

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

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IN RE: MOHAMED ALI SAMANTAR, :  
 : Case No. 12-11085-BFK  
 :  
 Debtor. : (Chapter 7)  
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Tuesday, February 21, 2012  
U.S. Bankruptcy Court  
Alexandria, Virginia

The above-entitled matter came on to be heard before THE  
HONORABLE BRIAN F. KENNEY, Judge, in and for the United  
States Bankruptcy Court, for the Eastern District of  
Virginia, Alexandria Division, beginning at approximately  
4:00 o'clock, p.m.

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APPEARANCES:

On behalf of the Debtor:

CHRISTOPHER MOFFITT, ESQUIRE

On behalf of Bashe Yousuf, et al:

JONATHAN GOLD, ESQUIRE  
JOANNA NEWDECK, ESQUIRE  
STEVEN SCHULMAN, ESQUIRE

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P R O C E E D I N G S

THE CLERK: Good afternoon, everyone. Please be seated. The clerk will please call our 4:00 o'clock matter.

THE CLERK: Mohamed Ali Samantar, Case Number 12-11085.

THE COURT: Will counsel please note their appearances?

MR. MOFFITT: Christopher Moffitt for the debtor.

MR. GOLD: Good afternoon, Your Honor. Jonathan Gold on behalf of the movants, standing as local Virginia counsel. I have with me today Steven Schulman and Joanna Newdeck.

Your Honor, I understand that this was an emergency motion filed this morning. We haven't yet been able to file written pro hac vice motions; however, they are coming.

I would like to make an oral motion to move Ms. Newdeck and Mr. Schulman in pro hac vice so they can be heard today.

THE COURT: That motion will be granted. We are happy to have you.

MS. NEWDECK: Thank you, Your Honor.

MR. SCHULMAN: Thank you, Your Honor.

THE COURT: I note that Mr. Drennan is with us this afternoon.

MR. DRENNAN: Yes, Your Honor. Your Honor, I do not

1 have an appearance in the bankruptcy case but Joseph Peter  
2 Drennan representing the debtor, Mohamed Ali Samantar, in the  
3 underlying District Court action.

4 THE COURT: Okay. Very good. Thank you, Mr.  
5 Drennan.

6 Who is going to argue for the movants?

7 MS. NEWDECK: I am, Your Honor.

8 THE COURT: Okay. I'll hear from you, please.

9 MS. NEWDECK: Good afternoon, Your Honor. Joanna  
10 Newdeck of Akin Gump Strauss Hauer & Feld on behalf of the  
11 movants, Bashe Yousuf and three other Somalian natives who  
12 are plaintiffs in the District Court action. For ease of  
13 reference, if it's okay with Your Honor, I would like to just  
14 refer to them as plaintiffs.

15 THE COURT: That will be fine.

16 MS. NEWDECK: Thank you.

17 Also with me today, Your Honor: I would like to  
18 introduce my colleague, Steven Schulman, who is a partner  
19 in Akin's pro bono practice; and also, today we have  
20 Elizabeth Tobio who filed a declaration in support of the  
21 motion.

22 THE COURT: Okay. Good afternoon.

23 MS. TOBIO: Good afternoon.

24 MS. NEWDECK: Your Honor, before I begin, first I  
25 would like to thank you. I know we filed the motion very

1 early this morning, almost close to 5:00 a.m. Thank you very  
2 much for making time in your schedule. It was very important  
3 to us and we really appreciate you making that time for us.

4 As Your Honor knows or you may have seen in the  
5 pleadings that we filed, the District Court case which is the  
6 subject of the lift-stay motion is a very unusual case. It's  
7 an international human rights case that is over seven years  
8 in the making.

9 This District Court case was actually slated for  
10 trial. It was supposed to begin this morning at 10:00 a.m.  
11 Obviously, in light of the debtor's bankruptcy filing, that  
12 case did not move forward.

13 Nonetheless, the plaintiffs are anxious to move  
14 forward in these cases.

15 On the other hand, the debtor is not anxious to  
16 move forward in the cases.

17 The debtor is the former Defense Minister of  
18 Somalia. Just last week, he actually filed two stay motions,  
19 one stay motion in the District Court for the Eastern  
20 District of Virginia and one stay motion in the 4<sup>th</sup> Circuit  
21 seeking to stay the District Court proceedings, both of which  
22 were summarily denied.

23 A few days after those denials, the debtor then  
24 filed bankruptcy proceedings in this court just a mere 48  
25 hours before the trial was set to begin in the District

1 Court.

2 Your Honor, I would like to point out: As I said,  
3 the hearing was initially scheduled to begin today at 10:00  
4 a.m. Even though it was stayed, the parties, both the  
5 plaintiffs' and also the debtor's counsel, appeared in front  
6 of the District Court.

7 We did send a transcript over earlier. I don't  
8 know if you have had a chance to review it. I know you've  
9 had a busy schedule today.

10 THE COURT: I have seen it. Thank you.

11 MS. NEWDECK: Okay. Since you've read it, you  
12 probably noticed that Judge Brinkema noted. She basically  
13 expressed her opinions about the bankruptcy filing. She  
14 called it extremely questionable.

15 I also would like to note to Your Honor that Judge  
16 Brinkema said that if Your Honor does deem to grant the lift-  
17 stay motion that we're requesting and if we can get back to  
18 her by around 4:30 that it has been granted, she can actually  
19 impanel a jury and we can continue with the District Court  
20 proceedings for tomorrow.

21 Before I get into the substance of the motion, I  
22 want to point out, we do have a whole other Akin Gump team  
23 that is preparing for the trial hopefully if this lift-stay  
24 motion is granted and the plaintiffs are actually back at the  
25 room we have set up preparing for trial.

1           That being said, if Your Honor thinks it makes  
2 sense to have the plaintiffs come for this hearing, we can  
3 give them a call and they can be here in about ten minutes.

4           THE COURT: I don't think so. I think it's strictly  
5 a legal issue.

6           MS. NEWDECK: Okay. Great. Thank you, Your Honor.

7           Lastly, I would like to note just, I would say,  
8 about an hour ago, the Chapter 7 trustee filed a response to  
9 our emergency motion. Has Your Honor seen that?

10          THE COURT: I've seen that, as well.

11          MS. NEWDECK: Okay. Great. Thank you. We just  
12 wanted to point out that the trustee had no objections to the  
13 relief requested in our motion.

14          If Your Honor would like, I can go through. I know  
15 we filed a voluminous list, pleadings. I would like to  
16 highlight some of the facts in our motion and also briefly go  
17 through the legal grounds for our lift-stay motion, if Your  
18 Honor would like.

19          THE COURT: I'm aware of the legal grounds. Tell  
20 me, if you would, your clients' claim that they will suffer  
21 hardship if the stay isn't lifted in the sense of costs that  
22 they're incurring to put on the trial and so forth. Can you  
23 walk us through that, please?

24          MS. NEWDECK: Yes, I can, Your Honor. We actually  
25 filed a declaration in support of that, that went in detail,

1 the costs that each of the plaintiffs would incur and Akin  
2 Gump would incur.

3 But basically, just to put a little light on the  
4 matter: Discovery has been completed in this matter. There  
5 has been written discovery, depositions. The depositions  
6 have taken place in the United States, Africa, Europe. A  
7 pretrial conference has been held. Witnesses have been flown  
8 in from all over the country. Hotel rooms have been paid for  
9 and currently are still being paid for. We have a  
10 transcriber that's ready to participate in the District  
11 Court.

12 So, basically, all the plaintiffs and the witnesses  
13 are here today. We are ready to go forward.

14 To the extent Your Honor has any specific questions  
15 about the costs, I actually would like to ask my colleague,  
16 Mr. Schulman, to step in because he's more familiar with the  
17 actual facts of the case.

18 THE COURT: Okay. That's fine.

19 MS. NEWDECK: Okay. Thank you, Your Honor.

20 THE COURT: Mr. Schulman, would you like to  
21 supplement your colleague's presentation?

22 MR. SCHULMAN: Yes. Thank you for the opportunity,  
23 Your Honor. I've been involved with this case since before it  
24 was heard at the Supreme Court.

25 The one thing I would point out, the issues of

1 prejudice to both the plaintiff and actually the debtor here  
2 are a matter of record in the District Court and the 4<sup>th</sup>  
3 Circuit. So, it's really already judicially been determined  
4 that there will be prejudice from any stay, in addition to  
5 the costs which are B- we have kind of costs, our daily costs  
6 that we're incurring and have incurred already today that we  
7 will never recover, costs of hotel rooms of many witnesses  
8 who are here, costs of the translators. We need to have  
9 simultaneous translators that Judge Brinkema has requested.

10 There has also been prejudice already to a jury  
11 pool. More importantly than that B-

12 THE COURT: I'm sorry. You have people who have  
13 flight tickets that need to get back to London and so forth?

14 MR. SCHULMAN: Yes. Exactly. People who need to  
15 get back to their families. We have someone in from Kuwait;  
16 we have someone coming in from London; we have two people  
17 from Somalia Land; one person from Seattle; one person from  
18 Atlanta, all of whom have converged here for this long-  
19 planned trial.

20 More importantly perhaps than just the monetary  
21 issues and making new flight plans and doing all that B-  
22 although those logistics, as you might imagine, were quite  
23 difficult B- two of the plaintiffs at debtor's counsel's  
24 request revealed their identities three weeks ago. They had  
25 been proceeding as John Doe plaintiffs in the action; and we

1 agreed once they left Somalia Land that they would release  
2 their names to the public.

3 Last week Judge Brinkema found, if this case is  
4 delayed, found the B- AThe plaintiffs have been forced to  
5 reveal their identity and they point out as an issue that  
6 they need to get this case therefore resolved. Your argument  
7 about your client, I mean to the extent that he's suffering  
8 with these allegations all of these years, you know, it's to  
9 his benefit in some respects to get them resolved in one way  
10 or another. A trial would do that.@

11 Our two clients who are from Somalia Land have  
12 already been threatened with harm both back in Somalia Land  
13 and even here in the United States. They're here escorted by  
14 the Department of Homeland Security, and sending them back to  
15 Somalia would mean that they could suffer potential great  
16 harm, were they to go back.

17 So, there's not just the monetary costs which  
18 obviously are very significant for a multi-week trial with  
19 parties from all over the world appearing but there is also  
20 really the very real safety concerns for our clients.

21 THE COURT: How long is the trial scheduled for?

22 MR. SCHULMAN: The trial is scheduled for two to  
23 three weeks, Your Honor, before Judge Brinkema. Obviously  
24 that kind of schedule is not easy to reschedule on her  
25 calendar, and you can imagine her upset this morning when she

1 found out that late Sunday night the effort to stay the case  
2 that she had denied and the 4<sup>th</sup> Circuit had denied both  
3 twice; and the one case she had found to be frivolous had  
4 been inadvertently granted by this court by operation of  
5 automatic stay, and so she was quite unhappy this morning.  
6 You heard my colleague, Miss Newdeck, talk about some of the  
7 words and you read the transcript this morning.

8 So, obviously, we're hoping that we can get the  
9 stay lifted as soon as possible, proceed with this trial.

10 We don't believe it will affect the estate at all.  
11 Obviously the trustee does not either.

12 THE COURT: Okay. Thank you very much, Mr.  
13 Schulman.

14 MR. SCHULMAN: Thank you, Your Honor.

15 THE COURT: Mr. Moffitt, I'll hear from you.

16 MR. MOFFITT: Good afternoon, Your Honor.

17 On a point of personal privilege, I was not  
18 retained in this matter until Sunday. So, any of the  
19 dastardly deeds that were alleged to have occurred before  
20 Sunday I had nothing to do with; and I guess in the 36 hours  
21 since I've been employed, I guess I've been able to do a lot  
22 of evil things.

23 One notable thing about the transcript of Judge  
24 Brinkema's hearing this morning. I wasn't there but I  
25 certainly didn't see fire, brimstone and outrage. What I did

1 see from the transcript, what she said, is that it's fully  
2 within the discretion of the Bankruptcy Court to grant or  
3 deny and basically what this court says is the law, and I  
4 would certainly hope that this court exercises its discretion  
5 to give the debtor a fair break.

6 Our main objection to this motion is that it  
7 totally deprives the debtor of any process. It's a  
8 legitimate issue whether or not there should be relief from  
9 the stay. However, we should have an opportunity, and they  
10 certainly have provided us with a tremendous amount of  
11 materials. We should have the right to be able to reply to  
12 that.

13 Given the amount of notice that we had, I certainly  
14 didn't have any time to do any case research whatsoever. You  
15 can't do that in that short of time.

16 I think my client is entitled to have a defense  
17 made for not, you know, giving relief from the stay.

18 Now, what issues might there be? First of all,  
19 there's the issue of dischargeability. If you note in the  
20 movants' brief, they have a banner headline that said this  
21 debt would not be dischargeable. Then, if you actually read  
22 in the substance, it's totally ambivalent.

23 I mean, they say there's a civil right. In civil  
24 right cases it may be nondischargeable. And then, they state  
25 that, well, whether or not the District Court determines

1 whether or not it's dischargeable, we'll go start another  
2 case in this court to determine dischargeability.

3 The underlying claim in this case, in the District  
4 Court case, is one of sort of implied responsibility by dent  
5 of position. You know, this man had a position of authority  
6 and the movants are trying to pin the acts of subordinates  
7 and other parties onto him.

8 Certainly there's a very reasonable chance that a  
9 court finding on these charges would not square with the  
10 dischargeability provisions of the Bankruptcy Code.

11 I think at the very least we should be entitled to  
12 go through the complaint very carefully and basically make  
13 the argument that it would not be determinant of a  
14 dischargeability. There still would be issues out there and  
15 to be litigated by this court. And why would that be  
16 important? Because of judicial economy.

17 We really don't want to go in there, through one  
18 two-week trial only to come back to another one. But I think  
19 the movants are going to be bound and restricted by their  
20 complaint; and going through their complaint, I did not see  
21 nondischargeability screaming at me. And there again, I  
22 obviously had a very limited time to look at it.

23 In all likelihood and I obviously don't know B- I  
24 haven't checked my client's resources but from every  
25 indication I have received, this would be a no-asset case.

1 So, where would it go on judicial economy if debtor is having  
2 to defend against a two-week trial only to determine the  
3 amount of a claim which the movant would never be able to  
4 file because it's a no-asset case? I mean, the whole thing  
5 doesn't make sense.

6 Finally B- and Mr. Drennan will speak more to  
7 this B- the movants have unlimited resources. I mean, I  
8 think any claim of expense is really a red herring. I mean,  
9 this case has been up and down from the Supreme Court.  
10 Within 36 hours, they were able to put together a 134-page  
11 emergency motion for relief from stay. We have the  
12 transcript of this morning's hearing before Judge Brinkema.

13 You know, I don't think that just dollars is a  
14 sufficient reason to deprive my client the opportunity to  
15 defend himself; and Mr. Drennan, I think, will fill in on  
16 some of the points raised in terms of the District Court  
17 case.

18 Thank you, Your Honor.

19 THE COURT: All right. I'll hear from Mr. Drennan.

20 MR. DRENNAN: Thank you, Your Honor.

21 Your Honor, I address my comments to the  
22 characterizations that have been made of the underlying  
23 District Court action both in respect of the creditors'  
24 moving papers as well as the remarks that have been made from  
25 the podium this afternoon.

1           Your Honor, this is indeed a case that has been  
2 vigorously litigated over a period of seven years, seven and  
3 a half years.

4           I came to this case after the remand from the  
5 Supreme Court but have familiarized myself with the history  
6 of the case both in terms of predecessor counsel in the  
7 District Court as well as Jones Day who because of the novel  
8 issue concerning whether an official has immunity under the  
9 Foreign Sovereignty Immunities Act B- Jones Day took that  
10 case pro bono to the Supreme Court.

11           I think that Jones Day would be surprised to see  
12 their efforts characterized before this court in the moving  
13 papers here as delay tactics. There are unchartered, very  
14 interesting and unusual issues of law that have been raised  
15 by these claims.

16           With regard to the issue of resources, Your Honor,  
17 respectfully, the dollar amounts that have been trotted out  
18 in Miss Tobio's declaration in my humble estimation, based  
19 upon what I've seen, are small potatoes to what's been  
20 actually expended, to say nothing of the amount of time that  
21 has been expended and invested in this case both by counsel  
22 that is sitting here before the Bar as well as a public  
23 interest law firm from San Francisco, the Center for Justice  
24 and Accountability, that has a couple of representatives here  
25 in the courtroom this afternoon.

1           Respectfully, I think that it probably is on the  
2 order of hundreds of thousands of dollars in costs that have  
3 been expended. Now they're talking about possibly having to  
4 incur a few tens of thousands more if the stay remains in  
5 effect and this matter is fully briefed on the merits as it  
6 should be.

7           We respectfully submit to the court that the notion  
8 or idea that that constitutes prejudice to the other side  
9 that outweighs my client's rights under the Bankruptcy Code  
10 is a chimerical point actually.

11           Now, with regard to the more serious issues of  
12 prejudice that have been raised, I really want to address  
13 those because I can speak to those from a personal  
14 perspective as well as from a historical perspective.

15           Your Honor, for one thing, there has been a  
16 representation made to the court that in these previous  
17 motions for stay that the issue of prejudice was addressed.  
18 The issue of prejudice was never addressed.

19           The initial stay that was made to the 4<sup>th</sup> Circuit  
20 last year was decided in the context of my client having  
21 health issues and plaintiff's counsel representing to the 4<sup>th</sup>  
22 Circuit that my client refused to appear at a deposition. @

23           Your Honor, my client is 76 years of age, suffering  
24 from end-stage renal disease. He undergoes dialysis three  
25 times a week and his condition during that period was

1     decidedly shaky, indeed, vouchsafed by medical documentation  
2     that was submitted to Judge Anderson who dealt with that  
3     issue back then.

4             Beyond that, Your Honor, with regard to this whole  
5     issue of prejudice, I'm extremely concerned, extremely  
6     concerned as an officer of this court who has practiced  
7     before this court for decades, about this casual use of  
8     prejudice in terms of lives being threatened both overseas  
9     and here in the United States. Your Honor, this is in my  
10    judgment the reddest of herrings because as for this notion  
11    that these plaintiffs harbored a fear that they would be  
12    subjected to persecution or threats of bodily harm to  
13    themselves or their families back in, as they call it,  
14    Somalia Land B- it's really Somalia, Your Honor. It's part  
15    of Somalia where they live.

16            They live in a part of Somalia, Your Honor, that  
17    is dominated by the Isaaq clan.

18            My client is considered from an untouchable clan  
19    irrespective of where he is in Somalia. He's a Tomal. His  
20    tribe, as counsel refers to it in declarations and papers  
21    before this court, is B- the Tomals are considered to be  
22    untouchables in Somalia. They have no power. They have no  
23    political voice and if it's a collapsed state in the northern  
24    part of Somalia, the Isaaqs predominate. What few, very few  
25    Tomal live in that region of the country, Your Honor, live in

1 a veritable Warsaw ghetto and have no rights and are  
2 oppressed.

3 Your Honor, there is a lawsuit that was filed just  
4 this past weekend in London by people who claim to be  
5 oppressed over there.

6 But beyond that, these particular plaintiffs claim  
7 that they would suffer prejudice. Your Honor, when they were  
8 paroled out of Somalia last August, they both executed  
9 affidavits before the Department of Homeland Security in  
10 Djibouti in which each of them, each of them, each of the  
11 plaintiffs coming out of Somalia indicated that they do not  
12 harbor a fear of prosecution in their homeland and they  
13 promise to return to their country. And then they come here  
14 and they claim that they're getting threats back in Somalia  
15 Land, as they call it.

16 Your Honor, those so-called threats, those claims  
17 of threats which are all hearsay but they're supposing  
18 telling their lawyers B- Your Honor, there's a veritable  
19 Tabula Rasa over there and they can build any kind of  
20 protective village they like.

21 It's not safe for me to go to that region. I went  
22 and deposed people that were brought out of Somalia in  
23 Djibouti; and this idea that they're at threats or some kind  
24 of risk because their names have been revealed is again the  
25 reddest of herrings.

1           Before Judge Brinkema back on the 20    of  
2   October B- there's a transcript of this. This issue was  
3   raised and counsel was raising concerns about their security  
4   in the United States. The judge said: They don't have any  
5   concern in the United States. We have a police force. We  
6   have laws here.

7           If Your Honor doesn't oblige plaintiffs and allows  
8   this case to be briefed on the merits, somehow Your Honor is  
9   putting these plaintiffs at risk is just absolutely  
10   outrageous to make that insinuation. There's no evidence of  
11   any of that.

12           By contrast, Your Honor, my client is basically a  
13   person with no means. He's a person with a bathrobe and a  
14   pair of slippers whose children, one of whom is in the  
15   courtroom B- in fact, three of them are in the courtroom this  
16   afternoon B- could vouchsafe for that.

17           Your Honor, the idea or notion that these  
18   plaintiffs would be subject to threats to their bodily harm  
19   if Your Honor allows due process to their father is just  
20   absolutely chimerical, Your Honor.

21           And this notion about people having travel plans  
22   and B- one witness supposedly has a doctor's appointment.  
23   She needs to go and see her doctor. It's uncertain whether  
24   some witnesses can come back. Your Honor, this very specter  
25   arose less than a fortnight ago where one of the witnesses of

1 the plaintiffs, a lady who lives in Accra, Ghana, reported to  
2 plaintiffs' counsel that she does not want to come and  
3 testify at court because her mother just passed away and  
4 she's in mourning and the court entertained a motion by  
5 plaintiffs' counsel to conduct a video deposition of that  
6 witness.

7 So, this idea that testimony is going to be lost  
8 and that prejudice is going to be suffered by the plaintiffs  
9 or their witnesses is just simply without merit.

10 Now, last point. There is a plaintiff by the name  
11 of Deria. We don't really know who he is but this plaintiff  
12 who calls himself Deria is represented as having arrived in  
13 Virginia and not being able to sleep at night. Well, Your  
14 Honor, of course he wouldn't be able to sleep at night. This  
15 witness testified in his deposition on the 29<sup>th</sup> of September  
16 to having committed serial immigration fraud and  
17 naturalization fraud and he indeed was naturalized under a  
18 name not his, came into this country under visas that were  
19 issued to people, not him, and I requested and demanded his  
20 AA@ file and Judge Anderson ordered it back on the 14<sup>th</sup> of  
21 October, 2011. You know when I got that file, Your Honor? I  
22 got it last Wednesday. And you know what it reveals? It  
23 reveals that that defendant submitted all sorts of false  
24 information to the immigration authority. So, certainly he  
25 wouldn't be able to sleep at night.

1           I don't mean to be flippant about this, Your Honor,  
2 but there are grave accusations that are being made here and  
3 there's an effort being made to steamroll my client, to  
4 steamroll me, to cast aspersions against me.

5           One of the lawyers filed a declaration with the  
6 court insinuating that I leaked the names of these John Doe  
7 plaintiffs back in October. They said, well, one of our  
8 people reported that he got threats right after those names  
9 were B- implying shortly after they were deposed in Mr.  
10 Drennan's office.

11           Your Honor, I'm not trying to impugn any of the  
12 lawyers appearing before this court. All I'm trying to do is  
13 to tell the court that my client is deserving of due process.

14           Mr. Moffitt, given the constraints of time that he  
15 has had to work with, has identified potential problems with  
16 this complaint going forward and with the promise of multiple  
17 litigation to a debtor with no assets.

18           Your Honor, respectfully we submit to the court  
19 that the stay should remain in effect, that Mr. Moffitt  
20 should be allowed to brief this issue fully before the court  
21 so that this issue can be adjudicated on the merits and with  
22 due process.

23           Thank you, Your Honor.

24           THE COURT: Thank you, Mr. Drennan.

25           (Mr. Schulman stands.)

1 THE COURT: I'm prepared to rule, counsel.

2 MR. SCHULMAN: Okay. Thank you, Your Honor.

3 THE COURT: I'm going to grant the motion. The  
4 matter is governed by Section 362(d)(1) which indicates that  
5 the court can grant relief from the automatic stay for cause.  
6 ACause<sup>th</sup> isn't defined but factors are discussed in the 4  
7 Circuit's decision in In re: Robbins, 964, 342.

8 The following factors are the factors that weigh in  
9 favor of a relief from the automatic stay order. First, and  
10 neither side addressed this but I think it is an important  
11 point to note, this court doesn't have jurisdiction over  
12 personal injury and wrongful death claims. Under 28 USC,  
13 Section 157, 3(2)(B), and (B)(5) of that same section, it  
14 plainly indicates that even in the context of an objection  
15 to a claim B- let's say that the plaintiffs filed a proof of  
16 claim in this case, claiming damages for the harms that they  
17 claim were imposed upon them and that claim were objected  
18 to. The court wouldn't have jurisdiction over that. That  
19 would have to be tried in District Court. So, there's a  
20 jurisdictional concern at the outset.

21 Second, the plaintiffs of course have demanded a  
22 jury trial. This court does not have the authority to  
23 conduct a jury trial and any jury trial of the matter would  
24 have to be tried in the District Court anyway.

25 Third, I do find that there are real hardships

1 that will be occasioned by an additional stay here against  
2 the plaintiffs compared with a minimal hardship of the  
3 defendant, the debtor, having to go forward with a trial  
4 that has been pending, as everyone agrees, for seven and a  
5 half years. He is well represented by able counsel, the  
6 debtor. Mr. Drennan.

7 Mr. Drennan has been involved in the case for some  
8 time now. I don't know exactly how long but he's quite a  
9 good attorney, and the case has been set for three weeks on  
10 the District Court's docket which as counsel for the  
11 plaintiffs indicate is not easy to come by in this court or  
12 in the District Court.

13 Overall, the court finds that the hardship to the  
14 debtor in going forward in a trial that has been scheduled  
15 for some time, that's scheduled for three weeks, is really  
16 minimal.

17 Both Mr. Drennan and Mr. Moffitt alluded to and  
18 argued due process concerns. I have every confidence that  
19 due process will be accorded and mete out by the United  
20 States District Court for the Eastern District of Virginia.  
21 I happen to be a part of that court. The Bankruptcy Court  
22 of course are Article I judges, appointed by the 4<sup>th</sup>  
23 Circuit;

24 but I just have no doubt that due process will be accorded  
25 by the United States District Court in connection with a

1 contested civil trial before it.

2 Two other factors weigh in favor of the stay being  
3 lifted here, one of which is: Counsel for the debtor notes,  
4 and he's right. Mr. Moffitt notes that this is filed as a  
5 no-asset, Chapter 7 bankruptcy case. If we look at the  
6 debtor's petition, docket item number one, of course,  
7 on the court's CM/ECF system where it indicates statistical,  
8 administrative information, the debtor estimates that after  
9 any exempt property is excluded and administrative expenses  
10 paid, there will be no funds available for distribution to  
11 unsecured creditors.

12 So, in that sense, the harm to the estate is  
13 slight, as far as we can tell, and we don't really know.  
14 There may be assets that are found, recovered, disclosed.  
15 We don't know, but as we sit here today the harm to the  
16 bankruptcy estate has to be slight because according to the  
17 debtor and his sworn statement before the court that  
18 initiated this bankruptcy case there are no assets in the  
19 bankruptcy estate, at least none that are non-exempt and  
20 available for distribution to the unsecured creditors.

21 A sub-factor on this issue is the trustee's  
22 response. The trustee filed a response this afternoon.  
23 It's found as docket number ten, item number ten on our  
24 docket, and the trustee, and I'm quoting here in paragraph  
25 one from the trustee's response: AThe trustee has no

1 objection to the granting of limited relief from the stay in  
2 order to permit the trial described in the motion to  
3 proceed, judgment to be entered, the filing of post-judgment  
4 motions, if any, and the prosecution of any appeals.@ That  
5 seems to make perfect sense to me.

6 So, the four reasons, to summarize, are: Number  
7 one, the court lacks jurisdiction over personal injury and  
8 wrongful death claims. That's a compelling reason to allow  
9 the District Court to go forward with the trial. Two, this  
10 court can't conduct a jury trial in any event. Three, I do  
11 find, given the submissions, the affidavits that I have  
12 read, that there are real hardships that will be imposed on  
13 the plaintiffs by virtue of a continuation of the automatic  
14 stay versus, as I say, what should be minimal hardships or  
15 not unexpected hardships in proceeding with a civil trial  
16 before the U.S. District Court as any litigant must. The  
17 fourth factor is that this court, the Bankruptcy Court, can  
18 and will protect any assets of the bankruptcy estate for the  
19 reasons that I have described.

20 The court is going to prepare the order. We will  
21 prepare the order this evening. It probably will not appear  
22 on the court's CM/ECF docket until tomorrow morning but the  
23 court is right now granting relief from the automatic stay.

24 If the trial can proceed tomorrow morning, if  
25 Judge Brinkema can get jurors into the court B- I don't know

1 if she can at this point B- then it should proceed tomorrow;  
2 if not, then according to the transcript that I've read, it  
3 can proceed on Thursday morning and it should proceed on  
4 Thursday morning.

5 The court will order, number one, that the  
6 automatic stay be lifted immediately to proceed to a trial  
7 on the merits, any post-judgment, trial motions, and any  
8 appeals thereof.

9 Number two, the court will provide that if the  
10 plaintiffs are successful, there will be no execution on any  
11 judgment that is entered against assets of the estate.

12 Number three, and this is an important point, Rule  
13 4001(a)(3) provides in relief from stay motions that there's  
14 an automatic stay of a relief from stay motion for 14 days  
15 which generally enables parties to note an appeal or move  
16 for reconsideration or the like but Rule 4001(a)(3) clearly  
17 says unless the court provides otherwise and the court is  
18 providing otherwise. The court is providing for immediate  
19 relief from the stay without a 14-day stay under Rule  
20 4001(a)(3) and the court's order will so provide.

21 I hope that I have made the ruling clear. Mr.  
22 Moffitt looks like he has a question.

23 MR. MOFFITT: Yes, Your Honor. In the movants'  
24 brief, they noted that in some cases when relief from stay  
25 is granted that any collection activities are subject to

1 bankruptcy court jurisdiction. As I heard your ruling, it  
2 was only collection against the estate. I would request  
3 that the order basically provide that any collection  
4 activities be done through the bankruptcy court.

5 THE COURT: I'm not sure what it is you are  
6 referring to.

7 MR. MOFFITT: Well, let's say that they get a two-  
8 million-dollar judgment.

9 THE COURT: Hypothetically.

10 MR. MOFFITT: Hypothetically and hypothetically  
11 the defendant gets \$10 million in the lottery after he has  
12 filed for Chapter 7, you know, well enough beyond to be  
13 considered part of the estate and they go and garnish that.  
14 I would just think that they should go through the  
15 bankruptcy court first.

16 THE COURT: Candidly, what I was thinking was  
17 there's property of the estate and there are exempt assets  
18 and assets are exempt under Virginia law and the Bankruptcy  
19 Code which defers in this case to Virginia law. They're not  
20 property of the estate because they're exempt and if they're  
21 exempt they're exempt from judgment creditor execution.

22 MR. MOFFITT: Okay.

23 THE COURT: For example, like a 401(k). A  
24 qualified ERISA pension plan would be exempt both from the  
25 bankruptcy estate and judgment creditor execution.

1           I don't really know what there would be in the way  
2 of the debtor's assets that either aren't assets of the  
3 estate or aren't exempt.

4           Let me put it this way. If at the conclusion of  
5 the trial and you have had a chance to think about that, if  
6 you want to move to re-impose the stay with respect to  
7 certain assets, I'll consider that.

8           For the time being, the court's order will be  
9 limited to precluding execution against any assets of the  
10 estate because I'm really protecting the estate and the  
11 Chapter 7 trustee's interests here. Does that make sense?

12           MR. MOFFITT: I certainly understand, Your Honor.  
13 The only other point I would make is that if at some point  
14 the judgment may come down and it may be subject to the  
15 discharge, I guess the discharge would cover it.

16           THE COURT: Well, a discharge would certainly be an  
17 affirmative defense to any collection activities subject to  
18 any determination of nondischargeability for which this  
19 court would have non-exclusive jurisdiction to determine the  
20 dischargeability of any indebtedness found by the District  
21 Court.

22           Mr. Schulman, do you have anything further to add?

23           MR. SCHULMAN: No, Your Honor.

24           THE COURT: Thank you, Mr. Moffitt.

25           MR. SCHULMAN: I just wanted to clarify that

1 obviously the issue of dischargeability is an issue we  
2 pointed out in our brief. The court isn't deciding that  
3 today, obviously, and in the future we may litigate that  
4 here before this court. We'll deal with that at a different  
5 time but I think that may be where the nub of this argument  
6 is about whether a successful claim for damages here would  
7 be properly dischargeable by this court.

8 THE COURT: All right. The court is certainly not  
9 making any findings as to dischargeability at this point.

10 So, with that, the court will prepare the order.  
11 We will call Judge Brinkema's chambers and let her know what  
12 this court's ruling is on relief from the automatic stay.

13 With that, the court stands adjourned. I thank  
14 you all for your presentations.

15 (Whereupon, at approximately 4:42 p.m., the  
16 proceedings were adjourned.)

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UNITED STATES BANKRUPTCY COURT

T R A N S C R I B E R ' S C E R T I F I C A T E

Diversified Reporting Services hereby certifies that:

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