IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

IN RE:	§	
	§	
LUKEN COMMUNICATIONS, LLC	§	**CASE NO. 1:13-bk-13069**
	§	
Debtor.	§	
	§	**CHAPTER 11**
	§	

M. RANDY RICE'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY

NOTICE OF HEARING

Notice is hereby given that:

A hearing will be held on this matter on July 25, 2013, at 10:00 a.m., in the courtroom of the Honorable John C. Cook, United States Bankruptcy Court, Historic U.S. Courthouse, 31 East 11th Street, Chattanooga, TN 37402-2722, Courtroom A.

If you do not want the court to grant the relief requested, you or your attorney must attend this hearing. If you do not attend the hearing, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting the relief.

TO THE HONORABLE JOHN C. COOK
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW M. Randy Rice, chapter 7 trustee (the "Trustee") for Equity Media Holdings Corporation ("Equity Media") and its Jointly Administered Subsidiary Debtors, including C.A.S.H. Services, Inc.[1] (collectively, the "Equity Media Debtors"), and files his

[1] The Jointly Administered Subsidiary Debtors include Arkansas 49, Inc., EBC Detroit, Inc., EBC Harrison, Inc., Borger Broadcasting, Inc., EBC Jacksonville, Inc., C.A.S.H. Services, Inc., EBC Kansas City, Inc., Equity News Services, Inc., EBC Los Angeles, Inc., Denver Broadcasting, Inc., EBC Minneapolis, Inc., EBC Atlanta, Inc.,

Motion for Relief from the Automatic Stay (the "Motion"). In support of the Motion, the Trustee would respectfully show as follows:

SUMMARY OF ARGUMENT

As the Debtor admits in its only First Day Motion, "[t]his Chapter 11 filing was prompted by proceedings in a bankruptcy case in Arkansas whereby a trustee in bankruptcy for Equity Media Holdings Corporation [along with C.A.S.H. Services, Inc.] was seeking a large judgment relating to the purchase by Debtor of Retro Television Network from Equity Media Holdings Corporation [and C.A.S.H. Services, Inc.]". *See* Docket No. 8-1, Affidavit of David Leach, ¶ 8. Indeed, on Friday, June 21, 2013, a jury in the United States District Court for the Eastern District of Arkansas, Western Division, after a week-long jury trial, found in favor of the Trustee against Luken Communications, LLC in the amount of $47.4 million on the Trustee's fraudulent transfer claim under 11 U.S.C. § 548(a)(1)(B). Additionally, the Honorable Kristine G. Baker, United States District Court Judge for the Eastern District of Arkansas, Western Division, was, upon information and belief, going to file her findings of fact and conclusions of law related to the Trustee's claim under the Arkansas Uniform Fraudulent Transfer Act on June 24, 2013 or June 25, 2013, and enter a judgment at that same time. Less than 48 hours after the verdict was read, Luken Communications, LLC filed its bare bones voluntary chapter 11 petition.

EBC Nashville, Inc., EBC Panama City, Inc., EBC Buffalo, Inc., Fort Smith 46, Inc., Logan 12, Inc., Marquette Broadcasting, Inc., Nevada Channel 3, Inc., Nevada Channel 6, Inc., Newmont Broadcasting Corporation, EBC Provo, Inc., Price Broadcasting, Inc., Pullman Broadcasting, Inc., EBC Scottsbluff, Inc., Rep Plus, Inc., EBC Seattle, Inc., River City Broadcasting, Inc., EBC Southwest Florida, Inc., Roseburg Broadcasting, Inc., TV 34, Inc., EBC Syracuse, Inc., EBC Pocatello, Inc., EBC St. Louis, Inc., EBC Waterloo, Inc., La Grande Broadcasting, Inc., Montgomery 22, Inc., Shawnee Broadcasting, Inc., EBC Waco, Inc., Vernal Broadcasting, Inc., Wyoming Channel 2, Inc., H&H Properties Limited Partnership, Woodward Broadcasting, Inc., Montana Broadcasting Group, Inc., Central Arkansas Payroll Company, Montana License Sub, Inc., Equity Broadcasting Corporation, Equity Insurance Inc., KLRA, Inc., EBC Mt. Vernon, Inc., EBC Wichita Falls, Inc. and EBC Boise, Inc. (the "Jointly Administered Subsidiary Debtors")

All that remains of the litigation in the United States District Court for the Eastern District of Arkansas, Western Division, is the entry of findings of fact and conclusions of law, and a judgment. Accordingly, to the extent it applies, the Trustee respectfully requests this Court modify the automatic stay in this case to permit the entry of findings of fact and conclusions of law and a judgment in the United States District Court for the Eastern District of Arkansas, Western Division.[2]

I. PROCEDURAL HISTORY

A. The History of Equity Media and RTN

1. In March 2007, Equity Broadcasting Corporation ("Equity Broadcasting"), an Arkansas corporation, and Coconut Palm Acquisition Corp. ("Coconut Palm"), a Delaware corporation, merged and formed Equity Media. Equity Media continued the operations of Equity Broadcasting as an owner of various radio and television stations and interests.

2. In approximately 2005, Equity Media's founder and then CEO Larry Morton, and Director of Television Operations Neal Ardman developed the concept for Retro Television Network ("RTN"), a network providing content consisting of syndicated programming obtained from the CBS Network that took some of the most popular and entertaining programs from the 1960's, 1970's, 1980's and 1990's (the "Programming"). The concept for RTN was that it would take the Programming and provide it to one of its RTN Affiliates, which were television stations all around the United States. RTN had the capability of providing customized feeds to all of the RTN Affiliates, making it unique in the marketplace. RTN was designed to be a television network which would air "Prime Time all the Time", airing round-the-clock programming, including long time classics and rarely seen older series, and would be similar to

[2] The Trustee requests the relief herein at this time without prejudice to seeking additional relief from the automatic stay if necessary in the future.

TV Land or Nickelodeon's Nick at Night.

B. Valuations of RTN

3. As of October 16, 2006, RTN was valued at $80 million, per the Valuation Memorandum of Holt Media Group (the "Holt Valuation"). At the time of the Holt Valuation, Holt Media Group was the oldest independent name in communications appraisals, including radio, television, cable, wireless and evolving technologies and had over thirty-five years' experience in the field.

4. As of September 1, 2007, RTN was valued, in a best case scenario at $155.5 million, middle case scenario at $115.8 million and worst case scenario at $65.9 million by the Fair Market Valuation of Retro Television Network as of September 1, 2007 and Assessment of its Business Plan of BIA Financial Network, Inc. (the "BIA Valuation"). At the time of the BIA Valuation, BIA Financial Network, Inc. had provided financial and strategic advisory services for the media, telecommunications and related industries for over 18 years.

C. The Sale of RTN

5. Following the March 2007 merger between Coconut Palm and Equity Broadcasting, Equity Media's business began shifting from primarily aggregating stations to increasing RTN affiliate penetration and maximizing revenue and profit for each station. Equity Media expended substantial effort into making RTN a profitable venture.

6. In February 2008, Henry G. Luken III ("Luken") became President, Chairman of the Board and CEO of Equity Media. This was during a time where Equity Media was suffering serious cash shortages—including questioning whether it would be able to survive two weeks. As President and CEO of Equity Media, Luken was aware of the serious financial condition of Equity Media.

7. On May 14, 2008, while still acting as Chairman of the Board, CEO, President of

Equity Media, and Board Member, Luken announced, essentially, he had found a way to save the Equity Media Debtors, but "several things had to happen at board level,"—the first of which was Luken's resignation.

8. One day after Luken's resignation, he proposed for his related entity, Luken Communications, LLC ("Luken Communications" or the "Debtor"), to purchase Equity Media and C.A.S.H. Services, Inc.'s ("C.A.S.H.") interests in RTN (the "RTN Transfer"). The purchase price for RTN, the crown jewel of certain of the Equity Media Debtors, was the fire-sale price of $18.5 million. As a part of the RTN Transfer, Equity Media and C.A.S.H. were given the ability to repurchase RTN, for a period of 6 months, for $27.75 million.

9. Luken knew that RTN was the most valuable asset of the Equity Media Debtors. In fact, as early as January 2008, Luken was in possession of the BIA Report, assessing RTN a valuation of between $65.9 million and $155.6 million. Indeed, in March 2008, Luken himself stated in a board meeting that he believed RTN to be "the true value of [Equity Media]".

10. On June 24, 2008, Equity Media, C.A.S.H, and Retro Programming Services, Inc. on the one hand, and Luken Communications, on the other hand, closed on the Stock Purchase Agreement, which consummated the RTN Transfer.

11. Incredibly, RTN was purchased by Luken Communications for approximately 23% of the value of RTN as determined by the Holt Valuation and approximately 12% of the high value of RTN as determined by the BIA Valuation.

D. The Equity Media and Jointly Administered Subsidiary Debtors' Bankruptcy Cases

12. On December 8, 2008, Equity Media filed its voluntary petition for relief under chapter 11 of Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of

Arkansas, Western Division.[3] On December 16, 2008, the Jointly Administered Subsidiary Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

13. The United States Bankruptcy Court for the Eastern District of Arkansas ordered joint administration of Equity Media's case and the Jointly Administered Subsidiary Debtors' cases on January 8, 2009.

14. The Debtors moved to have their cases converted to chapter 7 on June 17, 2010. On June 21, 2010, the Arkansas Bankruptcy Court granted the Debtors' requested conversion to chapter 7, and M. Randy Rice was appointed as the Trustee under 11 U.S.C. § 701 over of all the bankruptcy cases.

E. The Trustee's Fraudulent Transfer Complaint

15. On December 8, 2010, the Trustee filed his Original Adversary Complaint[4] (the "Original Complaint") against Luken Communications and Luken[5], individually, for, among other things, the avoidance and recovery of fraudulent transfers pursuant to 11 U.S.C. §§ 548 and 550, and the avoidance and recovery of fraudulent transfers pursuant to the Arkansas Uniform Fraudulent Transfer Act for Luken Communications' purchase of RTN[6] (the "Luken Fraudulent Transfer Litigation").

16. On January 5, 2011, Luken Communications and Luken filed their Demand for Jury Trial and Motion to Withdraw Reference seeking to withdraw the reference of the adversary proceeding to the Bankruptcy Court. The Motion to Withdraw the Reference was granted, and the adversary proceeding was withdrawn to the United States District Court for the

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[3] 11 U.S.C. §§ 101 *et seq.*

[4] On December 8, 2011, the Trustee filed his First Amended Adversary Complaint (the "First Amended Complaint"), maintain causes of action against Luken Communications, LLC for the avoidance and recovery of fraudulent transfers pursuant to 11 U.S.C. §§ 548 and 550 and the avoidance and recovery of fraudulent transfers pursuant to the Arkansas Uniform Fraudulent Transfer Act.

[5] The claims against Luken, individually, were eventually dismissed without prejudice.

[6] Today, and relevant to this bankruptcy case, RTN is now known as RetroTV.

Eastern District of Arkansas, Western Division (the "District Court").

17. In the weeks leading up to the trial on the Luken Fraudulent Transfer Litigation, the Honorable Kristine G. Baker, United States District Court Judge for the District Court, ruled on two motions for summary judgment, motions to exclude the Trustee's experts, a motion to dismiss on jurisdictional grounds, over 30 motions in limine, and pre-trial disclosure statements and their corresponding objections.

18. After over two and a half years since the Trustee filed his Original Complaint, trial of the Luken Fraudulent Transfer Litigation commenced on June 17, 2013. On the Witness and Exhibit List for the Trustee were 132 exhibits and 14 witnesses, some of which were flown in to Little Rock, Arkansas specifically for the trial.

19. During a five-day-long trial on the Luken Fraudulent Transfer Litigation which ended on June 21, 2013, the Trustee's claim under section 548 of the Bankruptcy Code was tried to a jury, and, pursuant to Arkansas law, the Trustee's claim under the Arkansas Uniform Fraudulent Transfer Act was tried to the Honorable Judge Kristine G. Baker.

20. At the conclusion of the trial, the jury awarded the Trustee $47.4 million in damages on the Trustee's claim under section 548 of the Bankruptcy Code. *See* Verdict Form, attached hereto as Exhibit A. Judge Baker indicated that she would enter her findings and fact and conclusions of law on the Trustee's claim under the Arkansas Uniform Fraudulent Transfer Act on Monday, June 24, 2013 or Tuesday, June 25, 2013.

21. Luken Communications commenced this bankruptcy case on Sunday, June 23, 2013, approximately 48 hours after the jury returned its verdict.[7] All that remains to be done Luken Fraudulent Transfer Litigation is for Judge Baker to issue her findings of fact and

[7] To date, there has been no Suggestion of Bankruptcy or Notice of Bankruptcy filed in the Eastern District of Arkansas, Western Division.

conclusions of law, and enter a judgment.

II. RELIEF REQUESTED

22. All that remains to be done in the Luken Fraudulent Transfer Litigation is for the Honorable Judge Kristine G. Baker to enter her findings of fact and conclusions of law, and a judgment. The Trustee asserts that the automatic stay does not apply to such actions (as discussed *infra*), however, out of an abundance of caution, the Trustee respectfully requests that this Court modify the automatic stay to the limited extent of allowing the Honorable Judge Kristine G. Baker to enter her findings of fact and conclusions of law, and a judgment, in the Luken Fraudulent Transfer Litigation.

III. LEGAL ARGUMENT

23. The filing of a bankruptcy petition operates as a stay against, *inter alia*, the continuation of a judicial proceeding against the debtor that was commenced before the filing of the petition. 11 U.S.C. § 362(a)(1). "On request of a party in interest . . . the court **shall** grant relief from the stay provided under [§ 362(a)], such as by terminating, annulling, modifying, or conditioning such stay . . . for cause . . . ." 11 U.S.C. § 362(d)(1) (emphasis added). "Cause" is not defined in the Bankruptcy Code, so what constitutes "cause" is determined on a case-by-case basis. *McSwain v. Williams (In re Williams)*, No. 11-26453 PJD, 2012 Bankr. LEXIS 3370, *6-7 (Bankr. W.D. Tenn. July 20, 2012).

24. In this case, the Luken Fraudulent Transfer Litigation proceeded all the way through a 5 day trial, and the jury returned a verdict in favor of the Trustee. Before the District Court could enter its findings of fact and conclusions of law, and a final judgment, the Debtor commenced this case. Under the circumstances, all that remains to be done in the District Court are ministerial acts, which do not violate the automatic stay. Even if that were not so, cause exists to lift the automatic stay to allow the District Court to enter its findings of fact,

conclusions of law, and a final judgment.

A. The Automatic Stay Does Not Apply to Ministerial Acts

25. "Ministerial acts, even if undertaken . . . subsequent to a bankruptcy filing, do not fall within the proscription of the automatic stay." *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 973-74 (1st Cir. 1997). "A ministerial act is one that is essentially clerical in nature." *Id.* at 974. Once judicial proceedings have otherwise been concluded, the entry of a judgment on the docket does not violate the automatic stay. *See Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522 (2d Cir. 1994).

26. For example, in *Bidermann*, on July 7, 1993, the U.S. District Court for the Southern District of New York announced, "I'm going to order that judgment be entered in favor of [RHI] in the amount of $12,946,748 . . . ." *Id.* at 525. Later that same day, Bidermann filed a chapter 11 bankruptcy case in the U.S. Bankruptcy Court for the Southern District of New York. *Id.* The next day, after the commencement of the bankruptcy case, the clerk of the District Court entered a money judgment against Bidermann. *Id.* The Second Circuit held that the entry of the money judgment was a ministerial act that did not violate the automatic stay. *Id.* at 528.

27. The facts here are analogous to those in *Bidermann*. The Trustee's case against the Debtor proceeded all the way through trial in the District Court, and a jury awarded the Trustee $47.4 million in damages. All that is left for the Honorable Judge Kristine G. Baker of the District Court to do is enter findings of fact and conclusions of law and a judgment. In other words, all that remains are ministerial acts that do not violate the automatic stay. Nevertheless, the Trustee is seeking relief from the stay out of an abundance of caution, and the Trustee therefore requests that the Court modify the stay to permit the Honorable Judge Kristine G. Baker to enter her findings of fact and conclusions and a judgment.

B. If the Automatic Stay Applies, Cause Exists to Lift the Automatic Stay

28. Even if more than ministerial acts remained to be done in the District Court, cause exists to lift the automatic stay. "The decision whether or not to lift the automatic stay resides within the sound discretion of the bankruptcy court." *Garzoni v. K-Mart Corp. (In re Garzoni),* 35 Fed. Appx. 179, 181 (6th Cir. 2002). "The bankruptcy court considers the following factors in deciding whether to lift the stay: 1) judicial economy; 2) trial readiness; 3) the resolution of preliminary bankruptcy issues; 4) the creditor's chance of success on the merits; and 5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors." *Id.*

29. "Courts of appeal in other circuits have listed factors to be considered as well, and nearly all courts include a general balancing of the hardships test." *In re Williams,* 2012 Bankr. LEXIS 3370 at *7. Additional factors considered include (1) whether relief would result in a complete or partial resolution of the issues; (2) the lack of any connection with or interference with the bankruptcy case; (3) whether litigation in another forum would prejudice the interests of other creditors; (4) whether the expertise of a state court is needed in resolving a question of state law; (5) whether the estate can be protected by a requirement that creditors seek enforcement through the bankruptcy court; (6) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (7) the impact of the stay on the parties and the balance of harms; and (8) whether the other proceeding involves the debtor as a fiduciary. *Id.* at *7-8; *see also In re Expresstrak, L.L.C.,* 2004 Bankr. LEXIS 114, 22-24 (Bankr. E.D. Mich. Jan. 20, 2004); (citing *In re Curtis,* 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)); *see also In re Johnson,* 115 B.R. 634, 636 (Bankr. D. Minn. 1989) (applying factors to a breach of contract claim, and focusing on prejudice to and respective hardships on the debtor and the creditor).

30. Importantly, "[t]hese factors need not be assigned equal weight, and only those factors relevant to the particular case need to be considered." *In re U.S. Brass*, 176 B.R. 11, 13 (Bankr. E.D. Tex. 1994) (citing *In re Keene Corp.*, 171 B.R. 180 (Bankr. S.D.N.Y. 1994); *see also, In re Henderson*, 352 B.R. at 444 ("[t]he Court is of the opinion that the various additional factors as outlined by other courts for consideration are not dispositive on the question before the Court."). Further, the decision to lift (or not lift) the stay may be upheld on judicial economy grounds alone. *See Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802, 807 (9th Cir. 1985).

31. For example, in *In re Williams*, the McSwains filed a complaint against Williams on October 30, 2008. 2012 Bankr. LEXIS 3307 at *2-3. On April 5, 2010, a Special Master was appointed to determine damages. *Id.* at *3-4. Approximately one year later, the Special Master filed his report, finding that Williams owed McSwain, LP more than $7 million in damages. *Id.* at *4. Williams responded by filing a bankruptcy petition before the Chancery Court could confirm the Special Master's report. *Id.* at *4-5. The McSwains then filed a motion for relief from the stay to allow the Chancery Court to consider McSwain, LP's application to confirm the Special Master's report and for entry of a final judgment against the debtor. *Id.* at 5.

32. The bankruptcy court lifted the stay, holding that judicial economy was an extremely important factor given that the underlying litigation had been pending three years before the bankruptcy case was filed. According to the court, "[a]llowing the Chancery Court to hear this case to finality may significantly reduce the duplication of evidence." *Id.* at *9. The court also noted that "[t]he impact of litigation on other creditors may be lessened by requiring that the enforcement and satisfaction of any judgment be through the bankruptcy court

to be dealt with along with the claims of other creditors." *Id.* at *10.

33. Further, other bankruptcy courts in this Circuit have permitted the automatic stay to be lifted when the movant is simply seeking to establish the amount of the debtor's liability, on the grounds of judicial economy. S*ee, e.g., May v. Wheeler Group, Inc. (In re Wheeler Group, Inc.)* (holding that since pre-petition litigation had "proceeded through very substantial adjudicatory steps in the District Court, the most expeditious way to liquidate the claim is to allow it to proceed to its conclusion in the District Court."); *In re Expresstrak, L.L.C.*, 2004 Bankr. LEXIS 114, 24-28 (Bankr. E.D. Mich. Jan. 20, 2004) (permitting the automatic stay to be modified to permit pre-petition litigation to proceed in the district court, where, in part, proceedings were extensive and had been on file for over a year, "rather than commence and conduct a duplicative proceeding before [the bankruptcy court]").

1. <u>The Factor of Judicial Economy Unquestionably Supports Lifting the Stay</u>.

34. Judicial economy is of utmost importance in lifting the stay to permit the entry of findings of fact and conclusions of law and a judgment in the Luken Fraudulent Transfer Litigation because it has been pending in Arkansas for over two and a half years. It proceeded all the way through a jury verdict before the Debtor filed its bankruptcy case. All that remains is for The Honorable Judge Kristine G. Baker to enter her findings of fact and conclusions of law, and a judgment. As was the case in *In re Williams*, any impact of the judgment on other creditors can be mitigated by requiring the Trustee to enforce the judgment in this court, which the Trustee does not oppose. Lest the Debtor forget—the Debtor chose to litigate the Luken Fraudulent Transfer Litigation in the District Court. It defies judicial economy to not lift the automatic stay to permit the findings of fact and conclusions of law, and a judgment, to be entered in the Luken Fraudulent Transfer Litigation.

2. The Factors of Trial Readiness, Preliminary Bankruptcy Issues and the Trustee's Chance of Success on the Merits Support Lifting the Stay.

35. The other factors also weigh in favor of lifting the stay. Trial readiness is not an issue because trial is over. There are no preliminary bankruptcy issues to resolve. The Trustee's chances of success on the merits have already been decided by a jury.

3. The Factor of the Potential Burden on the Bankruptcy Estate Supports Lifting the Stay.

36. The Debtor's estate will not incur any costs by virtue of allowing the District Court to enter findings of fact and conclusions of law, and a judgment. Accordingly, this factor supports lifting the stay to permit these actions to take place.

4. The Factor of the Complete Resolution of the Issues Supports Lifting the Stay.

37. Allowing the District Court to proceed would result in a final resolution of the issues between the Trustee and the Debtor, as litigated over two and a half years in the District Court. Once the findings of fact and conclusions of law and a judgment are entered in the District Court, the Trustee will be able to assert a final, liquidated claim against the Debtor.

5. The Factor of the Impact of the Stay on the Parties and the Balance of Harms Supports Lifting the Stay.

38. Keeping the stay in place would undoubtedly result in the Debtor attempting to re-try a case that a jury already decided. The only conceivable reason why the Debtor did not include the Trustee in the list of its 20 largest unsecured creditors is because the Debtor intends to dispute the jury's verdict in this court. This sort of collateral attack is not what the drafters of the Bankruptcy Code envisioned when they designed the automatic stay:

> It will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.

Robbins v. Robbins (In re Robbins), 964 F.2d 342, 345 (4th Cir. 1992) (quoting S. Rep. No. 989, 95th Cong., 2d Sess. 50 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5836).

39. In this regard, keeping the stay in place, and allowing the Debtor to re-litigate the Trustee's case, would be severely prejudicial to the Trustee and the creditors he represents, whose claims have been stayed for the last four and a half years since the Equity Media Debtors commenced their bankruptcy cases. The Trustee's case against the Debtor has been decided, and it would be inequitable not to allow the District Court to take the final, ministerial steps to formalize the results of two and a half years of litigation. The Debtor had its day in court, that day has passed, and the Debtor lost.

40. Accordingly, as none of the factors supports the maintenance of the automatic stay in this case, the Trustee submits that substantial cause exists to lift the automatic stay to allow the District Court to enter its findings of fact and conclusions of law, and a judgment.

C. The Trustee Requests Relief From the Stay of Order Provided For in Rule 4001(a)(3)

41. Under the Federal Rules of Bankruptcy Procedure, "[a]n order granting a motion for relief from the automatic stay . . . is stayed until the expiration of 14 days after the entry of the order, **unless the court orders otherwise**." FED. R. BANKR. P. 4001(a)(3) (emphasis added). When a delay in lifting the stay is unwarranted, it is appropriate for the bankruptcy court to waive the 14-day stay. *See In re Ying Hua Tam*, No. DK 12-03679, 2012 Bankr. LEXIS 3890, *19 (Bankr. W.D. Mich. Aug. 9, 2012). Here, if the Court lifts the stay, delay would be unwarranted. There is, for example, no property interest to protect. All that the Trustee is requesting is for the Court to lift and/or modify the stay to allow the Honorable Kristine G. Baker to enter her findings of fact and conclusions of law, and a judgment. Accordingly, the Trustee requests that the Court waive the 14-day stay.

IV. CONCLUSION

42. After two and a half years of litigation, a federal-court jury returned a verdict against the Debtor and in favor of the Trustee. Before the District Court could enter its findings of fact, conclusions of law, and a judgment, the Debtor commenced this bankruptcy case. If the District Court were to enter its findings, conclusions, and judgment, such actions would constitute ministerial acts that would not violate the automatic stay. Out of an abundance of caution, however, the Trustee is seeking relief from the stay to permit the District Court to perform those actions. Cause exists to lift the stay because every factor courts consider weighs in favor of lifting the stay.

43. A proposed order granting the relief requested herein is attached.

WHEREFORE, the Trustee respectfully requests that the Court (i) enter an order modifying the automatic stay to allow the District Court to enter its findings of fact, conclusions of law, and a judgment; (ii) waiving the 14 day stay provided for in Rule 4001(a)(3);, and (iii) providing the Trustee such other relief that the Court deems appropriate.

Dated: June 28, 2013.

Respectfully Submitted,

ROCHELLE McCULLOUGH LLP

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COUNSEL FOR M. RANDY RICE
CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

This is to certify that on the 28th day of June, 2013, a true and correct copy of the above and foregoing document was served electronically on all parties requesting notice via the Court's ECF and the attached service list via ECF and/or U.S. Mail:

/s/ Kerry Ann Miller
Kerry Ann Miller