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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 In re:

12 HELLER EHRMAN LLP,
13 Debtor.

CASE NO.: 08-32514

Chapter 11

Date: April 16, 2008

Time: 9:30 a.m.

Court: 235 Pine Street, 22nd Floor
San Francisco, CA

Judge: Honorable Dennis Montali

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17 **OFFICIAL COMMITTEE OF UNSECURED CREDITORS' OPPOSITION TO**
18 **MOTION FOR RELIEF OF AUTOMATIC STAY BROUGHT BY LIFELOCK, INC.**

19 **I.**

20 **SUMMARY OF ARGUMENT AND RELIEF REQUESTED**

21 The Official Committee of Unsecured Creditors (the "Committee") hereby opposes the
22 Motion ("Motion") for Relief of Automatic Stay Brought by LifeLock, Inc. ("LifeLock"), which
23 requests permission to pursue a legal action against Heller Ehrman LLP ("Debtor") to liquidate
24 the amount of LifeLock's claim.

25 The Committee respectfully submits that LifeLock fails to demonstrate sufficient "cause"
26 for relief from the automatic stay under 11 U.S.C. § 362(d)(1). Claimant LifeLock, one of the
27 Debtor's former clients, alleges to have a pre-petition professional liability claim against the
28 Debtor for a matter in which the Debtor is owed legal fees.

1 The estate would suffer substantial prejudice if relief from stay is granted for LifeLock at
2 this early stage in the Debtor's Chapter 11 bankruptcy case. The Debtor's energies and resources
3 cannot be diverted by litigation and legal expenses to liquidate LifeLock's potential claim in a
4 separate federal forum. There is a pressing need for the Debtor to prosecute its own avoidance
5 actions and other causes of action in order to determine the possibility of any meaningful
6 distribution to creditors in light of the Debtor's imminent cash short position.

7 As the claims bar date has not yet passed, the Committee recommends that LifeLock file a
8 proof of claim to be liquidated at a later date.

9 II.

10 ARGUMENT

11 **A. Section 362(a) of the Bankruptcy Code Imposes an Automatic Stay of All Litigation** 12 **to Protect Both the Debtor and its Creditors**

13 1. While the automatic stay provides a breathing spell for a bankruptcy debtor from its
14 creditors, the automatic stay also provides creditors protection through an "orderly liquidation
15 procedure under which all creditors are treated equally." *Benedor Corp. v. Conejo Enterprises,*
16 *Inc. (In re Conejo Enterprises, Inc.),* 96 F.3d 346, 352 (9th Cir. 1996); *In re Tucson Estates, Inc.,*
17 912 F.2d 1162, 1166 (9th Cir. 1990) (discussing the stay of all litigation).

18 2. Should creditors race to pursue their own remedies against the debtor's property to the
19 detriment of other creditors, the debtor's orderly liquidation would be thwarted. *Conejo*, 96 F.3d
20 at 352.

21 3. Exceptions to the automatic stay are specifically enumerated in 11 U.S.C. § 362(b). In
22 addition, upon a showing of "cause," a claimant may obtain relief from the automatic stay. *See*
23 11 U.S.C. § 362(d)(1).

24 4. Here, claimant LifeLock acknowledges that it initiated a civil complaint
25 ("Complaint") in the United States District Court for the Central District of California against the
26 Debtor on February 18, 2009, in violation of the automatic stay. After dismissing the Complaint
27 as to the Debtor, LifeLock now contends that the Court should lift the stay for "cause" to allow
28 LifeLock to pursue its legal action the Debtor to fix the Debtor's liability, if any, and to seek

1 recovery from the Debtor’s professional negligence insurance carrier. Such legal action, argues
2 LifeLock, is “only tangentially related to the bankruptcy case.” (Mot. At 7).

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4 **B. Claimant Has Not Shown Sufficient “Cause” for Immediate Relief From the**
5 **Automatic Stay, and the Granting of Relief Would Interfere With the Efficient**
6 **Administration of the Debtor’s Bankruptcy Estate**

7 5. To obtain relief from the automatic stay, the moving party must first establish a prima
8 facie case that “cause” exists. *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re*
9 *Plumberex Specialty Products, Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). After a prima
10 facie case is established, the debtor must show that relief is unwarranted. *Id.*

11 “Cause” has “no clear definition and is determined on a case-by-case basis.” *Tuscon Estates*, 912
12 F.3d at 1166. Consequently, courts will differ in determining whether relief from stay for “cause”
13 is warranted. *See Peterson v. Cundy (In re Peterson)*, 116 B.R. 247, 249 (D. Colo. 1990). For
14 litigation that is already pending (a posture that does not exist here), courts will look to multiple
15 non-exclusive factors before granting relief from stay to permit the pending litigation to continue.

16 6. “One of the primary purposes of granting relief from the stay to permit claim
17 liquidation is to economize judicial resources.” *Peterson*, 116 B.R. at 250. Many courts have
18 held that the “prospect of litigation expenses does not constitute irreparable injury sufficient to
19 justify continuation of the stay. . . .” *Id.* at 250; *see also In re Winterland*, 101 B.R. 547, (Bankr.
20 C.D. Ill. 1988).

21 7. In Chapter 11 bankruptcy cases involving more complex issues, however, courts
22 recognize that a debtor’s ability to act responsively in its bankruptcy case can be hindered by the
23 debtor’s attention to litigation and expenses in multiple judicial forums. *Peterson*, 116 B.R. at
24 250 n.3. Should litigation interfere with the administration of a bankruptcy estate, even to a slight
25 degree, this would be enough to preclude relief from stay. *In re United States Brass Corp.*, 173
26 B.R. 1000, 1005 (Bankr. E.D. Tex. 1994) (citing to *In re Curtis*, 40 B.R. 795, 806 (Bankr. D.
27 Utah 1984)).

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1 8. The early stages of a bankruptcy case, in particular, require a Chapter 11 debtor to
2 “devote full time and attention” to reviewing its financials, dealing with creditors, concentrating
3 on reorganization and paying claims. *In re Leonard*, 51 B.R. 53, 54 (Bankr. D.C. 1985) (finding
4 that there is no need for a claim to be liquidated in the early stage of a Chapter 11 proceeding,
5 especially since the estate is short on cash); *United States Brass*, 173 B.R. at 1006 (stating that
6 “the Court believes that Debtors efforts should be concentrated on the reorganization at this
7 [early] stage.”); *In re Johns-Manville Corp.*, 26 B.R. 405, 418-19 (Bankr. S.D.N.Y. 1983).
8 Consequently, a debtor would be severely prejudiced by having to defend lawsuits seeking
9 significant damages during the early stages of a Chapter 11 case. *Johns-Manville*, 26 B.R. at 419.

10 9. Here, the Debtor’s Chapter 11 case is a law firm liquidation, as opposed to
11 reorganization. The Debtor remains in its initial stage of liquidating its assets and winding up its
12 affairs, including the collection of accounts receivable. The joint financial advisor to the Debtor
13 and the Committee, DSI, is assisting in a wind down plan and wind down budget, as well as
14 investigating potential claims and preparing a liquidation analysis.

15 10. As discussed further below, the wind down and liquidation of the Debtor’s assets,
16 most of which are receivables, during the first four months of the Debtor’s Chapter 11 case have
17 failed to reach the projected targets by a significant margin. If the Court lifts the stay for
18 LifeLock to proceed with liquidating its claim, the estate will be burdened with litigation
19 expenses at a time when it is unclear whether there will even be monies to distribute to general
20 unsecured creditors. The ongoing costs of the liquidation process, and additional contingencies
21 such as contingent accounts receivable, avoidance actions against Bank of America and/or
22 Citibank, other estate causes of action will greatly affect case administration and importantly, the
23 estate’s distribution prospects. Hence, the automatic stay should not be lifted at this time.

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1 **C. The Estate is Facing a Cash Short Position in Light of Failing to Meet Receivables**
2 **Targets**

3 11. At the onset of this Chapter 11 case, it was believed that there would be a
4 significant return to unsecured creditors based on the collection of accounts receivables valued in
5 the Debtor's schedules at Schedule "B" in the amount of \$76,921,851.38.

6 12. Since the filing of the petition, however, the collection of accounts receivables has
7 slowed dramatically.

8 13. Based on the current internal projections of the cost of this Chapter 11 case
9 through May 31, 2009, and the projected amount of accounts receivables collected during that
10 time period, only approximately \$8.25 million is projected to be on hand and available to fund the
11 remaining costs of the Chapter 11, and distributions to creditors. *See* Declaration of Brad Sharp In
12 Support of the Official Committee of Unsecured Creditors' Opposition to Motion for Relief From
13 Stay by LifeLock, Inc. (the "Sharp Declaration") ¶ 6 at pg. 2.

14 14. Accounts receivables will continue to be collected after May 31, 2009, and many
15 will be moved into a collection or a fee arbitration or collection action mode at or before that
16 time, but costs will continue to accrue in this case which may largely offset post May 31, 2009
17 collections. Sharp Declaration at ¶ 8 pg. 2.

18 15. Excluded from this analysis are contingent fee accounts receivables ("Contingent
19 Fee Receivables") and/or the estate's potential claims v. third parties excluding claims v.
20 shareholders ("Potential Claims"). Sharp Declaration at ¶ 7 pg. 2.

21 16. If the Potential Claims have merit, the costs to bring those actions could easily
22 exceed the potential cash available in the estate. For example, in a recent Chapter 11 case, In re
23 Tri Valley Growers (Case No. 00-44089), where Lovitt & Hannan, Inc. ("L&H") was hired to
24 bring claims similar to the Potential Claims, L&H took one of the actions on a contingency basis,
25 but required a \$1,000,000.00 cost deposit, and took a second on a blended reduced
26 hourly/contingent basis, and the estate funded a \$4,000,000.00 fee and expense deposit prior to
27 the action being filed. The total recoveries, however, in the Tri Valley Growers actions ultimately
28 exceeded \$34,000,000.00. Sharp Declaration at ¶ 11 pg. 2.

