

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NEW LIFECARE HOSPITALS OF CHESTER
COUNTY LLC, *et al.*,

Plaintiffs,

v.

ALEX M. AZAR II, Secretary
U.S. Department of Health and Human Services

Defendant.

Civil Action No. 19-cv-705 (EGS)

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM

Plaintiffs submit this Supplemental Memorandum in response to the Court's May 22, 2019 minute order requesting supplemental briefing from the parties on the following issue: "To what extent the commencement of bankruptcy proceedings on May 6, 2019, by LifeCare Hospitals, the parent company for 12 hospital Plaintiffs, affect this pending litigation." Minute Order, May 22, 2019. As explained below, the bankruptcy proceedings of the 12 LifeCare Hospitals Plaintiffs do not affect ongoing proceedings in this case because both the D.C. Circuit and the Third Circuit recognize that the automatic stay pursuant to section 362(a)(1) of the Bankruptcy Code does not apply to actions commenced *by* the debtor. The Bankruptcy Code's automatic stay only prevents the commencement or continuation of actions *against* the debtor without prior approval from the Bankruptcy Court. This case was commenced by the debtor LifeCare Hospitals Plaintiffs (and other Plaintiff hospitals owned by different companies). Therefore, this case is not subject to the automatic stay of the Bankruptcy Code.

The Bankruptcy Code's automatic stay pursuant to section 362(a)(1) "is one of the fundamental debtor protections provided by the bankruptcy laws." *Checkers Drive-In*

Restaurants, Inc. v. Comm’r of Patents & Trademarks, 51 F.3d 1078, 1081 (D.C. Cir. 1995)

(internal quotation marks omitted). Section 362(a)(1) states in relevant part that the filing of a petition for bankruptcy:

operates as a stay, applicable to all entities, of . . . the commencement or continuation . . . of a judicial, administrative, or other action or proceeding *against* the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title”

11 U.S.C. § 362(a)(1) (emphasis added).¹ Courts broadly construe the Bankruptcy Code’s automatic stay in actions or proceedings *against* the debtor. *Checkers Drive-In Restaurants, Inc.*, 51 F.3d at 1082. However, the automatic stay does not apply to cases commenced *by* the debtor that is the subject of the bankruptcy proceedings. *See Carley Capital Group v. Fireman’s Fund. Ins. Co.*, 889 F.2d 1126, 1127 (D.C. Cir. 1989).

In *Carley Capital Group*, the D.C. Circuit considered how the Bankruptcy Code’s automatic stay affected an appellant that was forced into involuntary bankruptcy. The D.C. Circuit determined that the automatic stay pursuant to section 362(a)(1) is unambiguous and only stays proceedings *against* the debtor. *Id.* at 1127. The appellant in *Carley Capital Group* had originally commenced the action at issue prior to the bankruptcy. *Id.* The District Court found for the defendant, but the D.C. Circuit reversed and issued a judgment in favor of the appellant. *Id.* Before the Circuit Court could issue the mandate on the appeal, the appellant was forced into bankruptcy. *Id.* at 1126. However, the D.C. Circuit concluded that the automatic stay had “no proper role” with respect to the disposition of the proceedings before the court. *Id.* at 1127; *see also Role Models Am., Inc. v. Harvey*, 459 F. Supp. 2d 28, 39 (D.D.C. 2006) (“Section 362, however, only applies to claims made by creditors against debtors (here, the plaintiff) and it does

¹ None of the exceptions at 11 U.S.C. § 362(b) are applicable.

not address actions brought by the debtor which would inure to the benefit of the bankrupt estate.”).

LifeCare Hospitals filed their petitions for bankruptcy in the United States Bankruptcy Court for the District of Delaware.² The United States Court of Appeals for the Third Circuit has jurisdiction over the District of Delaware. Like the D.C. Circuit, the Third Circuit also recognizes that the automatic stay under section 362(a) of the Bankruptcy Code does not apply to actions brought by the debtor. *See Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3rd Cir. 1991). In evaluating the scope of the automatic stay, the Third Circuit stated that “the dispositive question is whether a proceeding was ‘*originally brought against the debtor.*’” *Id.* (quoting *Assoc. of St. Croix Condo. Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 449 (3d Cir. 1982)); *Assoc. of St. Croix Condo. Owners*, 682 F.2d at 449 (“Thus, whether a case is subject to the automatic stay must be determined at its inception.”).

Here, the LifeCare Hospitals and other Plaintiffs commenced this action on November 20, 2018, against the U.S. Department of Health and Human Services (“HHS”), Centers for Medicare & Medicaid Services (“CMS”) payment contractors by filing an Initial Group Appeal Request and a Request for Expedited Judicial Review to the HHS Provider Reimbursement Review Board (“PRRB”). Complaint, Dkt. 1 at 14. The PRRB granted Plaintiffs’ request for expedited judicial review on January 28, 2019. *Id.* at Exhibit A. Plaintiffs then filed a complaint

² The twelve LifeCare Hospitals Plaintiffs that commenced this action are hospitals owned by Hospital Acquisition LLC. On May 6 and May 7, 2019, each of these 12 Plaintiffs and Hospital Acquisition LLC filed separate Voluntary Petitions for Non-Individuals Filing for Bankruptcy in the United States Bankruptcy Court for the District of Delaware. At the same time, LifeCare filed a motion requesting that the Bankruptcy Court jointly administer all of the bankruptcy cases filed by Hospital Acquisition LLC and its affiliates. The Bankruptcy Court granted this motion and issued an order directing the joint administration of these Chapter 11 bankruptcy cases on May 8, 2019. *See Order Directing the Joint Administration of the Debtors’ Chapter 11 Cases, In re Hospital Acquisition LLC*, No. 19-10998 (Bankr. D. Del. May 8, 2019), Dkt. 36.

against HHS for review of agency action with this Court on March 13, 2019. *Id.* Therefore, the LifeCare Hospitals and other Plaintiffs commenced this action and initiated each step of the appeal process to date. At no point has HHS filed an appeal or a counterclaim against the LifeCare Hospitals Plaintiffs.

The automatic stay therefore generally applies to actions or proceedings *against* the 12 LifeCare Hospitals Plaintiffs effective as of May 6 or May 7, 2019. *See* 11 U.S.C. 362(a)(1). However, the automatic stay does not apply to the instant case because this case is not an “action or proceeding against the debtor.” 11 U.S.C. 362(a)(1). This case was commenced prior to the filing of the bankruptcy petitions, and at each step of the appeal process, *by* the debtor LifeCare Hospitals and the other Plaintiffs. Moreover, a judgment in favor of the debtor LifeCare Hospitals Plaintiffs “would inure to the benefit of the bankrupt estate.” *Role Models Am., Inc.*, 459 F. Supp. 2d at 39. Accordingly, the LifeCare Hospitals’ bankruptcy proceedings do not affect the proceedings in this case.

Dated: May 31, 2019

Respectfully Submitted,

/s/ Jason M. Healy
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