

Motion of Besnik Pazaj and Elida Pazaj for Relief from Stay Under Section 362 of the Bankruptcy Code (the “Pazaj Motion”)

By the Pazaj Motion, Besnik Pazaj and Elida Pazaj (collectively, the “Pazajs”) seek entry of an order modifying the automatic stay (the “Stay”) (i) to permit the Pazajs 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 claim against the Debtors in the amount of any unpaid judgment not satisfied by the applicable Insurance Policies.¹

On October 17, 2006, Besnik Pazaj was allegedly working on a construction project at 8100 River Road, North Bergen, New Jersey (the “Premises”) for a subcontractor, R & L Construction Management Corporation, when he alleges that he tripped and fell down an open elevator shaft to the floor below. On September 10, 2008, the Pazajs filed the Action in New Jersey state court against the owners of the Premises, including Debtors WCI Communities, Inc. and WCI Towers Northeast USA, Inc. and certain other parties, including the general contractor, Plaza Construction Corporation (collectively, the “Defendants”), for the injuries Besnik Pazaj sustained and for Elida Pazaj’s loss of consortium as a result of the Defendants’ alleged negligence.

The Pazajs assert that the Debtors will not suffer prejudice from lifting of the Stay since the Pazajs are seeking recovery from any available Insurance Policies that they contend are not property of the Debtors’ estates. Additionally, the Pazajs maintain that they will suffer a considerable hardship if the Stay is not lifted because it would prevent them from accessing the insurance policy proceeds and from prosecuting claims for violations of OSHA regulations and applicable statutes against the Defendants. Finally, the Pazajs allege that the Action stands an excellent chance of succeeding on the merits because OSHA certification and applicable insurance coverage regulations require owners to provide insurance for construction accidents. The Pazajs maintain that if they prevail in the Action, the Debtors will only need to supply the information about the Insurance Policies, and the Debtors’ estates will not need to participate in the Action further.

On November 25, 2008, the Debtors filed an objection to the Pazaj Motion (the “Debtors’ Objection”), which asserts that the Pazaj Motion should be denied because:

- a. Lifting the Stay in favor of the Pazajs at this time would cause the Debtors to needlessly divert their time and energy from other critical efforts;
- b. Lifting the Stay at this time would open the floodgates to an onslaught of stay relief litigation related to approximately 170 pending prepetition lawsuits to which the Debtors are party;

¹ In the Pazaj Motion, the Pazajs repeatedly assert that they are only seeking recoveries from the Insurance Policies. Nevertheless, the relief the Pazajs request explicitly includes authorization for them to file a claim against the Debtors in the amount of any unpaid judgment not satisfied by the Insurance Policies.

- c. No distributions to creditors are imminent at this time so the Pazajs will not be prejudiced by the Stay;
- d. The Pazajs commenced the Action in violation of the Stay after the Debtors filed their bankruptcy petitions, and thus the Pazajs should not be rewarded for this violation;
- e. The Court recently addressed the stay relief issue and established the law of these chapter 11 cases when it denied the motion for stay relief filed by Jan Aikin for an interim period;
- f. The Debtors disagree with the Pazajs' assertion that the proceeds of liability policies are not the property of a debtor's estate; and
- g. The Pazajs do not offer sufficient facts in the Pazaj Motion to demonstrate their probability of success on the merits in the Action.