Hearing Date: August 6, 2010 at 9:45 AM (ET)
Objection Deadline: July 30, 2010 by 5:00 PM (ET)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MOTORS LIQUIDATION COMPANY, et al., f/k/a GENERAL MOTORS, CORP. *et al.*,	:	Case No. 09-50026 (REG)
Debtors.	:	

MOTION OF JULIE AND DAVID BRITTINGHAM FOR RELIEF FROM THE AUTOMATIC STAY TO ALLOW THE COMPLETION OF A PENDING PERSONAL INJURY ACTION

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
MOTORS LIQUIDATION COMPANY, et al., f/k/a GENERAL MOTORS, CORP. *et al*.,	:	Case No. 09-50026 (REG)
Debtors.	:	

ORDER PURSUANT TO 11 U.S.C. 362(d) MODIFYING THE AUTOMATIC STAY TO ALLOW THE COMPLETION OF THE PENDING PERSONAL INJURY ACTION OF JULIE AND DAVID BRITTINGHAM

Upon the motion ("Motion") of Julie Brittingham ("Ms. Brittingham") and her husband, David Brittingham ("Mr. Brittingham", and collectively with Mrs. Brittingham as the "Brittinghams"), for an order, pursuant to 11 U.S.C. Section 362(d)(1) and Section 105, modifying the automatic stay to allow the Brittinghams to proceed with their state law personal injury action, pending in the Court in the Common Pleas of Montgomery County, Ohio, *Brittingham v. General Motors Corporation, et al.*, Case No. 2001 CV 00664 (the "Ohio Litigation"); and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefore, it is hereby

ORDERED that the Motion is granted as provided herein, and it is further

ORDERED that the automatic stay under section 362(a) of the Bankruptcy Code is hereby modified to permit the Brittinghams to proceed with and prosecute the Ohio Litigation against the Debtors.

Dated: New York, New York
_____, 2010

Honorable Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MAR 17 2006

JULIE BRITTINGHAM and
DAVID BRITTINGHAM,

Plaintiffs - Appellants,

vs.

GENERAL MOTORS CORPORATION
and
VIRGINIA STULL, M.D.,

Defendants - Appellees.

Case No. 06-3114

Case Manager: Roy G. Ford

APPELLEES' MOTION TO STAY PROCEEDINGS AND RESCIND BRIEFING SCHEDULE PENDING RESOLUTION OF APPELLEE DELPHI CORPORATION'S CHAPTER 11 BANKRUPTCY

Appellee, Delphi Corporation (Delphi), a debtor in possession under Chapter 11 of the Bankruptcy Act, on its own behalf and on behalf of its predecessor, GM Corporation and its employee, Virginia Stull, M.D., moves the Court to honor the automatic stay in Bankruptcy, 11 U.S.C.A. §362(a), and to rescind the briefing schedule previously published by the Clerk. This motion is supported by the accompanying Legal Argument, the affidavit of Francis P. Kuplicki and the attachments to the affidavit.

(Signature on Following Page)

Legal Argument

I. FACTS

A. Plaintiff's Employment, Pre-Employment Physical Examination and Medical Condition.

Plaintiff, Julie Brittingham, alleges that on August 1, 1997, she underwent a pre-employment physical examination at a manufacturing facility located in Montgomery County, Ohio, which was owned and operated by General Motors Corporation (GM). Plaintiff further alleges that the examination was conducted, in part, by Virginia Stull, M. D., a physician and GM employee assigned to the facility's medical unit. According to the plaintiff, the examination included a lung function study which allegedly demonstrated that the plaintiff suffered from a genetic lung condition known as Alpha 1 Antitripsin Deficiency, but that Dr. Stull failed to inform plaintiff of the results of the lung function study. Thus, plaintiff contends that she was hired by GM on September 11, 1997, and assigned to work in a plant environment that caused her harm. Plaintiff terminated her employment with GM and Delphi in August, 1999. See Kuplicki Affidavit, ¶4.B. attached.

B. General Motors Corporation (GM) and Delphi Corporation (Delphi).

Delphi was incorporated in 1998 as a wholly-owned subsidiary of GM. Prior to January 1, 1999, GM conducted Delphi's business through various divisions and subsidiaries. Effective January 1, 1999, all of the assets and

liabilities of these divisions and subsidiaries were transferred to Delphi and its subsidiaries and affiliates. Id., ¶3.

Pursuant to the corporate transactional documents, the facility where plaintiff underwent her pre-employment physical and later worked was transferred to Delphi on January 1, 1999. Id., ¶4.C.

In further accord with the corporate agreements, the plaintiff became a "Delphi employee" on January 1, 1999, and Delphi assumed "financial responsibility for employment related claims . . . incurred ***before or after*** the Contribution Date [(i.e., January 1, 1999)]." (emphasis supplied) Id., and documents A and B attached to the Kuplicki affidavit.

Plaintiffs filed their lawsuit on February 15, 2001, naming, among other defendants, GM, Delphi and Dr. Stull.[1] Id, ¶4.A. Thus, under the terms of the corporate agreements between GM and Delphi, when plaintiffs filed this action, Delphi was responsible for defending and indemnifying GM and to defend Dr. Stull who, like plaintiff, became a Delphi employee on January 1, 1999, and who had previously performed her professional duties vis-à-vis the plaintiff in a *respondeat superior* relationship to GM. Id., ¶4.C. and D. Delphi has defended

[1] Plaintiff David Brittingham is Julie's husband who pursues a derivative claim for loss of consortium. Curiously, however, appellants do not name, list or otherwise mention Delphi in their Notice of Appeal.

EXHIBIT A

FILED
COMMON PLEAS
2002 MAY 30 AM 10: 47
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OHIO

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IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO

JULIE BRITTINGHAM and
DAVID BRITTINGHAM
523 Eavey Street
Xenia, OH 45385

Civil Action No. 2001 CV 00664

(Judge Michael T. Hall)

Plaintiffs,

vs.

GENERAL MOTORS CORPORATION,
a Delaware corporation
c/o Registered Agent: Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

and

DELPHI AUTOMOTIVE SYSTEMS CORPORATION,
a Delaware corporation
c/o Registered Agent: Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

and

DELPHI AUTOMOTIVE SYSTEMS LLC,
a Delaware limited liability company
c/o Registered Agent: Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

and

V. STULL, M.D.
1420 Wisconsin Blvd.
Dayton, OH 45408-2602

and

JAMES RUFFNER, M.D.
Delphi Harrison Thermal
3600 Dryden Road
Moraine, OH 45439-1410

and

JOHN CZACHOR, M.D.
10356 Black Birch Drive
Dayton, OH 45458

and

JANE FARLEY, M.D.
50 Progress Drive
Xenia, OH 45986

and

FREDERICK STOCKWELL, M.D.
50 Progress Drive
Xenia, OH 45986

and

MEDICAL SERVICE ASSOCIATES OF XENIA, INC.
50 Progress Drive
Xenia, OH 45986

and

JOHN DOES I-V, inclusive,

Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT AND JURY DEMAND

COME NOW the Plaintiffs, by and through their counsel undersigned, and for their claims for relief and causes of action against the Defendants, jointly and severally, state and allege as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff Julie Brittingham is an Ohio citizen and a resident of Greene County, Ohio, and was such at all times material to this complaint.

2. Plaintiff David Brittingham is an Ohio citizen and resident of Greene County, Ohio, and was such at all times material to this complaint.

3. Defendant General Motors Corporation ("General Motors") is a Delaware corporation doing business in the State of Ohio and in Montgomery County at all times material to this complaint. At all times material to this complaint, Defendant V. Stull, M.D. and Defendant James Ruffner, M.D. were employees, agents and/or ostensible or apparent agents of Defendant General Motors.

4. Defendant Delphi Automotive Systems Corporation ("Delphi Corp.") is a Delaware corporation with its principal place of business in Montgomery County, Ohio, and is therefore a citizen of the State of Ohio.

It is liable for the acts and omissions of its employees acting within the scope of their employment as well the acts and omissions of Defendant General Motors and its employees, agents and/or ostensible or apparent agents.

5. Defendant Delphi Automotive Systems LLC ("Delphi LLC") is a Delaware limited liability company whose principal place of business is in Montgomery County, Ohio. Delphi LLC is liable for the acts and omissions of its employees acting within the scope of their employment and agents and/or ostensible or apparent agents, as well the acts and omissions of Defendant General Motors and its employees. Defendant Delphi Corp. and Defendant Delphi LLC will be hereinafter collectively referred to as "Delphi."

6. Defendant V. Stull, M.D. is a citizen of the State of Ohio and Montgomery County and was such at all times material to this complaint. She is a physician who at all times material to this complaint practiced medicine within the State of Ohio and may continue to practice medicine within the State of Ohio.

7. Defendant James Ruffner, M.D. is a citizen of the State of Ohio and of Montgomery County. He is a physician who at all times material to this complaint practiced medicine within the State of Ohio and may continue to practice medicine within the State of Ohio.

8. Defendant John Czachor, M.D. is a citizen of the State of Ohio and a resident of Montgomery County. He is a physician who at all

times material to this complaint practiced medicine within the State of Ohio and may continue to practice medicine within the State of Ohio.

9. Defendant Jane Farley, M.D. is a citizen of the State of Ohio. She is a physician who at all times relevant to this complaint practiced medicine within the State of Ohio and may continue to practice medicine within the State of Ohio.

10. Defendant Medical Service Associates of Xenia, Inc. is an Ohio partnership or corporation, which at all times material to this complaint employed or is otherwise vicariously responsible for the acts and omissions of Defendant Jane Farley, M.D.

11. John Does I-V, inclusive, are individuals or corporate health care providers who provided care and treatment to Plaintiff Julie Brittingham and were doing business within the State of Ohio and Montgomery County at all times material to this complaint. John Does I-V are sued herein under fictitious names because their true names are unknown. At such time as their true names are known, they will be substituted herein by amendment.

I. FACTS COMMON TO ALL CLAIMS FOR RELIEF

12. Plaintiff Julie Brittingham was born November 28, 1962,with a genetic condition known as Alpha 1 Antitrypsin Deficiency ("AAD"),also known as "acquired emphysema." This disease was not diagnosed in Plaintiff Julie Brittingham until early in September, 1999. It is a

progressive disease, which, if left untreated or not diagnosed for a significant time, will result in death or the need for lung transplantation.

13. Prior to August 1, 1997, Plaintiff Julie Brittingham applied for employment with Defendant General Motors.

14. On August 1, 1997, Plaintiff Julie Brittingham received a pre-employment physical in Montgomery County, Ohio, by personnel employed by Defendant General Motors and/or Defendant Delphi or for which these entities are vicariously responsible. Included in that physical examination and/or the report made to General Motors were lung function studies as well as other studies and/or conclusions of the physician(s) which were provided to Defendant General Motors. These reports and/or conclusions were reviewed by General Motors' employees acting within the scope of their employment prior to General Motors' employment of Julie Brittingham.

15. As a result of the aforementioned pre-employment physical, the physician(s) responsible for the physical examination Defendant General Motors and/or its, successors, employees or agents, including Delphi learned, or should have learned, that Plaintiff Julie Brittingham was suffering from AAD or from symptoms indicating significant lung function impairment.

16. Julie Brittingham did not learn of her disease until after she left the employ of General Motors. She would not have accepted the job at General Motors had she known the results of her pre-employment

physical exam and tests. Further, she would have sought medical care and changed her lifestyle to manage her disease had she known the results of her pre-employment physical exam and tests.

17. At all times material to this complaint, Defendant V. Stull, M.D. and Defendant James Ruffner, M.D. were employees of General Motors acting within the scope and capacity of their employment.

18. Plaintiff Julie Brittingham reasonably believed that Defendant, V. Stull, M.D. and Defendant James Ruffner, M.D., as well as the other persons involved in her pre-employment physical examination, were employees of Defendant General Motors.

19. Defendants, General Motors, Delphi, Ruffner, Stull and/or their successors, employees or agents had a fiduciary or other special duty to communicate to Julie Brittingham the results of pre-employment medical tests indicating her lung function impairment, but in direct violation of said duty, concealed this information from her and never informed her of these symptoms or problems.

20. Plaintiff Julie Brittingham's employment with Defendant General Motors was terminated before August of 1999, and her employment with Defendant Delphi was terminated in August of 1999.

II. FIRST CLAIM FOR RELIEF: CLAIM OF JULIE BRITTINGHAM FOR NEGLIGENCE AND INTENTIONAL MISCONDUCT OF DEFENDANT GENERAL MOTORS AND DEFENDANT DELPHI

21. All allegations of this complaint are incorporated herein by this reference.

22. Defendants General Motors and Delphi committed acts of intentional misconduct and negligence, which were perpetrated in violation of the duties they owed to Plaintiff, Julie Brittingham. Such negligence and intentional misconduct include without limitation the following:

A. Said Defendants failed to disclose to Plaintiff Julie Brittingham the results of her pre-employment physical examination and testing with General Motors;

B. Said Defendants failed to disclose to Plaintiff Julie Brittingham facts about her medical condition that said Defendants knew, but of which Julie Brittingham was unaware; and

C. In addition to the above, said Defendants were otherwise negligent and guilty of intentional misconduct, such intentional misconduct being that GM and Delphi, to the exclusion of Plaintiffs, had knowledge and appreciated or should have appreciated that there was a high risk of serious injury or death to Plaintiff Julie Brittingham and that such injury or death was substantially certain to occur.

23. As a direct and proximate result of Defendants General Motors' and Delphi's negligence and intentional misconduct, Plaintiff Julie Brittingham has been injured and will be required to undergo a lung transplant or she will die. Moreover, this negligence and intentional misconduct has proximately caused Plaintiff Julie Brittingham the following injuries or losses:

A. Pain, suffering and emotional distress in the past and to be experienced in the future;

B. Loss of enjoyment of life in the past and to be experienced in the future;

C. Reasonable medical expenses in the past and those to be experienced in the future;

D. Loss of income and loss of earning capacity experienced in the past and that to be experienced in the future;

E. Disability and disfigurement experienced in the past and that to be experienced in the future;

F. The loss of chance to live a more normal and a longer life but for the conduct of the Defendant General Motors and Defendant Delphi; and

G. All other injuries or losses for which compensatory damages are permitted pursuant to the law of the State of Ohio.

24. As a direct and proximate result of Defendants General Motors' and Delphi's intentional, willful and wanton misconduct, who perpetrated the acts alleged herein with the requisite state of mind to justify an award of punitive damages under the laws of the State of Ohio, the Plaintiffs are entitled to punitive damages against said Defendants in an amount of money sufficient to punish said Defendants and to deter future misconduct such as that which exists in this case.

III. SECOND CLAIM FOR RELIEF: CLAIM OF JULIE BRITTINGHAM FOR BREACH OF FIDUCIARY DUTY BY DEFENDANT GENERAL MOTORS AND DEFENDANT DELPHI

25. All allegations of this complaint are incorporated herein by this reference.

26. Defendants General Motors and Delphi had a confidential, fiduciary relationship with Plaintiff Julie Brittingham and had a fiduciary

duty to inform her of her medical condition of which they were aware, but of which Plaintiff Julie Brittingham was unaware.

27. Defendants General Motors and Delphi breached this fiduciary duty in particular and other fiduciary duties to Plaintiff Julie Brittingham, as well as the confidential relationship Defendants General Motors and Delphi had with Plaintiff Julie Brittingham, by not informing her of the results of her physical exam and of her pulmonary function tests when they learned of them or within a reasonable period of time thereafter. Plaintiffs were unaware of Defendants' breaches of fiduciary duty until after Julie Brittingham left the employ of Defendants General Motors and Delphi.

28. As a direct and proximate result of Defendants General Motors' and Delphi's intentional tortious misconduct, their breaches of fiduciary duty, and their breaches of duty imposed by the above-referenced confidential relationship, Plaintiff Julie Brittingham will be required to undergo a lung transplant or she will die. Moreover, this breach of fiduciary duty has proximately caused Plaintiff Julie Brittingham the following injuries or losses:

A. Pain, suffering and emotional distress in the past and to be experienced in the future;

B. Loss of enjoyment of life in the past and to be experienced in the future;

C. Reasonable medical expenses in the past and those to be experienced in the future;

D. Loss of income and loss of earning capacity experienced in the past and that to be experienced in the future;

E. Disability and disfigurement experienced in the past and that to be experienced in the future;

F. The loss of chance to live a more normal and a longer life but for the conduct of the Defendant General Motors and Defendant Delphi; and

G. All other injuries or losses for which compensatory damages are permitted pursuant to the law of the State of Ohio.

29. As a direct and proximate cause and consequence of Defendants General Motors' and Delphi's misconduct and breaches of duty toward Plaintiff Julie Brittingham, which misconduct and breaches of duty were perpetrated with the requisite state of mind to justify an award of punitive damages under Ohio law, the Plaintiffs are entitled to punitive damages against said Defendants in an amount of money sufficient to punish them and to deter future misconduct such as that which exists in this case.

IV. THIRD CLAIM FOR RELIEF: CLAIM OF JULIE BRITTINGHAM FOR FRAUDULENT CONCEALMENT AGAINST DEFENDANT GENERAL MOTORS AND DEFENDANT DELPHI

30. All allegations of this complaint are incorporated herein by this reference.

31. Prior to and after the cessation of her employment with Defendants General Motors and Delphi, said Defendants had a confidential, fiduciary relationship with Julie Brittingham and a fiduciary

duty to inform her of her medical condition of which they were aware, but which Plaintiff Julie Brittingham was unaware.

32. Defendants General Motors and Delphi failed to inform Plaintiff Julie Brittingham of the results of her pre-employment physical examination, including the results of adverse lung function tests both prior to and after the cessation of her employment by said Defendants. This failure to disclose was an actual intentional concealment of material facts, with knowledge of the facts concealed and done with the intent to mislead Plaintiff Julie Brittingham into relying upon such conduct followed by her actual reliance thereon in failing to seek an early diagnosis and treatment of her AAD. Julie Brittingham had the right to so rely and has suffered injury resulting because of such reliance. Plaintiffs were unaware of the fraudulent concealment until after Julie Brittingham left the employ of Defendant GM and Defendant Delphi.

33. As a direct and proximate result of Plaintiff Julie Brittingham's reliance upon Defendants General Motors' and Delphi's fraudulent concealment, Plaintiff Julie Brittingham will be required to undergo a lung transplant or she will die. Moreover, this fraudulent concealment and reliance upon such has proximately caused Plaintiff Julie Brittingham the following injuries or losses:

A. Pain, suffering and emotional distress in the past and to be experienced in the future;

B. Loss of enjoyment of life in the past and to be experienced in the future;

C. Reasonable medical expenses in the past and those to be experienced in the future;

D. Loss of income and loss of earning capacity experienced in the past and that to be experienced in the future;

E. Disability and disfigurement experienced in the past and that to be experienced in the future;

F. The loss of chance to live a more normal and a longer life but for the conduct of the Defendant General Motors and Defendant Delphi; and

G. All other injuries or losses for which compensatory damages are permitted pursuant to the law of the State of Ohio.

34. As a direct and proximate result of Defendants General Motors' and Delphi's above described misconduct and breaches of duty, who perpetrated the acts alleged herein with the requisite state of mind to justify an award of punitive damages under the laws of the State of Ohio, the Plaintiffs are entitled to punitive damages against said Defendants in an amount of money sufficient to punish said Defendants and to deter future misconduct such as that which exists in this case.

V. FOURTH CLAIM FOR RELIEF (MEDICAL NEGLIGENCE)

35. All allegations of this complaint are incorporated herein by this reference.

36. At times material to this complaint, the individual defendants were physicians practicing medicine within the State of Ohio and had a patient-physician relationship with the Plaintiff Julie Brittingham.

37. At all times material to this complaint, the Defendant physicians held themselves out to the public and to Plaintiff Julie Brittingham as being fully qualified and competent. Moreover, the physician Defendants had the responsibility and duty to inform Plaintiff Julie Brittingham of the results of their examinations and of their review of prior records concerning Plaintiff Julie Brittingham's health.

38. As a direct and proximate result of the Defendant physicians' negligence and their breaches of applicable standards of care, Plaintiff Julie Brittingham will be required to undergo a lung transplant or she will die. Moreover, this negligence and malpractice has proximately caused Plaintiff Julie Brittingham the following injuries or losses:

A. Pain, suffering and emotional distress in the past and to be experienced in the future;

B. Loss of enjoyment of life in the past and to be experienced in the future;

C. Reasonable medical expenses in the past and those to be experienced in the future;

D. Loss of income and loss of earning capacity experienced in the past and that to be experienced in the future;

E. Disability and disfigurement experienced in the past and that to be experienced in the future;

F. The loss of chance to live a more normal and a longer life but for the conduct of the Defendants General Motors and Delphi; and

G. All other injuries or losses for which compensatory damages are permitted pursuant to the law of the State of Ohio.

VI. FIFTH CLAIM FOR RELIEF (LOSS OF CONSORTIUM FOR PLAINTIFF DAVID BRITTINGHAM)

39. All allegations of this complaint are incorporated herein by this reference.

40. At all times material to this complaint, the Plaintiffs were and continue to be husband and wife.

41. As a direct and proximate result of Defendants General Motors' and Delphi's negligence and intentional misconduct and the negligence and breaches of duty of the physician Defendants as referenced above, Plaintiff David Brittingham has lost the care, comfort, support and consortium of his wife, Plaintiff Julie Brittingham.

42. Moreover, because the conduct of Defendants General Motors and Delphi was intentional and/or perpetrated with the requisite state of mind to justify an award of punitive damages under the law of the State of Ohio, Plaintiff David Brittingham claims punitive damages against the Defendant General Motors and Defendant Delphi Automotive in a reasonable sum.

WHEREFORE, Plaintiffs Julie Brittingham and David Brittingham demand judgment, jointly and severally, against the Defendants in an amount of money to reasonably compensate them for their injuries, damage and loss; for punitive damages against Defendants General

Motors and Delphi; for costs of this suit; and for such other and further relief which is just and proper.

Respectfully submitted,

/ Thomas J. Intili

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Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs Julie Brittingham and David Brittingham hereby continue their demand for a trial by jury on all issues which may properly be tried before a jury.

/ Thomas J. Intili

Thomas J. Intili, Trial Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of May, 2002, a true and accurate copy of the foregoing was placed in the U.S. mail, postage prepaid and/or sent by telefax as indicated below (before 5:00 p.m. MST) and addressed to:

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/ Thomas J. Intili

Thomas J. Intili, Trial Attorney

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TO: THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

Julie Brittingham ("Mrs. Brittingham") and her husband, David Brittingham (Mr. Brittingham, and collectively with Mrs. Brittingham as the "Brittinghams" or "Plaintiffs"), by their attorneys, hereby submit this motion for an order, pursuant to 11 U.S.C. Section 362(d)(1) and Section 105, modifying the automatic stay to allow them to proceed with their state law personal injury action, pending in the Court in the Common Pleas of Montgomery County, Ohio ("Ohio State Court"), *Brittingham v. General Motors Corporation, et al.*, Case No. 2001 CV 00664 (the "Ohio Litigation"), against, *inter alia*, Dr. Virginia Stull ("Dr. Stull"), and the Motors Liquidation Corporation et al. (f/k/a General Motors Corporation et al.)(the "Debtors"). In support of this Motion, the Brittinghams respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Sections 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. Sec. 157(b). Venue is proper in the Court pursuant to 28 U.S.C. Sections 1408 and 1409. The statutory predicate for the relief requested herein is section 362(d) of the Bankruptcy Code and Local Rule of Bankruptcy Procedure 4001-11.

BACKGROUND

(i) Ohio Litigation

2. On February 8, 2001, through Meyer & Williams, P.C., the Brittinghams commenced the Ohio Litigation. A copy of the amended complaint ("Complaint") is annexed hereto as **Exhibit "A".**

3. In the Ohio Litigation, the Brittinghams have asserted claims against the Debtors and Dr. Stull for, *inter alia*, (i) negligently conducting Mrs. Brittingham's *pre-employment*

physical examination ("Examination"), (ii) negligently failing to notify Mrs. Brittingham that her lung function was severely abnormal, (iii) negligently approving Mrs. Brittingham for employment for which she was not physically fit, and (iv) negligently failing to refer her to a qualified physician as a result of her impairment as required by the Debtors' policies and procedures.[1]

4. The Ohio Litigation revolves around the pre-employment examination of Mrs. Brittingham. Mrs. Brittingham applied for employment at GM in July 1997. On August 1, 1997, she underwent a pre-employment physical examination that included pulmonary function tests. After the first test showed Mrs. Brittingham's lung function to be 57% of predicted value, the test was repeated and again it showed diminished lung function, this time at 55% of predicted value. In her deposition, Mrs. Brittingham testified that no one explained to her why the test had to be repeated. After reviewing two abnormal pulmonary function tests, Dr. Stull did not discuss the results and their significance with Mrs. Brittingham. Instead, Dr. Stull had Mrs. Brittingham sign a printout of the results and then approved her for employment in a GM plant. This occurred in spite of the existence of a specific GM policy mandating that Mrs. Brittingham's results required that she be referred to a specialist. Subsequently, Mrs. Brittingham worked full-time for GM from September 11, 1997, until August 11, 1999, when she became physically unable to continue working.

5. In September 1999, Mrs. Brittingham was diagnosed with Alpha-1 Antitrypsin Deficiency Syndrome ("AAD"), also known as "acquired emphysema." AAD is an inherited condition resulting from the liver's failure to produce a sufficient amount of the protein alpha-1 antritrypsin. To extend her shortening life expectancy, Mrs. Brittingham is awaiting a double

[1] The facts and allegations are set forth herein for informational purposes. In the event of a dispute, the Brittinghams respectfully refer the Court to the Complaint itself, which shall govern.

lung transplant which carries a fifty percent, five-year death rate. Mrs. Brittingham maintains that if Dr. Stull had informed her of the abnormal test results and referred her to a physician, she would have sought immediate treatment.

6. After nearly eight years of litigation, Mrs. Brittingham is still waiting for her lung transplant and her health is continuing to deteriorate. She is on full time supplemental oxygen and rarely leaves her home[2].

7. As a result of the foregoing negligence, the Brittinghams have asserted claims for their damages of several million dollars.

8. Since 2001, the parties have litigated this matter, including several appeals, removal to the Federal Court, and remand back to Ohio State Court. As of the Debtors' Bankruptcy Filing, the case was in the final stages of readiness for trial in the Ohio State Court.

(ii) Indemnification and Insurance Coverage

9. After Mrs. Brittingham's January 1, 1999 Examination, she was employed by the Debtors, but was transferred and/or assigned as an employee to Delphi Automotive Systems Corporation ("Delphi") pursuant to an agreement between the Debtors and Delphi.

10. As indicated by Delphi in the motion filed in the United States Court of Appeals for the Sixth Circuit to stay the Ohio Litigation ("Sixth Circuit Stay Motion"), Delphi agreed to assume "financial responsibility for employment related claims … incurred *before or after* [January 1, 1999]"[3]. A copy of selected pages from the Sixth Circuit Stay Motion is annexed hereto as **Exhibit "B"**. The Sixth Circuit Stay Motion also indicates that Delphi's assumption of liability was affirmed in the Master Separation Agreement ("MSA") between Delphi and the

[2] Travel to New York to liquidate her claim would be essentially impossible for her.

[3] This was a motion by General Motors Corporation and Virginia Stull M.D. (Defendants – Appellees) to stay proceedings and rescind briefing schedule pending resolution of Delphi Corporation's Chapter 11 case. In the almost nine years that the Ohio Litigation has been proceeding, it has two trips, on two separate issues, to the United States Court Of Appeals for The Sixth Circuit.

MLC. Thus, as of January 1, 1999, Delphi contractually assumed ultimate responsibility for defending and indemnifying the Debtors and Dr. Stull with respect to the Ohio Litigation.

11. In addition to, or in furtherance of, the express indemnification agreement by Delphi, Delphi maintained policies of insurance ("Delphi Policy") insuring the Debtors and Dr. Stull for the acts and omissions complained of in the Ohio Litigation[4].

12. On or about October 8, 2005, Delphi filed a chapter 11 bankruptcy petition, and thereafter filed its First Amended Joint Plan of Reorganization on or about December 10, 2007 ("Delphi Plan"). Pursuant to Exhibit 7.20(a) Delphi-GM Master Restructuring Agreement filed December 10, 2007 to Delphi Plan, Delphi assumed the aforesaid Indemnification Agreement and specifically assumed all obligations related to the Ohio Litigation.

13. In fact, notwithstanding Delphi's bankruptcy filing, the Delphi Insurance Carrier defended the Debtors and Dr. Stull in the Ohio Litigation from its inception in 2001 until the Ohio Litigation was stayed as a result of the filing ("Bankruptcy Filing") of the Debtors' chapter 11 case ("Bankruptcy Case") on June 1, 2009 in the Southern District of New York Bankruptcy Court ("Bankruptcy Court")[5].

14. As a result of Debtors' Bankruptcy Filing, Plaintiffs' prosecution of the Ohio Litigation was automatically stayed pursuant to section 362 of the Bankruptcy Code[6].

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[4] The Delphi Policy, numbered AUL 5104184, by and between Delphi and Allianz Underwriters Insurance Co. Policy (the "Delphi Insurance Carrier"), was a policy covering claims made between May 28, 1999 through October 1, 2002, and having general policy coverage limits of $50 Million of coverage in excess of $1 million, and a self-insured retention of $1 million. Reliance National Indemnity Company (now defunct) held the underlying policy for the time period between May 28, 1999 and October 1, 2001, originally affording $1 million in coverage to the named insured, Delphi. Endorsement No. 2 to this policy indicates that the named insured is self-insured for $1 million and that the Allianz policy will provide $50 million of coverage after that $1 million has been exhausted.

[5] Thereafter, unbeknownst to the Brittinghams, by Order dated July 30, 2009, the Delphi Plan was modified ("Modified Delphi Plan"), and pursuant to the Supplement to the Plan Modification Approval Motion, specifically Exhibit 7.7 "Master Disposition Agreement" dated as of July 26, 2009, the Indemnification Agreement was purportedly rejected. It is currently unclear whether Delphi or the Delphi Insurance Carrier has a continuing obligation to defend the Debtors and Dr. Stull in the Ohio Litigation or whether their purported disclaimer after 8 years of litigation is permitted.

[6] Since that date, and as a result of the shifting of parties and obligations due to the bankruptcy filings, the

15. On or about August 5, 2009, the Brittinghams filed an Application for Examination Pursuant to Federal Rules of Bankruptcy Procedure 2004 [Docket No. 3665] in these chapter 11 proceedings (the "2004 Application"). In response to the 2004 Application the Debtors provided certain insurance policies ("New GM Policy") evidencing that General Motors, LLC ("New GM") has assumed the defense of Dr. Stull in the Ohio Litigation.

16. The New GM Policy indicates that Dr. Stull's actions are covered by a fronting policy issued by National Union Fire Insurance, American Home Assurance Company, the Insurance Company of the State of Pennsylvania (all member companies of AIG) (collectively the "New GM Insurance Carrier") providing for $10 million in coverage applicable to "occurrences" during the policy period September 1, 1996 through September 1, 1997. Endorsement H ("Incidental Malpractice" effective Sept. 1, 1996) amends the definitions of "occurrence" and "insured" to include claims such as those alleged in the Ohio Litigation.

CERTIFICATION

17. For at least the last six months, the Brittinghams' counsel, have been conferring with counsel for Debtors in attempt to agree to a stipulation to modify the stay. However, the parties have been unable to reach agreement on the terms. As a result of the continued deterioration of Mrs. Brittingham's health, Brittinghams' counsel are now compelled to seek an order modifying the automatic stay to allow them proceed with the Ohio Litigation.

GROUNDS TO LIFT THE AUTOMATIC STAY

18. Section 362 provides the court the authority to modify or lift the automatic stay to proceed as against the debtor in a few instances. Applicably, section 362(d)(1) provides that the stay may be modified or lifted "for cause, including the lack of adequate protection of an interest

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Brittinghams have attempted to discover which entity, if any, will be defending this action, and whether or not there is any insurance coverage for the actions of the Debtors and Dr. Stull therein.

in property of such party in interest." 11 U.S.C. §362(d)(1) (2009). Since neither the statute nor legislative history define "cause," In re Sonnax Indus., 907 F.2d 1280, 1285 (2d. Cir. 1990), the court found that bankruptcy courts are empowered to make such a determination on a case-by-case basis.

19. The court is accorded broad discretion to modify the automatic stay. Sonnax, 907 F.2d at 1288. A very fact-specific inquiry, weighing a number of factors, is required in determining a motion on such grounds. Id. The common factors employed by this Circuit, coined the *Sonnax* 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 the 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 full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests 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 interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms.

See also In re MarketXT Holdings Corp., 2009 Bankr. LEXIS 1897, at * 11-12 (Bankr. S.D.N.Y. July 20, 2009) (citing Sonnax, 907 F.2d at 1286); In re Bally Total Fitness of Greater N.Y., 402 B.R. 616, 623 (Bankr. S.D.N.Y. 2009) (same). "Not all of these factors will be relevant in every case." Mazzeo v. Lenhart (In re Mazzeo), 167 F.3d 139, 143 (2nd Cir. 1999).

20. The applicable factors in this case weigh in favor of granting a lifting of the stay in this instance:

(a) Relief would result in complete resolution of claim: The Debtors are a necessary party to the Ohio Litigation and the ability to enforce any award against

applicable insurance proceeds, however, as set out previously, the Brittinghams' claim also involves three important non-debtor parties, including New GM, Dr. Stull and Delphi. Granting relief requested in this Motion would result in complete resolution of the Ohio Litigation because all parties will be or will have the opportunity to be represented in Ohio State Court. Metz v. Poughkeepsie Sav. Bank, FSB (In re Metz), 165 B.R. 769, 772 (Bankr. E.D.N.Y. 1994) (in lifting the stay after an analysis of the *Sonnax* factors the court considered the "complete resolution of the issues" an important factor).

(b) No Interference with Bankruptcy Case: This matter is in the final stages of readiness for trial after 8 years of litigation. New GM will be defending Dr. Stull in the Ohio Litigation, and the Debtors have represented on numerous occasions that any discoverable information is within the control of New GM. As such, there will be minimum interference with the Bankruptcy Case. In fact, if the stay is not lifted, the case will have to be litigated in Bankruptcy Court which may result in a greater interference with the Bankruptcy Case, as a result of the Court's need to familiarize itself with the record of the Ohio Litigation that spans more than 8 years. In re Wapotish, 2009 Bankr. LEXIS 1851 (Bankr. N.D. Ill. July 1, 2009) (the court considered whether "there will be *greater interference* with bankruptcy case if stay is not lifted because matters will have to be litigated in bankruptcy court" *(emphasis added)*). Moreover, if it is determined that the Delphi Policy is not applicable, any judgment that the Brittinghams are awarded against the MLC would be enforced according to the rulings of this Court. In re Dryja, 425 B.R. 608, 612 (Bankr. D. Colo. 2010) (in deciding to lift the stay the

court reasoned that the interference with the bankruptcy court would be minimal because although the state court would decide on how certain property would be divided, the bankruptcy court would still retain its jurisdiction to adjudicate the impact of the state court's division of property on the bankruptcy case.)

(c) Debtors as fiduciary: The stay should be lift because in the Ohio Litigation the Brittinghams have claimed that the Debtors had a fiduciary obligation to Mrs. Brittingham. See In re Morris, 2010 Bankr. LEXIS 1875 (Bankr. N.D.N.Y. May 27, 2010) (the court found that the debtors' position as a fiduciary in the state action was a favorable factor in lifting the stay)**;** also see In re Sonnax Indus., 907 F.2d at 1286 ("[g]enerally, proceedings in which the debtor is a fiduciary … need not be stayed because they bear no relationship to the purpose of the automatic stay, which is protection of the debtor and his estate from his creditors. S. Rep. No. 989, 95th Cong., 2d Sess. 52, reprinted in 1978 U.S. Code Cong. & Admin. News 5838.")

(d) Specialized Tribunal: This Court should allow the completion of the Ohio Litigation because it revolves around personal injury issues based on Ohio State Law, and the Brittinghams are seeking a trial by jury. In re Ingle, 259 B.R. 856, 861 (Bankr. E.D. Tex. 2001) (in lifting the stay to allow a personal injury and wrongful death action to continue in state court, the court's overriding consideration was the nature of movant's claim, specifically a personal injury or wrongful death claim, cannot be tried in the bankruptcy court.); see 28 U.S.C. § 157[7]. Thus, in the case *sub judice*, although it is not technically a

[7] 28 USCS Section 157, in relevant part, states that a core proceeding of the bankruptcy court includes " …

specialized tribunal, the Ohio State Court's significant expertise and experience[8] is necessary. Sonnax, 907 F.2d at 1286 (court should consider whether another tribunal with necessary expertise exists to hear cause of action) (citing In re Curtis, 40 Bankr. 795, 799-800 (Bankr. D. Utah 1984)); In re Metz, 165 B.R. at 772 (lifting the stay based on the *Sonnax* factors, and specifically on the fact that the "expertise of the bankruptcy court is unnecessary"); In re Morris, 2010 Bankr. LEXIS 1875 (Bankr. N.D.N.Y. May 27, 2010) ("state court is the proper tribunal to hear the state law causes of action against [the Debtors] as one of several defendants"); see generally In re Dryja, 425 B.R. 608, 611 (Bankr. D. Colo. 2010).

(e) Insurance Defense: As set forth above, New GM has assumed the defense of Dr. Stull in the Ohio Litigation. There is a question as to whether there is insurance coverage for the Debtors, which issue will be determined after trial by the Ohio State Court.

(f) The action primarily involves third parties: One of the main purposes of the Ohio Litigation is to determine the culpability of Dr. Stull's actions, and New GM or its carrier that has assumed the defense of Dr. Stull. In re Morris, 2010 Bankr. LEXIS 1875 (Bankr. N.D.N.Y. May 27, 2010) (lifting the stay based on the fact that the state court action involves non-debtor parties, for which liability will need to be apportioned.) Furthermore, as for the actions of the Debtors, Debtors'

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allowance or disallowance of claims against the estate or exemptions from property of the estate … but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate … (emphasis added)".

[8] The Ohio State Court also has been involved in this action since 2001 which makes it better situated to make a determination on this matter than Bankruptcy Court.

counsel has represented that all relevant discoverable documents or information are now under the possession or control of New GM.

(g) The Pending Litigation would not affect or prejudice the other creditors of the Debtors: For the following reasons it is clear that allowing the completion of the Ohio Litigation would not prejudice other creditors: (i) New GM already acknowledged that they, or their insurance carrier, will be assuming responsibility for Dr. Stull's defense; (ii) Debtors' counsel has represented that all relevant discoverable documents or information are now under the possession or control of New GM[9]; (iii) this matter is in the final stages of readiness for trial after 8 years of litigation; and (iv) any defenses that the Debtors' would raise in opposition to the Brittinghams' claim will have to be made and will be the same whether asserted in this Court or Ohio State Court. In re Metz, 165 B.R. at 772. Thus, any prejudice that the Ohio Litigation would have on other creditors would be negligible.

(h) Interest of Judicial Economy: The interests of judicial economy and the expeditious and economical resolution of the litigation require that the Ohio Litigation be allowed to proceed to final determination. In In re Dryja, 425 B.R. 608, 612 (Bankr. D. Colo. 2010), the court lifted the stay and held that it would serve judicial economy to have the state court, that is familiar with the facts and circumstances of the case, to proceed because the action has been pending in state court for more than a year. *A fortiori*, here, with the Ohio Litigation ongoing for more than 8 years prior to the Debtors' Bankruptcy Filing, it is an understatement

[9] In re Ingle, 259 B.R. 856, 861 (Bankr. E.D. Tex. 2001) (the court weighed the completion of discovery, which related to less additional costs for the debtor to defend the case, in favor of lifting the stay).

to claim that the Ohio State Court's involvement in this case for all those years has given it an enormous advantage over any other court.

(i) The parties are ready for trial: The Brittinghams have only filed a Proof of Claim in this Court. In contrast, the parties have been litigating this matter for more than 8 years in Ohio State Court, and the case was in the final stages of readiness for trial when the action was stayed by Debtors' Bankruptcy Filing. In re Metz, 165 B.R. 769, 772 (Bankr. E.D.N.Y. 1994) (lifting the stay based on the fact that the parties were more ready to litigate the issue before the state court where the litigation is pending).

(j) Balancing of Harms Weighs Heavily in Favor of the Brittinghams: After more than 8 years of litigation, Mrs. Brittingham is still waiting for her lung transplant and her health is continuing to deteriorate, every day that the stay is in place lessens the chances that Mrs. Brittingham will ever have her day in court. Furthermore, as a result of the stay and the continuing shifting of insurance coverage, the Brittinghams have been unable to seek a determination of available insurance proceeds. On the other hand, there would be almost no harm to the Debtors, the impact of modifying the stay to allow the Brittinghams to proceed with the Ohio Litigation is minimal because (i) New GM already acknowledged that they will be assuming responsibility for Dr. Stull's defense; and (ii) Debtors have represented on numerous occasions that any discoverable information is within the control of New GM. It is possible that the Debtors will have to incur some attorneys' fees and costs if New GM's representation is insufficient or if they do in fact have discoverable information, however, that possibility alone

does not preclude the Brittinghams from lifting the stay because the Debtors will need to incur some attorneys' fees and costs in this Court also if they were to attempt to liquidate the claim. In re Morris, 2010 Bankr. LEXIS 1875 (Bankr. N.D.N.Y. May 27, 2010) (the court rejected the debtors argument that lifting the stay would cause the debtors to suffer a financial hardship because they would incur attorneys' fees and costs, should they find it necessary to defend the state action, the court noted that those expenses would be incurred regardless of whether or not the stay is lifted because the Debtors would still have to defend against the claim in bankruptcy court); In re Ingle, 259 B.R. 856, 861 (Bankr. E.D. Tex. 2001) (in lifting the stay the court noted that the cost of defending a personal injury action in state court is but one factor for the court to consider which alone does not constitute grounds for denying a movant relief from the automatic stay); In re Metz, 165 B.R. at 772 (Bankr. E.D.N.Y. 1994) **(**"The drafters envisioned lifting the stay to allow other proceedings to continue, where appropriate: 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. S. REP. NO. 989, 95th CONG.2d. SESS. ")

21. It is respectfully submitted that *Sonnax* factors weigh in favor of the Brittinghams in this matter. As such, it is respectfully requested that the Court enter an order, in substantially the form attached hereto as **Exhibit "C",** modifying the automatic stay to permit the Brittinghams to prosecute the Ohio Litigation.

WHEREFORE, it is respectfully requested that the Motion be granted in all respects, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
July 12, 2010

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