

Hearing Date and Time: January 13, 2003 at 10:00 a.m.
Objection Deadline: January 6, 2003

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re	:	
	:	
	:	
HPG INTERNATIONAL, INC.	:	Chapter 11
	:	Case No.: 01-64138 (KCF)
	:	Jointly Administered
	:	

MOTION FOR RELIEF FROM AUTOMATIC STAY

Hector Valentin (“Valentin”), by counsel, Davis, Saperstein & Salomon, P.C., hereby move before the court for an Order Terminating, Annulling, Modifying or Conditioning the Automatic Stay of 11 U.S.C. §362(d) for the purpose of permitting the Law Division of Passaic County Superior Court, New Jersey, to proceed to adjudicate the post-petition personal injury action filed by Valentin against Lansing Lathe Company, S&S Machinery Corporation, Kalex Chemical Products, Inc., HPG International, Inc., E.C. Electroplating, Inc. under Docket No.: PAS-L-3460-02 (the “Pending State Court Action”) and as grounds, respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
2. This motion is brought pursuant to 11 U.S.C. § 362(d) and Federal Rules of Bankruptcy Procedure 4001 and 9014.

Facts

3. Hector Valentin resides at 230 President Street, 2nd Floor, Passaic, New Jersey.
4. On November 17, 2000, the plaintiff was an employee of E.C. Electroplating, Inc. and a machine operator for the employer's metal lathe machine, identified as a "Lansing G.24 lathe." On the date of the accident, the plaintiff was operating the machine for only a couple of days when his shirt became entangled in the unguarded moving parts of the machine, thereby resulting in massive facial and head trauma. There were no interlocks, guards or mechanisms in place to de-energize the machine in the event of an emergency and the stop button was out of reach by the plaintiff.
5. As a direct and proximate result of the injuries suffered by Valentin, an action was commenced in the Passaic County Superior Court of the State of New Jersey for personal injury damages, on June 27, 2002 against the defendants, Lansing Lathe Company, S&S Machinery Corporation, Kalex Chemical Products, Inc., HPG International, Inc., E.C. Electroplating, Inc. under Docket No.: PAS-L-3460-02, ABC Entity 1-5 (fictitious) and XYZ Entity 1-5 (fictitious). An Amended Complaint was filed on July 25, 2002 and a Second Amended Complaint was filed on November 13, 2002, naming C.M.G. SRL-Costruzioni Meccaniche Gornati as a viable

defendant/manufacturer in this products liability action. Jurisdiction and venue exist and are appropriate in that Court. The parties engaged in initial discovery in the Pending State Court Action until such time that the parties were informed of the Bankruptcy Stay.

6. The Debtor filed its voluntary petition for relief in this Court under Chapter 11 of Title 11 of the United States Code on December 18, 2001.

7. Valentin is informed and believes, and upon such information and belief, that the entire exposure of Debtor in the Pending State Court Action is covered by a policy of insurance as a corporate conglomerate, through Royal Sun America/Alliance. Additionally, Valentin is informed and believes, and upon such information and belief, alleges, that costs attributable to the defense of the Debtor in the Pending State Court Action are being, and have been, defrayed by the Debtor's insurance carrier.

Argument

8. Under section 362(d)(1) of the Bankruptcy Code, the Court may modify the stay for "cause." 11 U.S.C. §362(d)(1).

9. The Second Circuit has enumerated the following factors to be considered in determining if "cause" exists to modify the stay:

(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interest of other creditors; (8) whether the judgment claim arising from the

other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in other proceeding; and (12) impact of the stay on the parties and balance of harms. *Sonnax Industries, Inc. v. Tri Component Products Corp. (In Re Sonnax Industries, Inc.)*, 907 F.2d 1280, 1285 (2d Cir. 1990). "Not all of the factors will be relevant in every case." *Mazzeo v. Lenhart (In re Mazzeo)*, 167 F.3d 139, 142-143 (2d Cir. 1999). Additionally, each element does not need to be accorded equal weight. *In re Keene Corp.*, 171 B.R. 180, 183 (Bankr. S.D.N.Y. 1994). *See also, In re New York Medical Group, P.C.*, 265 B.R. 408, 413 (Bankr. S.D.N.Y. 2001).

10. In this case, the majority of the elements weigh in favor of lifting the stay:

Element 1. Relief would result in a complete resolution of the issues in that Valentin's claim against the Debtor would be liquidated.

Element 2. Since this is a case for damages arising from personal injury under New Jersey law, it lacks any connection with and will not interfere with the bankruptcy case.

Element 5. Valentin has been informed in the Pending State Court Action that the Debtor's insurer will most likely resume responsibility for defending the action.¹ By virtue of the insurance coverage, a modification or termination of the automatic stay to permit the Pending State Court Action to proceed to judgment and collection against the insurer would have no impact on the bankruptcy estate. The insurance proceeds necessary to pay the claim are not the property of the estate and the Debtor does not

¹ Even if the Debtor's insurance were not covering the defense costs of the Pending State Court Action, the Debtor would have to defend the action (either in this court or in the Court in New Jersey) to determine the claim amount because, as discussed below, Valentin's claim amount cannot be estimated. Accordingly, litigation expenses have been held insufficient reason to deny a motion for relief from the stay. *In re Keen Corp.*, 171 B.R. 180, 185 (litigation costs do not constitute prejudice requiring denial of motion for relief from the stay); *In re Anton*, 145 B.R. 767, 770 (Bankr. E.D.N.Y. 1992) (cost of defending litigation does not preclude relief from the stay); *In re Rabin*, 53 B.R. 529, 532 (Bankr. D.N.J. 1985) ("[i]t is clear that movants' claim will have to be liquidated either in state court or the bankruptcy court. In either instance, the debtor will have to defend that action").

have any equity in such insurance proceeds. See, *In re New York Medical Group*, 265 B.R. 408, 415 (“collecting a judgment from available insurers will not prejudice the estate”); *Elliot v. Hardison*, 25 B.R. 305, 308 (E.D. Va. 1982) (affirming bankruptcy court order which allowed enforcement of any judgment to the extent of insurance coverage, in which debtor admitted he had no equity and no property interest). Accordingly, Valentin also requests that the stay be lifted to collect any judgment against the Debtor’s insurance carrier (or their successors).

Element 6. The action involves third parties, namely five other viable defendants. As the injury took place in New Jersey, there are also non-party witnesses as well as other evidence in New Jersey.

Element 7. The Pending State Court Action will not prejudice the interests of other creditors.

Element 8. Any judgment arising from the Pending State Court Action will not be subject to equitable subordination.

Element 9. Any judgment arising from the Pending State Court Action will not result in a judicial lien avoidable by the Debtor.

Element 10. The interests of judicial economy and expeditious and economical resolution of the litigation lie in allowing the action to proceed in New Jersey rather than forcing Valentin to proceed in two separate actions. See, e.g. *In re Anton*, 145 B.R. 767, 770 (“[j]f the stay is not lifted, Movants will have to try the same facts twice, once against the other defendants in the District Court and a second time against the Debtor in the Bankruptcy Court. Multiplicity of suits involving unnecessary time and expense on the part of Movants should be avoided”).

Element 12. The balance of harms is greater to Valentin who has no adequate remedy or protection to redress his injuries except to proceed in the pending tort action against those alleged to be liable for such injuries. See, *Jessie v. Honosky (In re Honosky)*, 6 B.R. 667 (Bankr. S.D. W.V. 1980) (“were this Court not to lift the stay to permit the plaintiff to proceed against the Debtor, she would be effectively precluded from any recovery for her alleged injuries”).

11. Moreover, pursuant to *Section 157(b)(2)(O)* of Title 28, personal injury tort claims are specifically excluded from the list of core proceedings in which bankruptcy

courts can enter final judgments and orders. Indeed, bankruptcy courts cannot liquidate or estimate contingent or unliquidated damages in personal injury torts or wrongful death claims. *In re C & G Excavating, Inc.*, 217 B.R. 64 (Bankr. E.D. Pa. 1998). Valentin has demanded a jury trial in the Pending State Court Action and does not consent to a jury trial in this Court.

Conclusion

12. Because there are no novel issues of law presented herein, Valentin respectfully requests that the Court waive the requirement that Valentin file a memorandum in support of this Motion.

13. No previous Motion for relief sought in this Motion has been made to this or any other Court.

WHEREFORE, Valentin respectfully requests that the Court enter an Order:

1. Terminating or modifying the automatic stay pursuant to 11 U.S.C. §362 to permit the Passaic County Superior Court of the State of New Jersey:
 - a. to adjudicate to a final conclusion the personal injury action before it in Docket No.: PAS-L-3460-02;
 - b. to determine liability, if any, of Debtor, for any injuries suffered by Valentin;
 - c. to liquidate the amount, if any, determined to be owed by Debtor (or its insurers) to compensate fairly Valentin for such injuries as have been suffered by him and obtain a judgment for that amount;
2. Permitting execution on any judgment awarded in the Pending State Court Action against Debtor's insurers or their successors; and

3. Granting such other and further relief as may be just and proper.

Respectfully submitted,

DAVIS, SAPERSTEIN & SALOMON, P.C.

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Counsel for the plaintiff, Hector Valentin

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December 3, 2002

Hearing Date and Time: January 13, 2003 at 10:00 a.m.
Objection Deadline: January 6, 2003

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

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In re	:	
	:	
HPG INTERNATIONAL, INC.	:	Chapter 11
	:	Case No.: 01-64138 (KCF)
	:	Jointly Administered
_____	:	

**NOTICE OF HEARING ON MOTION OF HECTOR VALENTIN FOR AN
ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY PURSUANT TO
SECTION 362(D) OF THE BANKRUPTCY CODE**

PLEASE TAKE NOTICE that a Motion, dated December 3, 2002 (“Motion”), of Hector Valentin, for an Order, pursuant to Section 362(d) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6004, granting relief from the automatic stay to allow Valentin to continue his post-petition personal injury action to determine the liability, if any, of HPG International, Inc. (the “Debtor”) for injuries suffered by Valentin, liquidate any amount determined to be owed by the Debtor to Valentin, obtain a judgment for any such amount and permit execution on any such judgment against Debtor’s insurance carriers or their successors, shall be considered at a hearing to be held before The Honorable Kathryn C. Ferguson, United States Bankruptcy Judge, Third Floor, of the United States Bankruptcy Court for the District of New Jersey, 402 East

State Street, Trenton, New Jersey 08608 (the “Bankruptcy Court”), on January 13, 2003 at 10:00 a.m. (Easter Standard Time), or as soon thereafter as counsel may be heard;

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the relief requested in the Motion, must be in writing, conform to the Federal Rule of Civil Procedure 83, the Federal Rules of Bankruptcy Procedure 5005(a)(2), 9011, 9029 and District of New Jersey Local Bankruptcy Rules 5005-1 and 1001-1, and be filed with the Bankruptcy Court electronically in accordance with the “General Order” (General Order and the User’s Manual for the Electronic Case Filing System can be found at www.njb.uscourts.gov/ecf/, the official website for the United States Bankruptcy Court for the District of New Jersey), by registered users of the Bankruptcy Court’s case filing system, and by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (“PDF”), WordPerfect or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and shall be served in accordance with the General Order and upon the Debtor through their bankruptcy counsel, Sam Della Fera, Esq., of Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., One Riverfront Plaza, Newark, New Jersey 07102-5496; and the following interested parties:

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and any person, or counsel if retained, appointed pursuant to 28 U.S.C. § 1104, so
as to be actually received by no later than 5:00 p.m. (Easter Standard Time), on
December 17, 2002.

Respectfully submitted,

DAVIS, SAPERSTEIN & SALOMON, P.C.

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December 3, 2002

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re	:	
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	:	
HPG INTERNATIONAL, INC.	:	Chapter 11
	:	Case No.: 01-64138 (KCF)
	:	Jointly Administered
	:	

**ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY PURSUANT TO
SECTION 362(D) OF THE BANKRUPTCY CODE**

Upon consideration of the Motion for Relief from the Automatic Stay, dated December 3, 2002 (“Motion”), of Hector Valentin (“Valentin”), for an Order, pursuant to section 362(d) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 6004, granting relief from the automatic stay to allow Valentin to continue his pre-petition personal injury action to determine the liability if any, of HPG International, Inc. (the “Debtor”) for injuries suffered by Valentin, liquidate any amount determined to be owed by the Debtor to Valentin, obtain a judgment for any such amount and permit execution on any such judgment against the Debtor’s insurance carriers or their successors; and it further appearing that the Court has jurisdiction to consider the Motion; and it appearing that due notice of the Motion has been given and no further notice need

be given; and upon the proceedings before the Court and good and sufficient cause appearing, it is hereby;

ORDERED that the Motion is granted and the automatic stay is lifted to permit the action pending in the Passaic County Superior Court, New Jersey, Docket No.: PAS-L-3460-02, to continue to determine the liability, if any, of the Debtor for the injuries alleged by Valentin, to liquidate the amount, if any, determined to be owed by the Debtor to Valentin and to obtain a judgment for any such amount;

IT IS FURTHER ORDERED that the automatic stay is lifted to permit Valentin to execute on any such judgment against the Debtor's insurers or their successors.

The Honorable Kathryn C. Ferguson
United States Bankruptcy Judge

Dated: January _____, 2003

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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY**

In re	:	
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HPG INTERNATIONAL, INC.	:	Chapter 11
	:	Case No.: 01-64138 (KCF)
	:	Jointly Administered
	:	

CERTIFICATION OF SERVICE

I, Marc C. Saperstein, do hereby certify as follows:

1. I am attorney at law of the State of New Jersey as well as the State of New York, and licensed in the Eastern District. I am also a shareholder in the law firm of Davis, Saperstein, & Salomon, P.C., counsel for the injured plaintiff, Hector Valentin in the matter of Hector Valentin v. S&S Machinery, et al., Docket No. PAS-L-3460-02.
2. I submit this "Certification of Service" in support of plaintiff's motion For Relief from the Automatic Stay of the Bankruptcy Court.
3. The following interested parties and/or individuals were served with a copy of the "Motion for Relief from the Automatic Stay" via certified mail return receipt requested:

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I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, that I am subject to punishment.

Respectfully submitted,

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December 3, 2002