**U.S. BANKRUPTCY COURT**
**District of South Carolina**

Case Number: **19-05154-hb**

**ORDER**

The relief set forth on the following pages, for a total of 5 pages including this page, is hereby ORDERED.

---

**FILED BY THE COURT**
**11/09/2021**

Entered: 11/09/2021

Chief US Bankruptcy Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT**
**DISTRICT OF SOUTH CAROLINA**

| | |
|---|---|
| IN RE:<br><br>Oaktree Medical Centre, LLC,<br><br>Debtor(s). | C/A No. 19-05154-HB<br><br>Chapter 7 |
| IN RE:<br><br>Oaktree Medical Centre, P.C.,<br><br>Debtor(s). | C/A No. 19-05155-HB<br><br>Chapter 7 |
| IN RE:<br><br>Labsource, LLC,<br><br>Debtor(s). | C/A No. 19-05161-HB<br><br>Chapter 7<br><br>**ORDER** |

**THIS MATTER** is before the Court on the Motions for Relief from Stay filed by Landmark American Insurance Company and responses and pleadings related thereto.[1] The above-captioned cases are three separate, but related Chapter 7 cases pending in this Court in which John K. Fort serves as the Trustee. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

Before any bankruptcy filing, Landmark issued Insurance Policy No. HP677660 to policy owner Oaktree Medical Centre, LLC ("Oaktree") providing, in order of priority: (A) direct coverage for its directors and officers; (B) indemnification coverage; and (C) direct coverage for Oaktree. The policy and Oaktree's rights therein are property of its bankruptcy estate. It is disputed whether the policy provides coverage to Oaktree Medical Centre, P.C. ("Medical Centre")

[1] Substantively identical pleadings were filed in the above-captioned cases: C/A No. 19-05154-HB, ECF Nos. 85, 91, 98, & 107; C/A No. 19-05155-HB, ECF Nos. 141, 147, 161, & 165; and C/A No. 19-05161-HB, ECF Nos. 96, 101, 115, & 120.

and Labsource, LLC ("Labsource") and their respective directors and officers.[2] The policy is a $1,000,000.00 declining balance policy, meaning all disbursements reduce the policy balance and claims are paid according to priority. Landmark's obligations under the policy are not altered by an entity covered under the policy filing for bankruptcy, and the policy is intended primarily to protect the directors and officers.

An alleged former officer and employee of Medical Centre filed a prepetition action against that entity and two of its former officers.[3] The bankruptcy filings invoked the automatic stay of 11 U.S.C. § 362. Thereafter, the Trustee filed identical adversary proceedings against several defendants, including former officers and directors of the Debtors, alleging they caused damages to the Debtors' estates while serving in those capacities.[4] Therefore, coverage (A) above may be triggered for Medical Centre's former officers in the prepetition action and for certain defendants in the Trustee's adversary proceedings. Landmark has undertaken these individuals' defenses, subject to certain reservations of rights. There is no evidence the Debtors have made any claims to any other coverage under the policy.

Landmark's Motion seeks relief from stay, if necessary, to allow it to meet its obligations under the policy terms. In response, the Trustee appears primarily concerned that if Landmark follows the terms of the policy, there may not be any proceeds left to satisfy any judgments he may obtain in the adversary proceedings. The Trustee requests that if the stay is lifted, it be conditioned upon Landmark providing advance notice of any disbursement of policy proceeds, an accounting of such proceeds paid to ensure they directly relate to the defense and are necessary and reasonable, and such payments be subject to disgorgement if found otherwise by the Court.

[2] Oaktree, Medical Centre, and Labsource are hereinafter collectively referred to as the "Debtors."
[3] *Rauch v. Oaktree Medical Centre, P.C., et al.*, C/A No. 2019-CP-23-02961 in the South Carolina Court of Common Pleas for Greenville County.
[4] Adv. Pro. Nos. 21-80058-HB (Oaktree), 21-80057-HB (Medical Centre), and 21-80059-HB (Labsource).

Insurance policies owned by a debtor are property of the estate, but "courts differ in their treatment of insurance proceeds." *In re Beach First Nat'l Bancshares, Inc.*, 451 B.R. 406, 408-09 (Bankr. D.S.C. 2011) (citations omitted); *see also A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994, 1001 (4th Cir. 1986) (insurance policies are property of the estate). Whether the proceeds of a directors and officers liability policy are property of the estate depends on the facts of each case. *Id.* at 409 (citing *In re CyberMedica, Inc.*, 280 B.R. 12, 16 (Bankr. D. Mass. 2002); *In re Downey Fin. Corp.*, 428 B.R. 595, 603 (Bankr. D. Del. 2010)). Courts look to "the language and scope of the specific policies at issue." *Downey Fin. Corp.*, 428 B.R. at 603. "[T]he Debtor's rights to the proceeds of his policy are inevitably subject to the contractual restrictions in his insurance policy[.]" *Jones v. GE Cap. Mortg. Co. (In re Jones)*, 179 B.R. 450, 455 (Bankr. E.D. Pa. 1995). Further, "the estate's legal and equitable interests in property rise no higher than those of the debtor." *Appleton v. Gagnon (In re Gagnon)*, 26 B.R. 926, 928 (Bankr. M.D. Pa. 1983). Consequently, "the owner of an insurance policy cannot obtain greater rights to the proceeds of that policy . . . by merely filing a bankruptcy petition." *In re Denario*, 267 B.R. 496, 499 (Bankr. N.D.N.Y. 2001) (quoting *Thomas v. Universal Am. Mortg.*, C/A Nos. 97-3995, -4001, -4123, & -5408, 1998 WL 57523 (E.D. Pa. 1998), *aff'd sub nom. In re Thomas*, 182 F.3d 904 (3d Cir. 1999)).

The filing of bankruptcy "operates as a stay, applicable to all entities, of . . . any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate[.]" 11 U.S.C. § 362(a)(3). Recently, the scope of this subsection was closely examined. *See City of Chicago v. Fulton*, 141 S. Ct. 585, 208 L. Ed. 2d 384 (2021). Considering the "property of the estate" at issue here includes only the Debtors' interests in the policy as defined by its terms, which appear quite limited, and because Landmark seeks only to honor its obligations

thereunder, it is difficult to find the relevant act that should be prohibited by the stay under § 362(a)(3).

Even if the stay applies and the insurance policy and proceeds thereof are considered property of the estate, courts have nonetheless granted relief from the stay to allow the insurer to advance payments for "defense costs . . . when the harms weigh more heavily against the directors or officers than the debtor." *Groshong v. Sapp (In re Mila, Inc.)*, 423 B.R. 537, 544 (9th Cir. B.A.P. 2010) (citing *CyberMedica, Inc.*, 280 B.R. at 18). Where the policy at issue is a declining balance policy, courts consider whether defense costs for directors and officers may exhaust the coverage available to pay a future covered loss under the policy or expose the bankruptcy estate to indemnification claims. *Id.* (citations omitted). However, "clear, immediate, and ongoing" losses to the directors and officers in incurring defense costs trump "hypothetical or speculative" claims by the trustee. *Id.* at 544-45 (citing numerous cases).

Cause exists here to lift any stay since Landmark has an immediate contractual obligation under the policy for the defense of the directors and officers. At this point, any lower priority claims the Debtors may have under the policy are purely speculative. As there is no provision in the policy that grants the Debtors the right to interfere with the distributions set forth in the insurance contract, the estates have no right to advance notice and an accounting of any policy proceeds paid for the defense of the officers and directors, and the facts of these cases do not motivate the Court to impose such conditions.

**IT IS, THEREFORE, ORDERED THAT** to the extent the automatic stay of 11 U.S.C. § 362(a) applies, it is lifted in the above-referenced cases pursuant to 11 U.S.C. § 362(d) to allow Landmark American Insurance Company to fulfill its contractual obligations under Insurance Policy No. HP677660. Any further relief requested by any party is denied.