

Iowa Code § 321.22.

2. Mary Ellis filed a petition for damages allegedly caused by the accident in the Iowa District Court for Johnson County. Van Gerpen was a named defendant. (Case No. 54568). Additionally, Ellis named her own insurance company, Allied Group Insurance, for payment of uninsured motorist benefits.

3. Subsequently, on March 23, 1993, Van Gerpen filed a third-party petition against Debtor, alleging that her negligence was the cause of Plaintiff's alleged injuries. Debtor answered on April 15, 1993, admitting that her negligence was "the sole or proximate cause of this accident and any damages sustained by the Plaintiffs" and requesting that her fault be compared with the fault of the other parties.

4. On June 1, 1993, Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code listing the pending cause of action as an unsecured claim. Van Gerpen (hereinafter "Movant") now moves for relief from the automatic stay requesting that the stay be lifted to allow the case to proceed in state court.

DISCUSSION

The parties in this case seek a ruling based solely on the state of the record, but have specifically reserved the opportunity to present evidence on disputed facts. The Court

finds that those factual matters disputed by the parties do not warrant a final evidentiary hearing. The record provides sufficient facts to enable this Court to rule on the motion at this time.

Movant requests that the automatic stay be lifted to allow pending litigation to proceed against Debtor for the purpose of apportioning fault in a pending case.

11 U.S.C. § 362(d)(1) provides in relevant part:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause . . .

Several factors may be weighed by the court when determining

whether there is sufficient cause to lift the automatic stay.

In re Curtis, 40 B.R. 795 (Bankr. D. Utah 1984). Those factors include:

1. whether relief would result in a partial or complete resolution of the issues;
2. lack of any connection with or interference with a bankruptcy case;
3. whether the other proceeding involves the debtor as a fiduciary;
4. whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
5. whether the debtor's insurer has assumed the full responsibility for defending it;

6. whether the action primarily involves third parties;
7. whether litigation in another forum would prejudice the interest of other creditors;
8. whether the judgment claim arising from the other action is subject to equitable subordination;
9. whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;
10. the interest of judicial economy and expeditious and economical resolution of litigation;
11. when the parties are ready for trial in the other proceeding;
12. impact of the stay on the parties and balance of harms.

Id. at 799-800.

In this case, the litigation is pending in state court and initial discovery has begun. The case involves issues of state law. Movant requests only a partial lift of the automatic stay to allow apportionment of fault and will not attempt to collect on any judgment which may result against the Debtor. Fault attributed to the Debtor, as an uninsured motorist, would be covered up to the policy limits by the Plaintiff's uninsured motorist insurance carrier who is also a party to the litigation. Therefore, the Court finds that lifting the stay to allow the state court action to proceed should not interfere with the bankruptcy case, nor prejudice the interest of other creditors.

Additionally, in balancing the harm to the respective

parties, the Court finds that the harm which could result to the Movant if the Court fails to lift the stay outweighs the harm that might result to the Debtor by allowing the case to proceed to apportion fault. The Debtor has already admitted fault in the underlying case in her answer. However, the jury will not be allowed to consider the fault of the Debtor if the stay is not lifted. Furthermore, the action is to be tried near the Debtor's place of residence, her involvement will be limited, and the insurance company's interests, for the most part, coincide with her own. More importantly, the parties will not be allowed to proceed against her for any judgment which might result from any deficiency existing after the insurance coverage limits are met. Accordingly, the Court finds that the risk of potential harm to Debtor resulting from her limited participation in the state court proceeding is relatively minimal.

Debtor argues that denial of the motion will not harm the Movant because even if this Court lifts the stay Iowa law would prohibit the introduction of a party, for purposes of apportionment of fault, who is protected against personal judgment by federal bankruptcy provisions. Whether the jury may consider the Debtor's fault involves the relevancy and application of Iowa law including the Iowa Supreme Court holding in Pepper v. Star Equipment Ltd., 484 N.W.2d 156 (Iowa 1992). As such, the Court declines to review this issue as it

is, uniquely, a state law issue more properly decided by the Iowa District Court.

Accordingly, after consideration of the relevant factors and balancing of the relative harms, the Court grants partial relief from the automatic stay to allow the pending litigation to proceed in state court. However, the parties are stayed from instituting any proceeding to collect upon any judgment against the Debtor that may result from the pending litigation.

ORDER

IT IS THEREFORE ORDERED, in accordance with the above discussion, that the automatic stay is modified to permit the pending action in the Iowa District Court for Johnson County to proceed.

IT IS FURTHER ORDERED that all parties are hereby stayed from commencing any action or proceeding to enforce or collect any judgment hereafter obtained as a result of the pending action.

Dated this 29th day of September, 1993.

Russell J. Hill
U.S. Bankruptcy Judge