

SEP 30 2016

At 11:29 P.M.  
Velva L. Price, District Clerk

NO. D-1-GN-16-0360

THE STATE OF TEXAS,  
Plaintiff,  
v.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

MILLENNIUM CLOSING SERVICES,  
L.L.C., dba Millennium Title  
Defendant.

53rd JUDICIAL DISTRICT

**MEMORANDUM RECOMMENDATION**

**(Peniel Holdings, LLC's Motion for Relief From The Automatic Stay)**

The Order of Reference entered in this proceeding refers issues regarding lifting of the stay to the Special Master.

The Special Master convened a hearing on August 5, 2016, to consider Peniel Holdings, LLC's (hereafter "Peniel") Motion for Relief from the Automatic Stay. At the hearing, counsel for the parties indicated that negotiations were underway to perhaps substantially narrow the matters in dispute. Accordingly, the hearing did not proceed so that the parties could explore agreements as to certain categories of entities/persons that might be deemed not covered by the automatic stay in place in this proceeding. A briefing schedule also was established as to any remaining issues that might exist.

Thereafter, the parties did resolve many matters in dispute and the Court entered on August 29, 2016, its Order Adopting Stipulations reached by the parties.

The one remaining issue is whether the stay should be lifted to allow Peniel to pursue recovery against any insurance policies that might cover the actions of Millenium and the individuals (primarily Nancy Carroll and her law firm) who owned and operated Millenium. The stay in effect prohibits legal actions against Millenium, Carroll, her law firm and others.

Peniel is the third creditor in this proceeding which has sought relief from the automatic stay. The prior two motions have been denied.

Peniel in its briefing distinguishes the mass tort bankruptcy proceedings in which a stay against creditors pursuing insurance policies or proceeds of the debtor was enforced, such as in the Dow Corning, John-Mansville and A. H, Robins matters. The Special Master generally does not disagree with the distinctions urged by Peniel, but this does not end the inquiry. In this estate, there are a number of creditors who have suffered a monetary loss as a result of an apparent series of wrongful actions by Carroll and possibly others. Peniel thus is one of many similarly-situated creditors. One of the primary purposes of the stay is to avoid a "race to the courthouse," and this purpose would be defeated if Peniel were allowed to proceed on its own against any relevant

insurance policies. Thus, for this and the other reasons set forth by the Special Deputy Receiver (SDR") in its briefing, Peniel's motion to lift the stay should be denied.

In the alternative, Peniel requests in its Reply Brief that the SDR develop procedures for demands for policy limits against the policies and for the segregation and distribution of any recovered policy proceeds. The Special Master certainly is interested in the position of the SDR regarding the policies and any plan that the SDR has or is developing for dealing with the insurance policies. Accordingly, in the status report due in connection with the next quarterly status conference that is set for November 7, 2016, the Master requests that the SDR address separately the matter of the insurance policies and the SDR's plan and timetable for dealing with same consistent with the deadlines set forth in the Court's August 9, 2016 Order Granting Joint Application to Provide Notice of Liquidation, Set Claims Filing Deadline and Establish a Claims Processing Procedure.

Accordingly, the Special Master RECOMMENDS that Peniel Holdings, LLC's Motion for Relief from the Automatic Stay be denied. Any Order on this Recommendation should not be entered by the District Court until the time for Movant to seek *de novo* review in the District Court has expired.

SIGNED this 20<sup>th</sup> day of September, 2016



Tom Collins, Special Master