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In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of:	)	
	)	Chapter 13 Case
RICHARD H. WARD )		
DOLORES E. WARD )		Number <u>98-42162</u>
	)	
<i>Debtors</i>	)	
	)	
	)	
ESTATE OF DOROTHY PRITCHETT )		
	)	
<i>Movant</i>	)	
	)	
v.	)	
	)	
RICHARD H. WARD )		
DOLORES E. WARD )		
	)	
<i>Respondents</i>	)	

**MEMORANDUM AND ORDER**  
**ON MOTION FOR RELIEF FROM STAY**

Debtors' case was filed under Chapter 7 on July 21, 1998, and was converted to Chapter 13 on December 23, 1998. On November 2, 1998, the Estate of Dorothy Pritchett, a creditor in the case, filed its Motion for Relief from Stay. The matter was heard on April 19, 1999. Based on the stipulations and the evidence produced at that time, I make the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

Dorothy Pritchett is the late sister of Debtor Richard H. Ward. At one time Ms. Pritchett's will contained a bequest in favor of her brother. At some time prior to Ms. Pritchett's death on January 2, 1994, she executed a new will which excluded her brother from any inheritance. Debtors filed a caveat challenging the will, alleging that undue influence caused Ms. Pritchett to execute the new will excluding Mr. Ward. The Estate asserted, among other defenses, that Ms. Pritchett had excluded Mr. Ward because of good and sufficient reason, to wit: that Mr. Ward was an alcoholic. In the course of discovery in the caveat proceeding, it became known that Debtors had altered certain medical records to delete any references to Mr. Ward's alcoholism from medical files produced in that litigation. Upon that discovery, Debtors dismissed their caveat to the will and the Estate sought sanctions against Debtors because of their actions during those proceedings.

The Maryland court concluded that while Debtors had altered documents, Maryland law did not permit an award of damages for an alleged fraud perpetrated upon a court; that ruling is now under appeal. The trial judge did award \$2,705.10 in sanctions against the Debtor for additional costs of litigation incurred by the Estate in defending the allegations having to do with the issue of alcoholism. On March 11, 1998, the Estate filed an independent fraud action in the State of Maryland and Debtors answered. The filing of this bankruptcy case automatically stayed both the appeal of the trial court's decision concerning damages for fraud perpetrated on the court and the independent fraud action filed in Maryland.

The Estate of Dorothy Pritchett filed a claim in Debtors' bankruptcy case

in the amount of \$600,000.00, which is of necessity an estimated claim at this time, as the liability has not been adjudicated. The Estate brings this motion seeking relief from the automatic stay in order to (1) continue the appellate process on the issues ruled upon in the caveat proceeding, and (2) to prosecute the independent fraud action pending in Maryland. The Wards urged the Court not to lift the automatic stay as to either issue, arguing (1) that unsecured creditors should not be granted stay relief in order to proceed with state court litigation, (2) that the desperate medical condition of both Mr. and Mrs. Ward weighs in favor of keeping the stay in place, and (3) that the expenses of litigation in a distant forum are prohibitively beyond the means of the Wards.

The evidence introduced at the hearing revealed that Mr. Ward suffered with Alzheimer's disease, experienced cognitive dysfunctions and had impaired memory.<sup>1</sup> Mrs. Ward has been diagnosed with mesothelioma, a fatal malignancy which cannot be alleviated by chemotherapy, radiation, or surgery. Debtors further proffered, without objection, that the cost of defending the appeal would be approximately \$10,000.00 and that the cost to defend the independent fraud action would be \$50,000.00 or more. Movant contends, notwithstanding the tragic circumstances in which the Wards find themselves, that the Court should grant stay relief or should abstain from litigating the issue of the Estate of Dorothy Pritchett's claim: because (1) there is a prior pending action in the State of Maryland, (2) the underlying conduct of the Wards amounted to sanctionable conduct and possibly fraud, (3) and that because this is a matter of particular expertise in the state court and of particular concern to the state courts of Maryland in whose forum the

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<sup>1</sup> Subsequent to the hearing, Debtors' counsel informed this Court that Mr. Ward committed suicide.

sanctionable conduct and alleged fraud occurred, the Maryland forum should be afforded the opportunity to litigate the issues between the parties.

#### CONCLUSIONS OF LAW

11 U.S.C. § 362(d) provides, in pertinent part:

On request of a part 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, including the lack of adequate protection of an interest in property of such party in interest.

“Cause” under Section 362(d)(1) may be based upon whether or not the matter is suitable for abstention pursuant to 28 U.S.C. § 1334(c)(1) or (2). See In re Burger Boys, Inc., 183 B.R. 682 (S.D.N.Y. 1994); In re Revco D.S., Inc., 99 B.R. 768 (N.D. Ohio 1989). Section 1334(c) provides:

(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and

can be timely adjudicated, in a State forum of appropriate jurisdiction.

Mandatory abstention is appropriate where the following elements are met: (1) the action is based on a state law claim or cause of action; (2) the action is only “related to” the bankruptcy case; (3) federal subject matter jurisdiction does not exist apart from bankruptcy jurisdiction; and (4) the action is already underway in a state forum which can timely resolve the issue. After examining the facts before me and the relevant law, I find that because abstention would be appropriate, the motion for relief should be granted for cause.

#### I. Mandatory Abstention

I find that mandatory abstention is appropriate with respect to the appeal now pending in the Maryland appellate system, which is based upon a claim for alleged fraud committed on the state court. The Court of Appeals is faced with the issue of whether such a claim arises under Maryland law, which meets the first element required under Section 1334(b).

Moreover, both the appeal and the fraud action are “related to” this bankruptcy case but do not “arise under” the bankruptcy case. Section 1334 confers subject matter jurisdiction to the district courts, which in this district have in turn referred such jurisdiction to the bankruptcy court. Jurisdictional categories are set out as follows:

(a) Except as provided in subsection (b) of this section, the

district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. § 1334(a), (b). Subsection (a), “all cases under title 11,” refers to the original bankruptcy petition itself. *See Matter of Wood*, 825 F.2d 90, 92 (5<sup>th</sup> Cir. 1987). In subsection (b), “proceedings arising under title 11” refers to matters which are based upon a cause of action either created or determined by a section of the Bankruptcy Code, such as a trustee’s power to avoid certain transfers. *In re Toledo*, 170 F.3d 1340, 1345 (11<sup>th</sup> Cir. 1999) (citing *Wood*, 825 F.2d at 96-97). “Proceedings arising in” cases under title 11 are those matters which are administrative in nature and which, though not based upon substantive rights created by the Code, would nevertheless not exist apart from the statute, such as the filing of proofs of claim or objections to discharge. *Id.*

The last category of jurisdiction, those proceedings “related to” a case under title 11, are those actions in which the outcome could conceivably have an effect on the administration of the bankruptcy estate. *In re Lemco Gypsum, Inc.*, 910 F.2d 784, 788 (11<sup>th</sup> Cir. 1990). The state claims in this case fall into this jurisdictional category, and are “related to” the Debtors’ bankruptcy case. The actions are not based upon substantive or procedural creations of the Bankruptcy Code, and therefore do not arise in or under the Code. The outcomes of the Maryland action, however, have the potential to “alter the Debtor’s rights, liabilities, options, or freedom of action,” *Lemco Gypsum*, 910 F.2d at

788, and therefore are “related to the case” before me.

No basis for federal jurisdiction exists over the appeal absent the grant of bankruptcy jurisdiction under Section 1334.<sup>2</sup> The appeal has been filed and is pending in the state appellate system for final determination. The fraud action is filed and answers have been served. No evidence has been produced to indicate that the Maryland courts will not be able to resolve all issues in a timely manner.

## II. Discretionary Abstention

Even if mandatory abstention is not required because federal diversity jurisdiction exists in the fraud case, abstention is still permissible pursuant to Section 1334(c)(1). Under this section, a court may exercise its discretion in abstaining from hearing a matter where to do so is in the interest of justice or in the interest of comity with state courts. In considering whether to abstain under Section 1334(c)(1), bankruptcy courts have examined a variety of factors:

1. the effect of abstention on the efficient administration of the bankruptcy estate;
2. the extent to which state law issues predominate over bankruptcy issues;
3. the difficulty or unsettled nature of the applicable law;
4. the presence of a related proceeding commenced in

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<sup>2</sup> With respect to the independent fraud action, however, the possibility for diversity of citizenship jurisdiction exists, because the Estate is a resident of Maryland and Debtors are residents of Georgia. A federal court has subject matter jurisdiction where the two parties are citizens of different states and the amount in controversy exceeds \$ 75,000.00. 28 U.S.C. § 1332(a).

- state court or other non-bankruptcy court;
5. the basis of bankruptcy jurisdiction, if any, other than 28 U.S.C. § 1334;
  6. the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
  7. the substance rather than form of an asserted “core” proceeding;
  8. the feasibility of severing state law claims from core bankruptcy matters to all judgments to be entered in state court with enforcement left to the bankruptcy court;
  9. the burden of the bankruptcy court’s docket;
  10. the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping;
  11. the existence of a right to a jury trial;
  12. the presence in the proceeding of non-debtor parties.

In re Perfect Home L.L.C., 231 B.R. 358, 361 (Bankr. N.D.Ala. 1999); *see also* In re Wedlo, Inc., 204 B.R. 1006, 1016 (Bankr. N.D.Ala. 1996). In this case, I find that discretionary abstention is appropriate.

As a result of that determination, cause exists to lift the stay. *See* In re Burger Boys, 103 B.R. at 688 (“The decision to grant relief from the automatic stay is logical within the context of the bankruptcy court’s determination that it must abstain.”). The issues presented in both actions are questions of state law that are unsettled. State law issues predominate over bankruptcy issues. There are no core bankruptcy issues asserted

in either state court proceeding. Efficient administration of the bankruptcy estate will not suffer because it presents no great difficulty for this Court to allow the state forum to resolve state issues and come to a final judgment, yet reserve the enforcement of any judgment to the bankruptcy case.

### CONCLUSION

Taking all of the relevant factors into account, I find that the motion for relief should be granted. Two actions are already under way in the state courts of Maryland; moreover, the issues at stake in these two actions involve questions of law unique to Maryland and for which no bankruptcy expertise is required. This Court's jurisdiction is based solely on the Maryland actions being "related to" the bankruptcy case, rather than being core proceedings. I find, therefore, that abstention is appropriate and that cause exists to terminate the automatic stay.

### ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the motion to lift the automatic stay is GRANTED.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of August, 1999.