example of just such a situation and serves as a foil to why this case is not. In *Caesars*, an action was brought against the debtor's parent, who was not a debtor but who had guaranteed all of the debtor's liability. The debtor asked that a lawsuit against its non-debtor parent relating to a guaranty of its debt be temporarily enjoined

[1] *But see Shickel v. Blitz USA Inc.*, No. 11-3330, 2012 WL 13012959 (C.D. Ill. Feb. 21, 2012) (discussed *infra* where the district court affirmatively states that the Seventh Circuit does require proof of irreparable harm to the debtors' estate).

under § 105 because the parent's creditors would thwart the debtor's multi-billion-dollar restructuring effort, which depended on a substantial contribution from the parent in settlement of the debtor's claims against the parent. The debtor argued that allowing the parent's creditors to sue on the guaranty would allow those creditors to jump the line in front of other creditors. The Seventh Circuit pointed out that the debtor's creditors had a direct and substantial interest in the parent's guaranty litigation, because the less capital the parent had for its subsidiary to recapture through prosecution or settlement of certain claims, the less money the debtor's creditors will receive in the bankruptcy proceeding. In short, in that case, whether an injunction under § 105 should have been granted to stay litigation against a non-debtor party turned on whether granting it would "enhance the prospects for a successful resolution of" the bankruptcy. *Id.* at 1188.

Two cases, *Shickel v. Blitz USA Inc*., No. 11-3330, 2012 WL 13012959 (C.D. Ill. Feb. 21, 2012) and *In re Lengacher et al*., 485 B.R. 380 (Bankr. N.D. Ind. 2012) compile and discuss the applicable law in the Seventh Circuit as well as show why such a stay is not appropriate in this matter.

In *Shickel*, both the manufacturer of a defective gas can and Wal-Mart, the seller of the can, were sued in a products liability action. Blitz filed for bankruptcy and the products liability action was stayed as to it per the automatic stay of §362. The debtor in bankruptcy, Blitz, unlike Tailored Brands here, first sought an extension of the automatic the stay to the actions against the non-debtor Wal-Mart before the bankruptcy court. Blitz argued before the bankruptcy court that the stay should be extended to Wal-Mart because the debtor Blitz, was obligated to *completely* indemnify Wal-Mart for claims arising out of the defective gas cans. The bankruptcy court denied extending the stay to Wal-Mart and deferred to the district court in which the product liability actions were pending to determine whether the cases should proceed against Wal-Mart.

In the district court Wal-Mart asserted a similar "identity" of interest argument to that asserted by Twin Hill, based upon Blitz's complete indemnification obligation to Wal-Mart. After stating that the general rule is to not extend the automatic stay to protect non-debtor co-defendants the district court noted that there were two exceptions (1) "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 judgement against the third-party defendant will, in effect, be a judgment or finding against the debtor" or (2) 'where the pending litigation, though not brought against the debtor, would cause *irreparable harm* to the debtor, the bankruptcy estate, or the reorganization plan." 2012 WL 13012959, at *2 (citing *In re Fernstrom Storage & Van Co.*, 938 F.2d 731, 736 (7th Cir. 1991)) (emphasis added).

Citing both *Reliant* and *Robins*,[2] the district court rejected Wal-Mart's identity of interest argument stating:

> Wal–Mart attempts to make out its "clear case" by arguing that, as a result of Blitz's contractual obligation to defend and indemnify Wal–Mart, there has been created "such identity between the debtor and the third-party 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." Under those circumstances, continuation of litigation against that third party should be encompassed within the bankruptcy stay. *But simply pointing to claims such as indemnity do not rise to the level of hardship sufficient to support an extension of the stay to a non-debtor.*

Id. (emphasis added and citations omitted).

As further reason to the deny extending the stay to Wal-Mart, the court in *Shickel* noted that Blitz and Wal-Mart occupied different roles – one was the manufacturer and one was the seller – and as such the cases against each differed: "The claims against Wal–mart are claims based upon its status as a seller or distributor of a product; the claims against Blitz are against the manufacturer.

[2] As discussed below, these are the two cases cited by Twin Hill in its suggestion of bankruptcy.

The law is not the same. The facts are not the same. While there will certainly be overlap, there will not be complete redundancy. Neither party is indispensable as to the claims against the other." *Id.* at *3.

Here, the facts are even more unfavorable to Twin Hill than Wal-Mart, as it is the manufacturer of the products in question and there are no allegations in this action that Tailored Brands played any role in the production or sale of the uniforms. Moreover, unlike *Shickel,* where the debtor owed Wal-Mart complete indemnity, Twin Hill admits that Tailored Brands merely owes it a contingent and limited indemnity – to pay costs of defense and deductibles/retention amounts if not covered by applicable insurance - obligations so insignificant that the debtor, Tailored Brands, has neither attempted to seek an extension of the stay before the bankruptcy court (likely because it too read Fifth Circuit law on this point) or even join in Twin Hill's filing here let alone step up to the plate, intervene, and attempt to seek an extension of the stay before this Court.

In *Lengacher*, prior to their filing bankruptcy a lender sued two individuals and entities wholly owned by them. The individuals declared bankruptcy but the two entities did not. The state court in which the cases were pending extended the stay to the non-debtor entities and the lender sought relief in the bankruptcy court. The bankruptcy court refused to extend the stay to these entities even though the debtors owned the entities and a judgment against the entities would affect the value of the debtors' estate.

In so holding, the bankruptcy court engaged in an extensive analysis of the law in the Seventh Circuit with regard to extending the stay to non-debtors and made the following pertinent points:

(1) "Despite its breadth, the automatic stay is not infinite. It does have limits. It does not prevent actions against non-debtor co-obligors, debtor's sureties or guarantors. See, *Matter of Fernstrom Storage and Van Co.,* 938 F.2d 731, 736 (7th Cir.1991)."

> (2) The automatic stay "does not protect separate legal entities, corporations, partnerships or non-debtor co-defendants in pending litigation. *Patton v. Bearden*, 8 F.3d 343, 349 (6th Cir.1993); *Pitts v. Unarco Industries, Inc.,* 698 F.2d 313, 314 (7th Cir.1983); *Maritime Electric Co. Inc. v. United Jersey Bank,* 959 F.2d 1194, 1205 (3rd Cir.1991) ("All proceedings in a single case are not lumped together for purposes of automatic stay analysis.... Within a single case, some actions may be stayed, others not."). This remains so even "where the non-debtor is a corporation wholly owned by the debtor."

485 B.R. 380, 383.[3]

Moreover, in the context of whether or not claims asserted against a non-debtor were "related" to the debtor's estate because it owed an indemnity obligation to the non-debtor defendant and whether the Seventh Circuit would adopt the "any effect" test of the Third Circuit:

> The Seventh Circuit has expressly rejected this test as overly broad. *FedPak Systems,* 80 F.3d at 214 (interpreting "related to" jurisdiction more narrowly). In this Circuit, *the effect on the bankruptcy estate must be material. The mere possibility of some effect from an indemnification claim is not enough to pose "related to" jurisdiction. See In re Spaulding,* 111 B.R. 689 (Bankr.N.D.Ill.) *aff'd,* 131 B.R. 84 (N.D.Ill.1990); *In re Emerald Acquisition Corp.,* 170 B.R. 632 (Bankr.N.D.Ill.1994); *In re VideOcart, Inc.,* 165 B.R. 740 (Bankr.D.Mass.1994); *Sanders Confectionery Products, Inc. v. Heller Financial, Inc.,* 973 F.2d 474, 482 (6th Cir.1992), *cert. denied,* 506 U.S. 1079, 113 S.Ct. 1046, 122 L.Ed.2d 355, *reh'g denied,* 507 U.S. 1002, 113 S.Ct. 1628, 123 L.Ed.2d 186 (1993).

In re Green, 210 B.R. 556, 560 (Bankr. N.D. Ill. 1997) (emphasis added). *See also Federal Home Loan Bank of Indianapolis v. Banc of American Mortgage Securities, Inc.*, No. 1:10-cv-1463, 2011 WL 2133539, *4 (S.D. Ind. 2011) ("While the UBS Defendants have demonstrated that it is theoretically possible that this case could eventually have some impact on the IndyMac and/or the

[3] The *Lengacher* court also noted that the automatic stay "does not prohibit taking discovery from debtors in connection with litigation against non-debtors, even if that information might later be used against the debtors." *Id*. In answer to counsel for Plaintiff's inquiry, counsel for Twin Hill stated that it was not going to continue to participate in discovery including, unilaterally terminating the parties' on-going meet and confer discussion as well as not producing any more documents. (Exhibit B, Email from F. Citera, dated August 12, 2020).

AHM bankruptcies, they have not demonstrated any more than that, and the Court is not convinced that this is enough to support a finding that this case is 'related to' those bankruptcy proceedings.").

The same applies here – at most Twin Hill has a contingent claim for some amount of indemnification from Tailored Brands in the event that insurance cannot cover any judgments entered against it in the future. And that assumes that Twin Hill's contingent claim will not have been disposed of in some manner during the reorganization or the bankruptcy itself will have been terminated by the time such judgements are final.

B. Under Fifth Circuit Law Twin Hill's Requested Stay Should be Denied

Apparently believing that Fifth Circuit law applies to its request for a stay, Twin Hill cites two cases in support of its requested stay – one out of the Fifth Circuit and one out of the Fourth Circuit that is cited by the Fifth Circuit. The first of the two cases cited by Twin Hill is *Reliant Energy Services, Inc. v. Enron Canada Corp.,* 349 F.3d 816 (5th Cir. 2003). *Reliant* arose out of the Enron debacle and involved the Plaintiff, Reliant, suing a Canadian subsidiary of Enron (Canadian Enron) pursuant to a contract in which the parties also included the parent, Enron, and several other affiliated entities. Enron, the parent, moved to dismiss Reliant's claim as a matter of contract law and as a matter of bankruptcy law. The district court granted Enron's motion to dismiss, finding the contract unambiguous and holding that as a result Reliant did not have a claim against Enron Canada; as well as holding that the lawsuit also violated the automatic stay pursuant to § 362.

The Fifth Circuit reversed and remanded. According to the Fifth Circuit, whether Reliant's lawsuit should be dismissed against Enron Canada required evidence outside the four corners of the agreement to determine whether it imposed joint liability upon Enron Canada such that it was

independently liable to Reliant and with regard to whether the Reliant lawsuit should be stayed the Fifth Circuit noted:

> The purposes of the bankruptcy stay under 11 U.S.C. § 362 "are to protect the debtor's assets, provide temporary relief from creditors, and further equity of distribution among the creditors by forestalling a race to the courthouse." *GATX Aircraft Corp. v. M/V Courtney Leigh,* 768 F.2d 711, 716 (5th Cir.1985). "By its terms the automatic stay applies only to the debtor, not to co-debtors under Chapter 7 or Chapter 11 of the Bankruptcy Code nor to co-tortfeasors." *Id.* This Court has also noted that "[s]ection 362 is rarely, however, a valid basis on which to stay actions against non-debtors." *Arnold v. Garlock, Inc.* 278 F.3d 426, 436 (5th Cir.2001). *However, an exception to this general rule does exist, and a bankruptcy court may invoke § 362 to stay proceedings against nonbankrupt co-defendants 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." A.H. Robins Co., 788 F.2d at 999.*

Id. at 825 (emphasis added).

The Fifth Circuit did not discuss what the result should be on remand with regard to extending the stay. Thus, the *Reliant* case provides little guidance here with regard to Twin Hill's request for a stay.

In *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986), the debtor, A.H. Robins, manufactured an alleged dangerous medical device – the Dalkon Shield – and was a defendant in over 5000 lawsuits. It declared bankruptcy and by operation of law the automatic stay applied to any such actions against it. But there were several lawsuits that named non-debtor co-defendants. These defendants were not independently liable – rather, as key employees of the debtor, they had rights of total indemnification against Robins. In discussing why a stay was appropriate based upon the facts before it, the court distinguished its case from a case where the third-party non-debtor was "independently liable . . . where the debtor and another are joint tort feasors or where the nondebtor's liability rests upon his own breach of duty." *Id.* at 999 (quoting *In re Metal Center*,

31 B.R. 458, 462 (D. Conn. 1983)). The *Robins* court discussed just such an instance from another decision and noted:

> In discussing the issue, the court first dismissed as inapplicable to the facts of this case the situation where the third-party defendant was "independently liable as, for example, where the debtor and another are joint tort feasors or where the nondebtor's liability rests upon his own breach of duty." It noted that in such a case "the automatic stay would clearly not extend to such non debtor."

Id.

The latter example noted by the *Robins* court is on all fours with this case. Twin Hill is the entity, the only entity alleged in the SAC, to have manufactured and sold the toxic uniforms. Neither Tailored Brands nor Men's Wearhouse are mentioned in the SAC as actors in this debacle. Surely Twin Hill has not alleged this to be the case and even if the debtors were joint tortfeasors with Twin Hill, under *Robins* that would not warrant a stay here as Twin Hill is independently liable to Plaintiffs.

The *Robins* court also provided an illustration of when there would be a sufficient identify of interest between the debtor and the non-debtor defendant, "An illustration of such a situation would be a suit against a third- party who is entitled to *absolute* indemnity by the debtor on account of any judgment that might result against them in the case." *Id*. (emphasis added). Here, no such absolute indemnity can be asserted by Twin Hill or the debtor. In fact, as discussed below, it is not even clear that the debtor's estate will have to pay anything, as there appears to be an insurance carrier that is obligated to pay all costs of Twin Hill's defense and the only other possible current obligation is for the debtors to pay any deductibles or retention amounts due under the policies. But even if such obligations were due and owing now, these facts do not come close to depicting the "absolute indemnity" described by the *Robins* court.

In conclusion, it is clear that under Fifth Circuit law, there is no basis to extend the automatic stay in these cases as Twin Hill has failed to and cannot possibly show a sufficiently close identity with the debtors with regard to the claims currently being litigated before the Court and, most importantly, has failed to show by clear and convincing evidence that the continuation of this litigation against Twin Hill will materially affect the debtors' estate.

III. Twin Hill Has Not Made – and Cannot Make – The Required Showing To Warrant Section 105 Injunctive Relief

In Schedule 2 of Ms. Etlin's declaration case milestones are listed including the last one, "Consummation of the Acceptable Plan" where it is anticipated that this will occur within 120 days of the petition date. Exhibit A, Etlin Declaration Schedule 2, A-2. And in fact, in its Disclosure Statement filed with the Bankruptcy Court, Tailored Brands stated that it is expected that the reorganization plan will be confirmed by November 15, 2020 and that Tailored Brands will emerge from bankruptcy by November 30, 2020. (Exhibit C, "Disclosure Statement for Debtors' Joint Plan of Reogranization Pursuant to Chapter 11 of the Bankruptcy Code", p. 39.). At such point in time, the parties in this action will, at best, be involved in merits discovery.[4]

But even if confirmation of the reorganization plan occurs later than the end of November 2020, there is nothing that Twin Hill can do after confirmation to prevent the Plaintiffs in this case from pursuing Twin Hill. Moreover, Twin Hill will, at best, have a contingent claim against Tailored Brands that will be dealt with like any other creditor in the bankruptcy case. And in the unlikely event that the bankruptcy drags on for years and judgments are entered against Twin Hill in this matter, this will in no way impair the bankruptcy estate as it will, at most, merely trigger an

[4] This is particularly so, since Twin Hill has shut down its discovery and American has yet to produce one document in response to Plaintiffs' document requests and informed Plaintiffs today that they would not be getting back to Plaintiffs about whether and what they would produce until September 10, 2020.

indemnification obligation which by the time judgments might be entered in these matters will be long after a plan of reorganization is approved. A potential an additional claim in a bankruptcy case, without more, does not constitute "unusual circumstances" which would be grounds to extend the automatic stay to litigation between non-debtors.

Twin Hill's own words in its suggestion of bankruptcy further show how minimal are the debtor's indeminification obligations here. Per Twin Hill, under the August 2019 stock purchase agreement, Tailored Brands is only obligated to pay for the costs of defense in this matter and even then it may not have to as it may be covered by "applicable insurance carriers." Furthermore, with regard to any other indemnification owed to it by the sellers/debtors , Twin Hill states that all they must do is "to pay or indemnify Twin Hill with respect to any applicable deductibles or retention amounts." In other words, after deductibles or retention amounts the insurance carriers will provide any payments due to Plaintiffs in this matter, not the debtor. It is elemental that if Twin Hill's liability is covered by insurance, then the debtor has no complete or absolute indemnity obligation sufficient to warrant an extension of the automatic stay in this matter.

Finally, efficient administration of the courts and the equities in favor of Plaintiffs here militates against a stay in this matter. This case has been pending for three years. There is no credible reason why this matter should be halted just as discovery is being commenced due to some ephemeral and contingent claims that the defendant here may have against a non-defendant debtor at some future date. And all such a stay will do is cause further delay because even if this case is stayed, it will start up again at some time in the future.

It makes no sense to stay these proceedings now, when it is not even clear that these cases will have any impact on the bankruptcy estate either because insurance will cover the bulk if not

all of the claims, or, if in the unlikely event there is no insurance and the Twin Hill unsecured claim has yet to be resolved.

IV. Conclusion

For the foregoing reasons, Plaintiffs request the Court deny Twin Hill's requested stay.

Dated: August 27, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a true and correct copy of the foregoing was served on the following individuals on this 27th day of August, 2020 via electronic mail:

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