

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

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

*Plaintiffs,*

v.

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

*Defendant.*

Civil Action No. 19-00705 (EGS)

**DEFENDANT’S SUPPLEMENTAL  
MEMORANDUM REGARDING BANKRUPTCY PROCEEDINGS**

Defendant, Alex M. Azar II, in his official capacity as Secretary of Health and Human Services, by and through undersigned counsel, respectfully submits this Supplemental Memorandum pursuant 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.”

Defendant agrees with Plaintiffs that the bankruptcy proceedings at issue do not impact this litigation. The automatic stay provision of the bankruptcy code, by its terms, applies only to actions or proceedings “against the debtor[.]” 11 U.S.C. § 362(a)(1); *see also Carley Capital Group v. Fireman’s Fund. Ins. Co.*, 889 F.2d 1126, 1127 (D.C. Cir. 1989) (“We readily agree that this unambiguous provision by its terms only stays proceedings against the debtor, and does not address actions brought by the debtor which would inure to the benefit of the bankruptcy estate.” (internal quotation marks omitted)); *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194,

1204 (3d Cir. 1991) (“[T]he clear language of section 362(a) indicates that it stays only proceedings against a ‘debtor.’”). This lawsuit is not an action “against the debtor.” Rather, this is an action brought by certain of the debtors and, therefore, the automatic stay provision does not apply to this suit.

Respectfully submitted,

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*/s/ Joshua Kolsky* \_\_\_\_\_  
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