

Motion of Robert Scarmazzo for Relief from the Automatic Stay and Protective Motion for Leave to File a Claim After the Bar Date (the “Scarmazzo Motion”)

By the Scarmazzo Motion, Robert Scarmazzo (“Scarmazzo”) seeks entry of an order modifying the automatic stay (the “Stay”) (i) to permit Scarmazzo to pursue a state court action (the “Action”) against the Debtors’ liability insurance policy(s) (collectively, the “Insurance Policies”) and to satisfy any judgment awarded or settlement reached from the proceeds of the Insurance Policies and (ii) to file a protective claim after the deadline established for filing proofs of claim (the “Bar Date”) naming the Debtors as defendants in the Action. Scarmazzo represents that he will not seek to recover any unpaid judgment related to the Action from the Debtors.

Scarmazzo alleges that in December, 2007, he sustained personal injuries when a “built in” refrigerator, installed by Debtor Resort at Singer Island Properties, Inc. (“RSI”), fell on him. Scarmazzo alleges that (i) the refrigerator was installed by RSI, (ii) Scarmazzo’s injuries were caused by RSI’s negligence, (iii) Scarmazzo notified RSI of his personal injury claim on June 6, 2008, prior to the RSI’s bankruptcy filing, and (iv) RSI did not notify Scarmazzo of the bankruptcy until April 28, 2009, after the Bar Date. Scarmazzo seeks recovery for pain and suffering as well as medical expenses.

Scarmazzo asserts that the Debtors will not suffer prejudice from lifting of the Stay since Scarmazzo is only seeking recovery from any available Insurance Policies. Additionally, Scarmazzo maintains that he will suffer a considerable hardship if the Stay is not lifted because it would prevent him from accessing the Insurance Policy proceeds. Finally, Scarmazzo alleges that the Action stands a reasonable chance of succeeding on the merits because his injuries were caused by a “built in” refrigerator, installed by RSI, falling on him.